

**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: June 28, 2019  
(Date of earliest event reported)**

**Hornbeck Offshore Services, Inc.**  
(Exact Name of Registrant as Specified in Its Charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**001-32108**  
(Commission  
File Number)

**72-1375844**  
(I.R.S. Employer  
Identification Number)

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

**70433**  
(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))

Class	Trading Symbol	Name of exchange on which registered
<b>Common Stock, \$0.01 par value</b>	<b>HOS</b>	<b>New York Stock Exchange</b>

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Act of 1934 (17 CFR §240.12b-2).

Emerging growth company

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

### **Item 1.01 – Entry into a Material Definitive Agreement.**

On June 28, 2019, Hornbeck Offshore Services, Inc. (the “Company”) entered into a new \$100 million senior secured asset-based revolving credit facility by and among the Company, as Borrower, certain of the Company’s subsidiaries, as guarantors, certain lenders, and CIT Northbridge Credit LLC as Administrative Agent and Collateral Agent for the lenders (the “Senior Credit Facility”). The Senior Credit Facility is guaranteed by certain of the Company’s domestic and foreign subsidiaries and contains customary representations and warranties, covenants and events of default.

The fully-funded Senior Credit Facility is secured by first priority liens on certain eligible receivables, certain restricted cash amounts and related assets. The Senior Credit Facility will be comprised of two tranches that will rebalance each month based on the variable receivable-backed borrowing base. The unrestricted receivables-backed tranche will mature in 2022, whereas the restricted cash-backed tranche will mature in 2025. The receivables-backed tranche may be used, subject to the completion of applicable eligibility review procedures, for working capital and general corporate purposes, including the refinancing or repayment of existing debt, subject to, among other things, compliance with certain requirements. The cash-backed tranche may, over time, rebalance to the receivables-backed tranche as eligible receivables increase and may be refinanced over time.

Borrowings under the Senior Credit Facility accrue interest at LIBOR plus a floating-rate spread of 5.00% for the life of the facility. The Company may, at its option from time to time, prepay loans under either tranche of the Senior Credit Facility. Fifty percent (50%) of such loans available under the Senior Credit Facility is subject to a prepayment premium (i) at 103% of the principal amount repaid if such repayment occurs on or prior to June 28, 2020; (ii) at 102% of the principal amount repaid if such repayment occurs on or prior to June 28, 2021; (iii) at 101% of the principal amount repaid if such repayment occurs on or prior to December 28, 2021 and (iv) at 100% of the principal amount repaid if such repayment occurs after December 28, 2021, with such premiums subject to adjustments downward under certain circumstances. The other fifty percent (50%) of such loans may be repaid at any time without a prepayment penalty.

The foregoing is only a summary, is not necessarily complete, and is qualified by the full text of the Senior Credit Agreement, the Guaranty and Security Agreement and the ABL/Term Intercreditor Agreement filed herewith as Exhibit 10.1, Exhibit 10.2 and Exhibit 10.3, respectively.

Also filed herewith as Exhibit 99.1 is a press release to be released on Monday July, 8, 2019 in substantially the form attached hereto.

At the request of certain holders of the Company’s Senior Notes (described below), on May 8, 2019, the Company executed an Instrument of Resignation, Appointment and Acceptance (the “Trustee Instrument”) with Wells Fargo Bank, National Association (“Wells Fargo”), as resigning trustee, and Wilmington Trust, National Association (“Wilmington Trust”), as successor trustee, with respect to the indenture dated March 16, 2012 (the “2012 Indenture”)

governing the Company's 5.875% Senior Notes due 2020 and the indenture dated March 28, 2013 (the "2013 Indenture") governing the Company's 5.00% Senior Notes due 2021. Pursuant to the terms of the Trustee Instrument, (i) Wells Fargo resigned as trustee, registrar, paying agent, and note custodian under the 2012 Indenture and the 2013 Indenture and (ii) Wilmington Trust assumed all of Wells Fargo's rights, powers and duties, as trustee, registrar, paying agent, and note custodian under the 2012 Indenture and the 2013 Indenture. The resignation of Wells Fargo and the appointment of Wilmington Trust was effective May 8, 2019.

The preceding paragraph is only a summary, is not necessarily complete, and is qualified by the full text of the Trustee Instrument filed herewith as Exhibit 4.1.

### **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 8.01 – Other Events**

On June 28, 2019, in connection with the Company's entry into the Senior Credit Facility, the Company, entered into Amendment No. 2 to First Lien Term Loan Agreement ("Amendment No. 2") whereby the Company's First Lien Term Loan Agreement dated as of June 15, 2017, as previously amended, was further amended to clarify various provisions and make certain technical revisions related to the entry into the Senior Credit Facility. The foregoing is a summary only, is not necessarily complete, and is qualified by the full text of Amendment No. 2 filed herewith as Exhibit 10.4.

On June 28, 2019, in connection with the Company's entry into the Senior Credit Facility, the Company, entered into Supplement No. 2 to First Lien Guaranty and Collateral Agreement ("Supplement No. 2") whereby the Company's First Lien Guaranty and Collateral Agreement dated as of June 15, 2017, as previously amended, was further amended to amend an applicable definition related to the entry into the Senior Credit Facility. The foregoing is a summary only, is not necessarily complete, and is qualified by the full text of the Supplement No. 2 filed herewith as Exhibit 10.5.

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

(d) Exhibits

<b>Exhibit Number</b>	<b>Description</b>
4.1	<a href="#"><u>Instrument of Resignation, Appointment and Acceptance dated as of May 8, 2019 by and among the Company, Wells Fargo Bank, National Association, as resigning trustee, and Wilmington Trust, National Association, as successor trustee.</u></a>
10.1	<a href="#"><u>Senior Credit Agreement dated as of June 28, 2019 by and among the Company, as Borrower, the obligors signatory thereto, CIT Northbridge Credit LLC, as Collateral Agent and Administrative Agent, and the lenders party thereto.</u></a>
10.2	<a href="#"><u>Guaranty and Security Agreement dated as of June 28, 2019 by and among the Company, as Borrower, CIT Northbridge Credit LLC, as Agent, and the obligors signatory thereto.</u></a>
10.3	<a href="#"><u>ABL/Term Intercreditor Agreement dated as of June 28, 2019 by and among the Company, as Parent Borrower, Wilmington Trust, National Association, as Initial Senior Term Collateral Agent and Initial Junior Term Collateral Agent, CIT Northbridge Credit LLC, as ABL Collateral Agent, and the grantors signatory thereto.</u></a>
10.4	<a href="#"><u>Amendment No. 2 to First Lien Term Loan Agreement dated as of June 28, 2019 by and among the Company, as Parent Borrower, Hornbeck Offshore Services, LLC, as Co-Borrower, the guarantors signatory thereto, Wilmington Trust, National Association, as Administrative Agent, Wilmington Trust, National Association, as Collateral Agent, and the lenders party thereto, with accompanying Exhibit A.</u></a>
10.5	<a href="#"><u>Supplement No. 2 to First Lien Term Guaranty and Collateral Agreement dated as of June 28, 2019 by and among the Company, as Parent Borrower, Hornbeck Offshore Services, LLC, as Co-Borrower, the guarantors signatory thereto and Wilmington Trust, National Association, as Collateral Agent with accompanying Appendix A.</u></a>

10.6 [Conformed copy of First Lien Term Loan Agreement dated as of June 15, 2017, consolidating all amendments made by \(i\) Amendment No. 1 to First Lien Term Loan Agreement dated as of March 27, 2018 and \(ii\) Amendment No. 2 to First Lien Term Loan Agreement dated as of June 28, 2019. This conformed copy is being filed for ease of reference and is qualified in its entirety by reference to \(i\) and \(ii\), above.](#)

99.1 [Press Release to be released on July 8, 2019](#)

**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: July 5, 2019

By: /s/ James O. Harp, Jr.

James O. Harp, Jr.

Executive Vice President and Chief Financial Officer

THIS INSTRUMENT OF RESIGNATION, APPOINTMENT AND ACCEPTANCE, dated as of May 8, 2019 (this "*Instrument*"), is by and among HORNBECK OFFSHORE SERVICES, INC., a Delaware corporation (the "*Company*"), WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States of America and having a corporate trust office at 150 East 42nd Street, 40th Floor, New York, New York 10017, as resigning Trustee (the "*Resigning Trustee*"), and WILMINGTON TRUST, NATIONAL ASSOCIATION, a national banking association duly organized and existing under the laws of the United States of America and having a corporate trust office at 50 South Sixth Street, Suite 1290, Minneapolis, Minnesota 55402, as successor Trustee (the "*Successor Trustee*").

#### RECITALS

WHEREAS, there are currently \$224,313,000.00 aggregate principal amount of the Company's 5.875% Senior Notes due 2020 (the "*2020 Notes*") outstanding under an Indenture, dated as of March 16, 2012, by and between the Company, each of the Guarantors party thereto, and the Resigning Trustee (as amended and supplemented, the "*2012 Indenture*");

WHEREAS, there are currently \$450,000,000.00 aggregate principal amount of the Company's 5.00% Senior Notes due 2021 (the "*2021 Notes*") and, together with the 2020 Notes, the "*Notes*") outstanding under an Indenture, dated as of March 28, 2013, by and between the Company, each of the Guarantors party thereto, and the Resigning Trustee (as amended and supplemented, the "*2013 Indenture*" and, together with the 2012 Indenture, the "*Indentures*");

WHEREAS, the Company appointed the Resigning Trustee as Trustee, Registrar, Paying Agent, and Note Custodian under the Indentures.

WHEREAS, Section 7.08 of the Indentures provides that the Trustee may at any time resign and be discharged from the trust created by the Indentures by giving written notice of such resignation to the Company, effective upon acceptance by a successor Trustee of its appointment as a successor Trustee;

WHEREAS, Section 7.08 of the Indentures provides that, if the Trustee shall resign, the Company shall promptly appoint a successor Trustee;

WHEREAS, Section 7.08 of the Indentures provides that any successor Trustee appointed in accordance with the Indentures shall deliver a written acceptance of its appointment to the retiring Trustee and the Company, and thereupon the resignation shall become effective and the successor Trustee shall have all the rights, powers and duties of the Trustee under the Indentures and the retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee; *provided* that all sums owing to the retiring Trustee have been paid and subject to the Lien under Section 7.07 of the Indentures.

WHEREAS, the Resigning Trustee wishes to resign as Trustee, Registrar, Paying Agent, and Note Custodian under the Indentures; the Company wishes to appoint the Successor Trustee to succeed the Resigning Trustee as Trustee, Registrar, Paying Agent, and Note Custodian under the Indentures; and the Successor Trustee is willing to accept appointment as successor Trustee, Registrar, Paying Agent, and Note Custodian under the Indentures;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein, the receipt and sufficiency of which are hereby acknowledged, the Company, the Resigning Trustee and the Successor Trustee agree as follows:

## ARTICLE ONE

### THE RESIGNING TRUSTEE

Section 1.1. Resignation of the Resigning Trustee. Pursuant to Section 7.08 of the Indentures, the Resigning Trustee hereby notifies the Company that the Resigning Trustee resigns as Trustee, Registrar, Paying Agent, and Note Custodian under the Indentures, effective as of the Effective Date (as defined in Section 4.3 hereof).

Section 1.2. Representations and Warranties of the Resigning Trustee. The Resigning Trustee represents and warrants to the Successor Trustee that:

- (a) the Resigning Trustee is a national banking association duly organized and existing under the laws of the United States of America;
- (b) no covenant or condition contained in the Indentures has been waived by the Resigning Trustee in violation of the Indentures;
- (c) to the best of the knowledge of the Responsible Officers of the Resigning Trustee assigned to its corporate trust department, there is no action, suit or proceeding pending before any court or any governmental authority arising out of any action or omission by the Resigning Trustee as Trustee, Registrar, Paying Agent, or Note Custodian under the Indentures;
- (d) this Instrument has been duly authorized, executed and delivered on behalf of the Resigning Trustee and constitutes a legal, valid and binding obligation of the Resigning Trustee, enforceable in accordance with its terms, subject 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);
- (e) as of the Effective Date, the Resigning Trustee will hold no moneys or property under the Indentures;
- (f) the Resigning Trustee has lawfully and fully discharged its duties as Trustee under the Indentures;
- (g) the Indentures, and each amendment and supplemental indenture thereto, have not been further modified;

(h) \$224,313,000.00 aggregate principal amount of 2020 Notes are outstanding as of the date of this Instrument and all interest due on the 2020 Notes has been paid to April 1, 2019;

(i) \$450,000,000.00 aggregate principal amount of 2021 Notes, are outstanding as of the date of this Instrument and all interest due on the 2021 Notes has been paid to March 1, 2019; and

(j) the registers in which the Resigning Trustee has registered and transferred registered Notes accurately reflect the amount of Notes issued and outstanding and the amounts payable thereon.

Section 1.3. Assignment of Resigning Trustee. Subject to the terms and limitations in this Instrument, the Resigning Trustee hereby assigns, transfers, delivers and confirms to the Successor Trustee all right, title and interest of the Resigning Trustee in and to the trusts under the Indentures in its capacity as Trustee, Registrar, Paying Agent, and Note Custodian under the Indentures, including, without limitation, all the rights, powers, and duties of the Resigning Trustee under the Indentures and all property and money held by such Resigning Trustee under the Indentures. The Resigning Trustee shall execute and deliver such further instruments and shall do such other things as the Successor Trustee may reasonably request, in writing, so as to more fully and certainly vest and confirm in the Successor Trustee all the rights, powers, and duties hereby assigned, transferred, delivered and confirmed to the Successor Trustee as Trustee, Registrar, Paying Agent, and Note Custodian under the Indentures.

Section 1.4. Delivery of Documents. The Resigning Trustee shall deliver to the Successor Trustee as of or promptly after the Effective Date, all of the items listed on Exhibit A annexed hereto to the extent these items are in the possession, custody or control of the Resigning Trustee.

Section 1.5. Liability of Resigning Trustee. The Resigning Trustee shall have no liability or responsibility for any matters occurring on or after the Effective Date in connection with the Notes and Indenture, and the Resigning Trustee shall not be liable to any person for any costs, claims, liabilities, losses or damages whatsoever incurred or suffered by such person arising out of any action or omission of the Successor Trustee on or after the Effective Date.

## **ARTICLE TWO**

### **THE COMPANY**

Section 2.1. Acceptance of Resignation. The Company hereby accepts the resignation of the Resigning Trustee as Trustee, Registrar, Paying Agent, and Note Custodian under the Indentures in Section 1.1 hereof.

Section 2.2. Company Certification. The Company hereby certifies that the Company and the officer of the Company who has executed this Instrument each are duly authorized and empowered to: (a) accept the Resigning Trustee's resignation as Trustee, Registrar, Paying Agent, and Note Custodian under the Indentures; (b) appoint the Successor



Trustee as Trustee, Registrar, Paying Agent, and Note Custodian under the Indentures; and (c) execute and deliver such agreements and other instruments as may be necessary or desirable to effectuate the succession of the Successor Trustee as Trustee, Registrar, Paying Agent, and Note Custodian under the Indentures.

Section 2.3. Appointment of Successor Trustee. The Company hereby appoints the Successor Trustee as Trustee, Registrar, Paying Agent, and Note Custodian under the Indentures, effective as of the Effective Date, and hereby vests with and confirms in the Successor Trustee all rights, powers and duties of the Resigning Trustee under the Indentures, with like effect as if the Successor Trustee were originally named as Trustee, Registrar, Paying Agent, and Note Custodian under the Indentures.

Section 2.4. Execution and Delivery of Documents. The Company shall execute and deliver such further instruments and shall do such other things as the Successor Trustee may reasonably require so as to more fully and certainly vest and confirm in the Successor Trustee all the rights, powers and duties hereby vested with and confirmed in the Successor Trustee.

Section 2.5. Company Representations and Warranties. The Company hereby represents and warrants to the Resigning Trustee and to the Successor Trustee that:

(a) the Company is a Delaware corporation duly organized and existing pursuant to the laws of the State of Delaware;

(b) the Indentures, and each amendment and supplemental indenture thereto, were validly and lawfully executed and delivered by the Company and are in full force and effect and constitute valid and binding agreements of the Company, enforceable against the Company in accordance with their terms, subject 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);

(c) the Notes were validly and lawfully issued by the Company and constitute binding obligations of the Company, subject 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);

(d) no covenant or condition contained in the Indentures has been waived by the Company or, to the knowledge of the Company, by Holders of the percentage in aggregate principal amount of the Notes required by the Indentures to effect any such waiver;

(e) there is no action, suit or proceeding pending against the Company before any court or any governmental authority arising out of any action or omission of the Company under the Indentures;

(f) the Company has, by a resolution which was duly adopted by its Board of Directors, and which is in full force and effect on the date hereof, authorized certain officers of the Company to: (a) accept the Resigning Trustee's resignation as Trustee, Registrar, Paying Agent, and Note Custodian under the Indentures; (b) appoint the Successor Trustee as Trustee, Registrar, Paying Agent, and Note Custodian under the Indentures; and (c) execute and deliver such agreements, including, without limitation, this Instrument and other instruments as may be necessary or desirable to effectuate the succession of the Successor Trustee as Trustee, Registrar, Paying Agent, and Note Custodian under the Indentures;

(g) this Instrument has been duly authorized, executed and delivered on behalf of the Company and constitutes a legal, valid and binding obligation of the Company, enforceable in accordance with its terms, subject 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

(h) all conditions precedent relating to the appointment of Wilmington Trust, National Association as successor Trustee and Registrar, Paying Agent, and Note Custodian under the Indentures have been complied with by the Company.

### ARTICLE THREE

#### THE SUCCESSOR TRUSTEE

Section 3.1. Successor Trustee Representations and Warranties. The Successor Trustee hereby represents and warrants to the Resigning Trustee and the Company that:

(a) the Successor Trustee is not disqualified under Section 7.10 of the Indentures and is eligible under Section 7.10 of the Indentures to act as Trustee under the Indentures;

(b) this Instrument has been duly authorized, executed and delivered on behalf of the Successor Trustee and constitutes a legal, valid and binding obligation of the Successor Trustee, enforceable in accordance with its terms; and

(c) the Successor Trustee is a national banking association duly organized and existing under the laws of the United States of America.

Section 3.2. Appointment of Successor Trustee. Pursuant to Section 7.08 of the Indentures, the Successor Trustee hereby accepts its appointment as successor Trustee, Registrar, Paying Agent, and Note Custodian under the Indentures and accepts all rights, powers and duties of the Resigning Trustee under the Indentures, effective as of the Effective Date and upon the terms and conditions set forth herein, with like effect as if the Successor Trustee was originally named as Trustee, Registrar, Paying Agent, and Note Custodian under the Indentures. The Successor Trustee agrees and undertakes to perform all duties and obligations as Registrar, Paying Agent, and Note Custodian under the Indentures and abide by the provisions of the Indenture and all applicable laws.

Section 3.3. Notice to Holders. In accordance with Section 7.08 of the Indentures, promptly after the Effective Date, the Successor Trustee, on behalf of the Company, shall cause a notice, substantially in the form of Exhibit B or Exhibit C hereto, as applicable, to be sent to each Holder of Notes.

Section 3.4. Liability of Successor Trustee. The Successor Trustee shall have no liability or responsibility for any matters occurring prior to the Effective Date in connection with the Notes and the Successor Trustee shall not be liable to any person for any costs, claims, liabilities, losses or damages whatsoever incurred or suffered by such person arising out of any action or omission of the Resigning Trustee from the date of issuance of the securities through the date prior to the Effective Date.

Section 3.5. Corporate Trust Office. References in the Indentures to “Corporate Trust Office” or other similar terms shall be deemed to refer to the designated corporate trust office of the Successor Trustee, which is presently located at 50 South Sixth Street, Suite 1290, Minneapolis, Minnesota 55402.

## ARTICLE FOUR

### MISCELLANEOUS

Section 4.1. Definitions. Except as otherwise expressly provided or unless the context otherwise requires, all capitalized terms used herein which are defined in the Indentures shall have the meanings assigned to them in the Indentures.

Section 4.2. Headings. The captions and headings in this Instrument are for convenience only and are not intended to be full or accurate descriptions of the contents thereof. Such captions and headings shall not be deemed to be part of this Instrument and in no way define, limit, extend or describe the scope or intent of any provisions hereof.

Section 4.3. Effective Date. This Instrument and the resignation, appointment and acceptance effected hereby shall be effective as of the close of business on the date first above written (the “**Effective Date**”), only upon (a) the execution and delivery of this Instrument by each of the parties hereto and (b) payment of the Resigning Trustee’s fees, costs, expenses and indemnities, including for the avoidance of doubt the fees, costs and expenses of the Resigning Trustee’s professionals, accrued and payable as of the Effective Date; *provided however*, that the resignation of the Resigning Trustee as Registrar, Paying Agent, and Note Custodian and the appointment of the Successor Trustee as Registrar, Paying Agent, and Note Custodian shall be effective as of the latest of: (i) 10 Business Days after the Effective Date, and (ii) receipt by DTC of both the Resigning Trustee’s transfer agency change notice and the Successor Trustee’s transfer agency change notice.

Section 4.4. Surviving Obligations. Notwithstanding this Instrument and the resignation of the Resigning Trustee, the Resigning Trustee shall retain all rights and entitlements relating to its service as Trustee, Registrar, Paying Agent, and Note Custodian under the Indentures arising or accruing on or before the Effective Date, including, without limitation, all entitlements to the payment of its fees and reimbursement of its expenses, regardless of when such amounts become payable or are paid. In the event and to the extent the Successor Trustee shall exercise any lien upon the distributions to the holders of the Notes or otherwise becomes entitled to indemnity or to receive payment of funds or payment otherwise of fees and expenses as Trustee under the Indentures, for any reason at a time when the Resigning Trustee has not been fully paid, the Successor Trustee shall exercise such lien or receive such payment for both its own fees and expenses and the outstanding fees and expenses of the Resigning Trustee, incurred in connection with its duties under the Indentures on or before the Effective Date and any subsequent transitional services requested by the Successor Trustee from the Resigning Trustee after the Effective Date. If there are outstanding fees or expenses, the Successor Trustee shall promptly pay over a *pro rata* portion of any and all such proceeds to the Resigning Trustee when and as received. To the extent the Resigning Trustee receives funds from the Company, other than for payment of the Resigning Trustee's fees and expenses, it agrees to hold those funds as agent for the Successor Trustee and promptly pay over such funds to the Successor Trustee, which obligations survive execution hereof. The Company shall remain obligated under Section 7.07 of the Indentures to compensate, reimburse and indemnify the Resigning Trustee in connection with its prior trusteeship under the Indentures. The Company also acknowledges and reaffirms its obligations to the Successor Trustee as set forth in Section 7.07 of the Indentures, which obligations shall survive the execution hereof. Notwithstanding this Instrument and the resignation of the Resigning Trustee, the parties hereto agree that this Instrument does not constitute (a) an assumption by the Successor Trustee of any liability of the Resigning Trustee arising out of any actions or inaction by the Resigning Trustee under the Indentures or (b) an assumption by the Resigning Trustee of any liability of the Successor Trustee arising out of any actions or inaction by the Successor Trustee under the Indentures.

Section 4.5. Choice of Law. This Instrument shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflicts of laws principles thereof.

Section 4.6. Privilege. Nothing in this Instrument shall impose any duty upon the Resigning Trustee to disclose any communications, information or materials subject to the attorney client privilege, work product or any confidentiality agreement to the Successor Trustee or any other person or entity.

Section 4.7. Acknowledgement of Receipt. The Company, Resigning Trustee and the Successor Trustee each hereby acknowledge receipt of all executed counterparts of this Instrument and the effectiveness thereof.

Section 4.8. Counterparts. This Instrument may be executed in any number of counterparts each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. Transmission by facsimile or email in PDF format of an executed counterpart of this Instrument shall be deemed to constitute due and sufficient delivery of such counterpart for all purposes. Signatures of the parties hereto transmitted by facsimile or email in PDF format shall be deemed to be their original signatures for all purposes.

Section 4.9. Successors. The provisions of this Instrument shall be binding upon and inure to the benefit of each party and its successors (whether by law or otherwise).

Section 4.10. Notices. Unless otherwise provided herein or in the Indentures, all notices and other communications to any party hereunder shall be in writing (including facsimile and email) and will be deemed received when actually received pursuant to the following instructions:

TO THE RESIGNING TRUSTEE:

Wells Fargo Bank, N.A.  
Attn: James Lewis  
150 East 42nd Street  
40th Floor  
New York, New York 10017  
Email: [james.r.lewis@wellsfargo.com](mailto:james.r.lewis@wellsfargo.com)

-and-

Andrew I. Silfen  
Arent Fox LLP  
1301 Avenue of the Americas, 42nd Floor  
New York, New York 10019  
Tel: (212) 484-3925  
Fax: (212) 484-3990  
Email: [andrew.silfen@arentfox.com](mailto:andrew.silfen@arentfox.com)

TO THE SUCCESSOR TRUSTEE:

Wilmington Trust, N.A.  
Attn: Peter Finkel  
50 South Sixth Street, Suite 1290  
Minneapolis, Minnesota 55402  
Email: [pfinkel@wilmingtontrust.com](mailto:pfinkel@wilmingtontrust.com)

-and-

Jayne T. Goldstein  
Stroock & Stroock & Lavan LLP  
180 Maiden Lane  
New York, New York 10038  
Tel: (212) 806-5805  
Fax: (212) 806-6006  
Email: [jgoldstein@stroock.com](mailto:jgoldstein@stroock.com)

TO THE COMPANY:

Hornbeck Offshore Services, Inc.  
103 Northpark Boulevard, Suite 300  
Covington, Louisiana 70433  
Tel: 985-727-6802  
Attention: James Harp, Chief Financial Officer  
Fax: (985) 727-2006  
Email: james.harp@hornbeckoffshore.com

-and-

Aaron Marks  
Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, New York 10022  
Tel: (212) 446-6856  
Email: [amarks@kirkland.com](mailto:amarks@kirkland.com)

Section 4.11. USA Patriot Act. The Company acknowledges that, in accordance with Section 326 of the USA Patriot Act, the Successor Trustee, in order to help fight the funding of terrorism and prevent 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 Successor Trustee. The Company agrees that it will provide the Successor Trustee with such information as it may request in order for the Successor Trustee to satisfy the requirements of the USA Patriot Act.

Section 4.12. Entire Agreement. This Instrument sets forth the entire agreement of the parties with respect to its subject matter, and supersedes and replaces any and all prior contemporaneous warranties, representations or agreements, whether oral or written, with respect to the subject matter of this Agreement other than those contained in this Instrument.

[Remainder of this page intentionally left blank]

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

HORNBECK OFFSHORE SERVICES, INC., the Company

By: /s/ James O. Harp, Jr.  
Name: JAMES O. HARP, JR.  
Title: EXECUTIVE VICE PRESIDENT & CFO

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
solely as Resigning Trustee

By: /s/ James R. Lewis  
Name: James R. Lewis  
Title: Vice President

WILMINGTON TRUST, NATIONAL ASSOCIATION,  
solely as Successor Trustee

By: /s/ Peter Finkel  
Name: Peter Finkel  
Title: Vice President

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**SENIOR CREDIT AGREEMENT**

Dated as of June 28, 2019

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**HORNBECK OFFSHORE SERVICES, INC.,**

as Borrower

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**EACH OF THE OTHER OBLIGORS,**

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**CERTAIN FINANCIAL INSTITUTIONS,**

as Tranche A Lenders

**CERTAIN FINANCIAL INSTITUTIONS,**

as Tranche B Lenders

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**CIT NORTHBRIDGE CREDIT LLC,**

as Collateral Agent and as Administrative Agent

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**OPPENHEIMER & CO.,**

as Sole Lead Arranger

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## SENIOR CREDIT AGREEMENT

**THIS SENIOR CREDIT AGREEMENT** (this "Agreement") is dated as of June 28, 2019, among **HORNBECK OFFSHORE SERVICES, INC.** ("Borrower"), the other Persons from time to time party to this Agreement as Guarantors, the financial institutions party to this Agreement from time to time as Lenders, and **CIT NORTHBRIDGE CREDIT LLC**, a Delaware limited liability company ("CNC"), as collateral agent and administrative agent for the Lenders (in such capacity, "Agent").

### RECITALS:

Hornbeck Offshore Services, LLC ("HOS"), as borrower, the Borrower, as parent guarantor, Wells Fargo Bank, National Association, as the administrative agent, and the other parties thereto entered into the Prior Credit Agreement (as defined below).

The Borrower has requested and the Lenders have agreed (x) to refinance the obligations of the Obligors and their Affiliates under and replace the Prior Credit Agreement with the term loan facility evidenced by the First Lien Term Loan Agreement (as defined below), the Second Lien Term Loan Agreement (as defined below) and this Agreement and to make new extensions of credit under this Agreement and (y) to permit the refinancing and replacement of the obligations of the Obligors and their Affiliates under the Prior Credit Agreement with any other Credit Facility evidenced by any First Lien Documents, any Second Lien Documents, any Junior Lien Documents or any other Debt permitted hereunder that may subsequently be provided to the Obligors and their Affiliates by lenders or other investors, in each case on the terms and subject to the conditions set forth herein.

Borrower has requested that Lenders provide a revolving credit facility to Borrower to finance the Obligors' mutual and collective business enterprise. Lenders are willing to provide the credit facility on the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, for valuable consideration hereby acknowledged, the parties agree as follows:

### **SECTION 1. DEFINITIONS; RULES OF CONSTRUCTION**

**1.1 Definitions.** As used herein, the following terms have the meanings set forth below:

2019 Convertible Senior Notes: means the 1.500% Convertible Senior Notes due 2019 issued pursuant to the 2019 Convertible Senior Notes Indenture.

2019 Convertible Senior Notes Indenture: means that certain Indenture, dated as of August 13, 2012, among the Borrower, the Guarantors (as defined therein) party thereto and Wells Fargo, as trustee, as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof.

2020 Senior Notes: means the 5.875% Senior Notes due 2020 issued pursuant to the 2020 Senior Notes Indenture.

2020 Senior Notes Indenture: means that certain Indenture, dated as of March 16, 2012, among the Borrower, the Guarantors (as defined therein) party thereto and Wilmington Trust, as successor trustee, as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof.

2021 Senior Notes: means the 5.000% Senior Notes due 2021 issued pursuant to the 2021 Senior Notes Indenture.

2021 Senior Notes Indenture: means that certain Indenture, dated as of March 28, 2013, among the Borrower, the Guarantors (as defined therein) party thereto and Wilmington Trust, as successor trustee, as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof.

Account Control Agreement: means, with respect to any Collateral Account, an agreement or agreements in form and substance reasonably acceptable to Agent among the applicable Obligor, Agent, the Tranche A Lender and Tranche B Lender, as applicable, and such other bank or banks governing such Deposit Account or Securities Account pursuant to which the security interest of Agent in such Deposit Account or Securities Account and the assets deposited therein shall be perfected.

Accrued Revenue: means, for any month, Receivables reflected on the Borrowing Base Certificate delivered in respect of such month, in each case in respect of services rendered but not yet billed, provided that such Receivables are reasonably anticipated to be billed on or prior to the 20th day of the following calendar month in accordance with Borrower's and the other Obligor's ordinary billing practices.

Affiliate: means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. For the avoidance of doubt, an employee stock ownership plan sponsored by Borrower shall not be an "Affiliate". "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have correlative meanings.

Agent: has the meaning set forth in the first paragraph of this Agreement.

Agent Indemnitees: means Agent and its officers, directors, employees, Affiliates, agents and attorneys.

Agent Professionals: means attorneys, accountants, appraisers, auditors, business valuation experts, environmental engineers or consultants, other consultants, and other professionals and experts retained by Agent.

Agent's Fee Letter: means the letter agreement titled "Agent's Fee Letter" dated as of the Closing Date between Borrower and Agent.

Agent's Reserves: has the meaning set forth in **Section 8.1**.

Aggregate Receivables Formula Amount: means, at any time, an amount equal to (a) the Tranche A-1 Receivables Formula Amount at such time plus (b) the Tranche A-2 Receivables Formula Amount at such time.

Aggregate Restricted Cash Formula Amount: means, at any time, an amount equal to (a) the Tranche B-1 Restricted Cash Formula Amount at such time plus (b) the Tranche B-2 Restricted Cash Formula Amount at such time.

Agreement Among Lenders: has the meaning set forth in **Section 6.1(m)**.

Anti-Terrorism Law: means any laws relating to sanctions, terrorism or money laundering, including the Patriot Act and the laws comprising or implementing the Bank Secrecy Act (as any of the foregoing laws may from time to time be amended, renewed, extended, or replaced).

Applicable Law: means all laws, rules, regulations and legally binding governmental guidelines applicable to the Person, conduct, transaction, agreement or matter in question, including applicable statutory law and common law, as well as provisions of constitutions, treaties, statutes, rules, regulations, orders and decrees of Governmental Authorities (having the force of law).

Applicable Margin: means, for any day, (a) with respect to any Loans bearing interest based on the LIBO Rate, 5.00% per annum, and (b) with respect to any Loans bearing interest based on the Base Rate, 2.00% per annum.

Asset Sale: means the sale, lease, conveyance or other disposition (a “disposition”) of any Collateral or Equity Interests of any Person that owns any Collateral (provided that the disposition of other Property of Borrower and its Restricted Subsidiaries, whether in a single transaction or a series of related transactions, shall not constitute an Asset Sale) that (i) results in the receipt of consideration for sold Collateral having a value in excess of \$10,000,000. Notwithstanding the foregoing provisions of this definition, the following transactions will be deemed not to be Asset Sales: (A) the sale, lease, conveyance or other disposition of any Property other than Collateral; (B) a disposition of Collateral by Borrower to another Obligor or by a Guarantor to Borrower or another Guarantor; (C) a disposition of Collateral that constitutes a Permitted Investment or a Restricted Payment that is permitted by Section 10.2.3; (D) a disposition of cash, Cash Equivalents or similar investments; and (E) a disposition of Collateral by a Restricted Subsidiary of Borrower to an Obligor.

Assignment: means an assignment agreement between a Lender and Eligible Assignee, in the form of **Exhibit A** or otherwise satisfactory to Agent.

Bail-In Action: means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

Bail-In Legislation: means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time that is described in the EU Bail-In Legislation Schedule.

Bank: means CIT Bank, N.A.

Bank Product: means any of the following products or services extended to, or arranged for, Borrower or any other Obligor by Agent, a Tranche A Lender or any of their respective Affiliates: (a) Cash Management Services; (b) products under Hedging Agreements; (c) commercial credit card and merchant card services; and (d) other banking products or services.

Bankruptcy Code: means Title 11 of the United States Code.

Base Rate: means, for any day, a fluctuating rate per annum equal to the highest of: (a) the Federal Funds Rate plus 1/2 of 1%; or (b) the rate of interest in effect for such day as publicly announced from time to time by JPMorgan Chase Bank, N.A. as its “prime rate” in effect for such day. Any change in the “prime rate” announced by JPMorgan Chase Bank, N.A. shall take effect without notice to Borrower at the opening of business on the day specified as the effective date of change in the public announcement or publication of such change. The Base Rate is not necessarily the lowest rate of interest charged by Lenders in connection with extensions of credit. If JPMorgan Chase Bank, N.A. ceases to announce its “prime rate”, Agent may select a reasonably comparable index or source to use as the basis for the Base Rate.

Blocked Accounts: means the Tranche B-1 Blocked Account and the Tranche B-2 Blocked Account.

Board of Governors: means the Board of Governors of the Federal Reserve System.

Borrower Agent: has the meaning set forth in **Section 4.4**.

Borrower Materials: means Borrowing Base Reports, Compliance Certificates and other information, reports, financial statements and other materials delivered by Borrower hereunder.

Borrowing Base: means, on any date of determination, an amount equal to the lesser of (a) \$100,000,000 and (b) the sum of (i) the Aggregate Receivables Formula Amount on such date plus (ii) the Aggregate Restricted Cash Formula Amount on such date.

Borrowing Base Report: means a report in the form attached hereto as **Exhibit B**, with such changes as may be agreed to by Borrower Agent and Agent, by which Borrower Agent certifies pursuant to **Section 8.1** the Borrowing Base.

Business Day: means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, New York, and at any time the Loans bear interest at the LIBO Rate, any such day on which dealings in Dollar deposits are conducted in the London interbank market.

Calculation Date: means, (a) with respect to any Borrowing Base Report, the last day of the calendar month immediately preceding the date of such Borrowing Base Report, and (b) with respect to any other relevant event, calculation, financial ratio or covenant hereunder, the date on which such event occurred or for which the calculation of such test, financial ratio or covenant hereunder is made.



**Capital Lease Obligation:** means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized on a balance sheet in accordance with GAAP. Notwithstanding the foregoing, any lease (whether entered into before or after the Closing Date) that would have been classified as an operating lease pursuant to GAAP as in effect on the Closing Date will be deemed not to represent a Capital Lease Obligation.

**Cash Collateral:** means cash on deposit in the Tranche A Unrestricted Account, in a Collection Account or in a Blocked Account, and all interest, dividends, earnings and other proceeds relating thereto.

**Cash Collateralize:** means the delivery of cash to Agent, as security for the payment of any inchoate, contingent or other Obligations (including Secured Bank Product Obligations, if applicable), in an amount equal to and for Agent's good faith estimate of the amount due or to become due, including fees, expenses and indemnification hereunder. "**Cash Collateralization**" has a correlative meaning.

**Cash Dominion Trigger Period:** means any period commencing on any day that Liquidity is less than \$50,000,000 and continuing until Liquidity is greater than \$75,000,000.

**Cash Equivalents:** means

(a) securities issued or directly and fully guaranteed or insured by the government of the United States of America or any agency or instrumentality of any such government having maturities of not more than six months from the date of acquisition;

(b) certificates of deposit and Eurodollar time deposits with maturities of six months or less from the date of acquisition, bankers' acceptances with maturities not exceeding six months and overnight bank deposits, in each case with or issued by any commercial bank organized under the laws of any country that is a member of the Organization for Economic Cooperation and Development having capital and surplus in excess of \$300,000,000 and whose long-term debt securities are rated at least A3 by Moody's and at least A by S&P,

(c) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (a) and (b) above entered into with any financial institution meeting the qualifications specified in clause (b) above,

(d) commercial paper having a rating of at least P-1 from Moody's or at least A-1 from S&P and in each case maturing within 270 days after the date of acquisition,

(e) deposits available for withdrawal on demand with any commercial bank not meeting the qualifications specified in clause (b) above, provided that all deposits referred to in this clause (e) are made in the ordinary course of business and do not exceed \$5,000,000 in the aggregate at any one time, and

(f) money market mutual funds substantially all of the assets of which are of the type described in any of the foregoing clauses (a) through (d).

**Cash Management Services:** means services relating to operating, collections, payroll, trust, or other depository or disbursement accounts, including automated clearinghouse, e-payable, electronic funds transfer, wire transfer, controlled disbursement, overdraft, depository, information reporting, lockbox and stop payment services.

**CERCLA:** means the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. § 9601 et seq.).

**Change in Control:** means the occurrence of any of the following: (a) except as permitted pursuant to Section 10.2.4, the sale, assignment, transfer, lease, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of the Property of Borrower and its Subsidiaries, taken as a whole, (b) the adoption of a voluntary plan relating to the liquidation or dissolution of Borrower, (c) the consummation of any transaction (including, without limitation, any merger or consolidation, but excluding the effect of any voting arrangement pursuant to any agreement among Borrower and any stockholders of Borrower as in effect on the Closing Date) the result of which is that any “person,” “persons” or “group” (as such terms are used in Section 13(d) (3) of the Exchange Act) becomes the “beneficial owner” (as such term is defined in Rule 13d-3 and Rule 13d-5 under the Exchange Act), directly or indirectly through one or more intermediaries, of more than 50% of the voting power of the outstanding Voting Stock of Borrower; provided, however, that a transaction in which Borrower becomes a Subsidiary of another Person (other than a Person that is an individual) shall not constitute a Change in Control if (i) the shareholders of Borrower immediately prior to such transaction “beneficially own” (as such term is defined in Rule 13d-3 and Rule 13d-5 under the Exchange Act), directly or indirectly through one or more intermediaries, a majority of the voting power of the outstanding Voting Stock of such other Person immediately following the consummation of such transaction and (ii) immediately following the consummation of such transaction, no “person,” “persons” or “group” (as such terms are defined above), other than such other Person (but including the holders of the Equity Interests of such other Person), “beneficially owns” (as such term is defined above), directly or indirectly through one or more intermediaries, more than 50% of the voting power of the outstanding Voting Stock of Borrower, (d) the occurrence of a “Change of Control” (or similar event, however denominated), as defined in the Unsecured Indentures (and any Permitted Refinancing Indebtedness in respect thereof) or the documentation governing the First Lien Term Loan Agreement, any Junior Lien Debt or any other Material Indebtedness. For purposes of this definition, a time charter of, bareboat charter or other contract for, vessels to customers in the ordinary course of business shall not be deemed a lease under clause (a) above.

**Change in Law:** means the occurrence, after the date hereof, of (a) the adoption, taking effect or phasing in of any law, rule, regulation or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof; or (c) the making, issuance or application of any request, guideline, requirement or directive (whether or not having the force of law) by any Governmental Authority; provided, however, that “**Change in Law**” shall include, regardless of the date enacted, adopted or issued, all requests, rules, guidelines, requirements or directives (i) under or relating to the Dodd-Frank Wall Street Reform and Consumer Protection Act, or (ii) promulgated pursuant to Basel III by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any similar authority) or any other Governmental Authority.

Closing Date: has the meaning set forth in **Section 6.1**.

Closing Liquidity: means, as of the Closing Date immediately prior to giving effect to the Transactions, unrestricted cash and Cash Equivalents on the consolidated balance sheet of the Obligors. For purposes of clarity, no proceeds of the Loans shall be counted towards Closing Liquidity.

CNC: has the meaning set forth in the first paragraph of this Agreement.

CNC Indemnitees: means CNC and its officers, directors, employees, Affiliates, agents and attorneys.

Code: means the Internal Revenue Code of 1986, as amended.

Collateral: means all Property described in **Section 3.1** of the Guaranty and Security Agreement, all Property described in any other Security Documents as security for any Obligations, and all other Property that now or hereafter secures (or is intended to secure) any Obligations.

Collateral Account: means each Collection Account, each Collection/Disbursement Account, the Tranche A Unrestricted Account and each Blocked Account, in each case as identified on **Schedule 9.1.27**, and “Collateral Accounts” means all such identified accounts.

Collection Account: means each of the collection accounts established by the Borrower into which Account Debtors shall make payment on Receivables, pursuant to **Section 8.2.5**, in each case that is subject to an Account Control Agreement and as identified as a “Collection Account” on **Schedule 9.1.27**.

Collection/Disbursement Account: means each of the accounts established by Borrower or a Guarantor, in each case that is subject to an Account Control Agreement and identified as a “Collection/Disbursement” account on **Schedule 9.1.27**.

Combined Usage: means, as of any date of determination, (a) Tranche A Usage on such date plus (b) Tranche B Usage on such date.

Commitment: means, (a) for any Lender of Tranche A-1 Loans and Tranche B-1 Loans, the obligation of such Lender to make such Tranche A-1 Loans and Tranche B-1 Loans and (b) for any Lender of Tranche A-2 Loans and Tranche B-2 Loans, the obligation of such Lender to make Tranche A-2 Loans and Tranche B-2 Loans, in each case up to the principal amounts shown in **Schedule 1.1(a)**. “Commitments” means the aggregate amount of all such Commitments of all Lenders.

Commitment Termination Date: means the earliest to occur of (a) the Tranche B Maturity Date; (b) the date on which Borrower terminates all of the Commitments pursuant to **Section 2.2**; or (c) the date on which the Commitments are terminated pursuant to **Section 11.2**.

Compliance Certificate: means a certificate in the form attached hereto as **Exhibit C** signed by the chief financial officer of Borrower Agent, delivered pursuant to **Section 10.1.2(c)**.

**Consolidated EBITDA:** means, with respect to any Person for any period, the Consolidated Net Income of such Person for such period plus, to the extent deducted or excluded in calculating Consolidated Net Income for such period and without duplication,

(a) an amount equal to any extraordinary loss plus any net loss realized by such Person or any of its Restricted Subsidiaries in connection with an asset sale,

(b) provision for taxes based on income or profits of such Person and its Restricted Subsidiaries,

(c) Consolidated Interest Expense of such Person and its Restricted Subsidiaries,

(d) depreciation and amortization (including impairment charges, write-offs and amortization of goodwill and other intangibles but excluding amortization of prepaid cash expenses that were paid in a prior period) and all other non-cash expenses of such Person and its Restricted Subsidiaries,

(e) losses (or minus any gains) on early extinguishment of debt for that period (including, without limitation, any nonrecurring charges relating to any premium or penalty paid, write off of deferred finance costs or original issue discount or other charges in connection with redeeming or otherwise retiring any Debt prior to its stated maturity),

(f) stock-based compensation expense (or minus any gains) reported for such period under FAS 123R,

(g) all Transaction Expenses and any expenses, fees, charges, or losses (other than depreciation or amortization expense) related to any Equity Offering, Permitted Investment of the type described in clause (c), (d), (e), (h) or (i) of the definition thereof, acquisition or disposition of vessels, Redemption of Debt, or the incurrence of Debt permitted to be incurred by this Agreement (including a refinancing thereof) (whether or not successful and including any such transaction consummated prior to the Closing Date); and

(h) any other adjustments to Consolidated Net Income included by Borrower in calculating EBITDA or adjusted EBITDA for such period of a type reported in Borrower's Form 10-K for the fiscal year most recently ended or Borrower's Form 10-Q for the fiscal quarter most recently ended, in each case, on a consolidated basis and consistent with applicable SEC guidelines regarding non-GAAP financial measures.

**Consolidated Fixed Charge Coverage Ratio:** means, with respect to any Person for any Test Period, the ratio of (a) the Consolidated EBITDA of such Person for such Test Period to (b) the sum of the Consolidated Interest Expense of such Person and the amount of cash dividends or distributions paid by Borrower with respect to any preferred Equity Interest that does not constitute Disqualified Stock or any Disqualified Stock that is permitted to be incurred under **Section 10.2.1**, in each case for such Test Period. For the avoidance of doubt, Consolidated Fixed Charge Coverage Ratio shall be determined for the relevant Test Period on a pro forma basis.

**Consolidated Interest Expense:** means, with respect to any Person for any period, the sum, without duplication, of (a) the consolidated interest expense of such Person and its Restricted Subsidiaries for such period, whether paid or accrued (including, without limitation, amortization of original issue discount, the interest component of any deferred payment obligations, the interest component of all payments associated with Capital Lease Obligations, commissions, discounts and other fees and charges incurred in respect of letter of credit or bankers' acceptance financings, and net payments (if any) pursuant to Hedging Obligations but excluding (i) amortization of debt issuance costs and (ii) any nonrecurring charges relating to any premium or penalty paid, write off of deferred finance costs or original issue discount or other charges in connection with redeeming or otherwise retiring any Debt prior to its stated maturity, to the extent that any of such nonrecurring charges constitute interest expense) and (b) the consolidated interest expense of such Person and its Restricted Subsidiaries that was capitalized during such period; provided that (x) Consolidated Interest Expense shall exclude any interest that is paid-in-kind or is imputed non-cash interest expense in accordance with GAAP and (y) for purposes of the calculation of Consolidated Fixed Charge Coverage Ratio, in connection with the incurrence of any Debt pursuant to **Section 10.2.1**, (i) Borrower may elect, pursuant to an officer's certificate, to treat all or any portion of the commitment (any such amount elected until revoked as described below, an "**Elected Amount**") under any Debt which is to be incurred (or any commitment in respect thereof) as being incurred as of the Calculation Date and (A) any subsequent incurrence of Debt under such commitment (so long as the total amount under such Debt does not exceed the Elected Amount) shall not be deemed, for purposes of this calculation, to be an incurrence of additional Debt or an additional Lien at such subsequent time, (ii) Borrower may revoke an election of an Elected Amount pursuant to an officer's certificate and (iii) for purposes of all subsequent calculations of the Consolidated Fixed Charge Coverage Ratio, the Elected Amount (if any) shall be deemed to be outstanding, whether or not such amount is actually outstanding, so long as the applicable commitment remains outstanding.

**Consolidated Net Income:** means, with respect to any Person for any period, the aggregate of the Net Income of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, determined in accordance with GAAP, provided that (a) the Net Income (but not loss) of any Person that is not a Restricted Subsidiary or that is accounted for by the equity method of accounting shall be included only to the extent of the amount of dividends or distributions paid in cash to the referent Person or a Restricted Subsidiary thereof, (b) the Net Income of any Restricted Subsidiary shall be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that Net Income is not at the date of determination permitted without any prior governmental approval (that has not been obtained) or, directly or indirectly, by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders, (c) unrealized losses and gains under derivative instruments included in the determination of Consolidated Net Income, including, without limitation those resulting from the application of FASB ASC Topic No. 815, Derivatives and Hedging, shall be excluded, (d) the cumulative effect of a change in accounting principles shall be excluded and (e) any extraordinary, non-recurring, unusual or infrequent items shall be excluded. In addition, notwithstanding the preceding, there shall be excluded from Consolidated Net Income any nonrecurring charges relating to any premium or penalty paid, write off of deferred finance costs or original issue discount or other charges in connection with redeeming or otherwise retiring any Debt prior to its stated maturity.

**Consolidated Net Tangible Assets:** means, with respect to any Person as of any date, the sum of the amounts that would appear on a consolidated balance sheet of such Person and its consolidated Restricted Subsidiaries as the total assets of such Person and its consolidated Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP and after deducting therefrom, (a) to the extent otherwise included, unamortized debt discount and expenses and other unamortized deferred charges, goodwill, patents, trademarks, service marks, trade names, copyrights, licenses, organization or development expenses and other intangible items and (b) the aggregate amount of liabilities of such Person and its Restricted Subsidiaries which may be properly classified as current liabilities (including tax accrued as estimated), determined on a consolidated basis in accordance with GAAP. Notwithstanding the foregoing, deferred drydocking expenses and the corporate headquarters and HOS Port leasehold improvements shall not be deducted under (a) above.

**Controlled Unrestricted Account:** means (a) each Collection Account, (b) each Collection/Disbursement Account, (c) the Tranche A Unrestricted Account, and (d) any other account identified on **Schedule 9.1.27** that is (i) subject to an Account Control Agreement and (ii) not a Blocked Account.

**Convertible Indebtedness:** means Debt of Borrower or a Restricted Subsidiary of Borrower (which may be guaranteed by the Guarantors) permitted to be incurred under the terms of this Agreement that is either (a) convertible or exchangeable into common stock of Borrower (and cash in lieu of fractional shares) and/or cash (in an amount determined by reference to the price of such common stock) or (b) sold as units with call options, warrants or rights to purchase (or substantially equivalent derivative transactions) that are exercisable for common stock of Borrower and/or cash (in an amount determined by reference to the price of such common stock).

**Credit Facility:** means, one or more debt facilities, indentures or commercial paper facilities including, without limitation, this Agreement and the Loan Documents, the First Lien Term Loan Agreement and related first lien loan documents, the Second Lien Term Loan Agreement and related second lien loan documents and any Junior Lien Documents, in each case, with banks or other institutional lenders, accredited investors or institutional investors providing for revolving credit loans, term loans, term debt, notes, bonds or other debt securities, receivables financing (including through the sale of receivables to such lenders or to special purpose entities formed to borrow from such lenders against such receivables) or letters of credit, in each case, as amended, restated, supplemented, waived, extended, renewed, replaced (whether or not upon termination, and whether with the original lenders or otherwise), restructured, repaid, refunded, refinanced or otherwise modified from time to time, including any agreement or indenture extending the maturity thereof, refinancing, replacing or otherwise restructuring all or any portion of the Debt under such agreement or agreements or indenture or indentures or any successor or replacement agreement or agreements or indenture or indentures or increasing the amount loaned or issued thereunder or altering the maturity thereof, whether by the same or any other agent or agents, lender or group of lenders, represented by one or more agreements and whether one or more Subsidiaries are added or removed as borrowers or guarantors thereunder or as parties thereto.

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

CWA: means the Clean Water Act (33 U.S.C. §§ 1251 et seq.).

Debt: means, with respect to any Person, any indebtedness of such Person, whether or not contingent, in respect of (i) borrowed money including, without limitation, any guarantee thereof, or (ii) evidenced by bonds, debentures, notes, term loans or similar instruments or letters of credit (or reimbursement agreements in respect thereof) or bankers' acceptances or representing Capital Lease Obligations or the deferred and unpaid purchase price of any Property, or representing any Hedging Obligations, if and to the extent any of the foregoing indebtedness (other than letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet of such Person prepared in accordance with GAAP; provided, however, that any accrued expense or trade payable of such Person shall not constitute Debt. The amount of any Debt outstanding as of any date shall be (a) the accreted value thereof, in the case of any Debt that does not require current payments of interest, and (b) the principal amount thereof, in the case of any other Debt (with letters of credit being deemed to have a principal amount equal to the maximum potential liability of such Person and its Restricted Subsidiaries thereunder). Furthermore, notwithstanding the foregoing, the following shall not constitute or be deemed "Debt": (i) any indebtedness which has been defeased in accordance with GAAP or defeased pursuant to the deposit of cash or Cash Equivalents (in an amount sufficient to satisfy all such indebtedness obligations at maturity or Redemption, as applicable, and all payments of interest and premium, if any) in a trust or account created or pledged for the sole benefit of the holders of such indebtedness, and subject to no other Liens, and the other applicable terms of the instrument governing such indebtedness; (ii) any obligations arising from agreements of a Person providing for indemnification, guarantees, adjustment of purchase price, holdbacks, contingent payment obligations based on a final financial statement or performance of acquired or disposed of assets or similar obligations (other than guarantees of Debt), in each case, incurred or assumed by such Person in connection with the acquisition or disposition of assets (including through mergers, consolidations or otherwise); (iii) obligations with respect to letters of credit in support of trade obligations or incurred in connection with public liability insurance, workers' compensation, unemployment insurance, old-age pensions and other social security benefits other than in respect of employee benefit plans subject to ERISA; and (iv) repayment or reimbursement obligations of the Borrower or any of its Restricted Subsidiaries with respect to Customary Recourse Exceptions unless and until an event or circumstance occurs that triggers the Borrower's or such Restricted Subsidiary's direct payment liability or reimbursement obligation (as opposed to contingent or performance obligations) to the lender or other party to whom such obligation is actually owed, in which case the amount of such direct payment liability to such lender or other party shall, to the extent otherwise applicable, constitute Debt.

Debtor Relief Laws: means the Bankruptcy Code of the United States of America, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

**Default:** means any event or condition which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

**Default Rate:** means, for any Obligation (including, to the extent permitted by law, interest not paid when due), 2% plus the interest rate otherwise applicable thereto.

**Defaulting Lender:** means, subject to **Section 4.2**, any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies Agent and the Borrower and in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, (b) has notified Borrower and Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Agent or the Borrower, to confirm in writing to Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-in Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to **Section 4.2**) upon delivery of written notice of such determination to the Borrower and each Lender.

**Designated Jurisdiction:** means a country or territory that is the subject of a Sanction.

**Disbursement Account:** means each of the accounts established by Borrower or a Guarantor that is (i) as of the Closing Date, identified as a "Disbursement Account" on **Schedule 9.1.27** or (ii) after the Closing Date, identified by Borrower to Agent as a "Disbursement Account" pursuant to **Part A of Schedule 10.1.12**.



**Disqualified Stock:** means any Equity Interests that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, matures (excluding any maturity as a result of an optional Redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is 91 days after the Tranche B Maturity Date; provided, however, that any Equity Interests that would constitute Disqualified Stock solely because the holders thereof (or of any security into which it is convertible or for which it is exchangeable) have the right to require the issuer to repurchase such Equity Interests (or such security into which it is convertible or for which it is exchangeable) upon the occurrence of any of the events constituting an asset sale or a Change in Control shall not constitute Disqualified Stock if such Equity Interests (and all such securities into which it is convertible or for which it is exchangeable) provide that the issuer thereof will not repurchase or redeem any such Equity Interests (or any such security into which it is convertible or for which it is exchangeable) pursuant to such provisions prior to compliance by Borrower with **Section 5.3**.

**Distribution:** means any declaration or payment of a distribution, interest or dividend on any Equity Interest (other than payment-in-kind); distribution, advance or repayment of Debt to a holder of Equity Interests; or purchase, redemption, or other acquisition or retirement for value of any Equity Interest.

**Dollars:** means lawful money of the United States.

**EEA Financial Institution:** means (a) any credit institution or investment firm established in any EEA Member Country that is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country that is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country that is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

**EEA Member Country:** means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

**EEA Resolution Authority:** means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

**Eligible Assignee:** means (a) a Lender or Affiliate of a Lender; (b) an assignee approved by Borrower Agent (which approval shall not be unreasonably withheld or delayed, and shall be deemed given if no objection is made within two Business Days after notice of the proposed assignment) and Agent; or (c) during an Event of Default, any Person acceptable to Agent in its discretion.

**Enforcement Action:** means any action to enforce any Obligations (other than Secured Bank Product Obligations) or Loan Documents or to exercise any rights or remedies relating to any Collateral, whether by judicial action, self-help, notification of Account Debtors, setoff or recoupment, credit bid, deed in lieu of foreclosure, action in an Insolvency Proceeding or otherwise.

**Environmental Laws:** means any law, statute, code, ordinance, order, determination, rule, regulation, judgment, decree, injunction, franchise, permit, certificate, license, authorization or other directive or requirement, whether now or hereafter in effect, pertaining in any way to health, safety, the environment or the preservation or reclamation of natural resources, in effect in any and all jurisdictions in which Borrower or any Subsidiary is conducting or at any time has conducted business, or where any Property of Borrower or any Subsidiary is located, including without limitation, the CWA, OPA, the Clean Air Act, as amended, CERCLA, the Federal Water Pollution Control Act, as amended, the Occupational Safety and Health Act of 1970, as amended, the RCRA, the Safe Drinking Water Act, as amended, the TSCA, the Superfund Amendments and Reauthorization Act of 1986, as amended, the HMTA, and other environmental conservation or protection Governmental Requirements. The term “oil” shall have the meaning specified in OPA, the terms “hazardous substance” and “release” (or “threatened release”) have the meanings specified in CERCLA, the terms “solid waste” and “disposal” (or “disposed”) have the meanings specified in RCRA; provided, however, that (a) in the event either OPA, CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment and (b) to the extent the laws of the state or other jurisdiction in which any Property of Borrower or any Subsidiary is located establish a meaning for “oil,” “hazardous substance,” “release,” “solid waste,” “disposal” or “oil and gas waste” which is broader than that specified in either OPA, CERCLA or RCRA, such broader meaning shall apply for such purpose.

**Environmental Notice:** means a notice (whether written or oral) from any Governmental Authority or other Person of any possible noncompliance with, investigation of a possible violation of, litigation relating to, or potential fine or liability under any Environmental Law, or with respect to any Environmental Release, environmental pollution or Hazardous Materials, including any complaint, summons, citation, order, claim, demand or request for correction, remediation or otherwise.

**Environmental Release:** means a release as defined in CERCLA or under any other Environmental Law.

**Equity Interest:** means the interest of any (a) shareholder in a corporation; (b) partner in a partnership (whether general, limited, limited liability or joint venture); (c) member in a limited liability company; or (d) other Person having any other form of equity security or ownership interest.

**Equity Offering:** means any public or private sale of common stock or preferred stock of Borrower (excluding Disqualified Stock), other than: (i) public offerings with respect to the Borrower’s common stock registered on Form S-8, or (ii) issuances to any Subsidiary of the Borrower.

**ERISA:** means the Employee Retirement Income Security Act of 1974.

**ERISA Affiliate:** means any trade or business (whether or not incorporated) under common control with an Obligor within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

**ERISA Event:** means

- (a) any “reportable event,” as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan;
- (b) the failure of a Plan to meet the minimum funding standards under Section 412 of the Code or Section 302 of ERISA (determined without regard to any waiver of the funding provisions therein or in Section 430 of the Code or Section 303 of ERISA);
- (c) the filing pursuant to Section 412 of the Code or Section 303 of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan;
- (d) the incurrence by Borrower, a Subsidiary or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan;
- (e) the receipt by Borrower, a Subsidiary or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, but only to the extent such Plan is subject to Section 412 of the Code or Section 302 of ERISA;
- (f) the incurrence by Borrower, a Subsidiary or any ERISA Affiliate of any liability under Section 4062(e) of ERISA or with respect to the withdrawal or partial withdrawal from any Plan (including as a “substantial employer,” as defined in Section 4001(a)(2) of ERISA) or Multiemployer Plan (including the incurrence by Borrower, a Subsidiary or any ERISA Affiliate of any Withdrawal Liability); or
- (g) the receipt by Borrower, a Subsidiary or any ERISA Affiliate of any notice concerning the imposition of a Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, in endangered or critical status, within the meaning of Section 305 of ERISA, or insolvent or in reorganization, within the meaning of Title IV of ERISA.

**EU Bail-In Legislation Schedule:** means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

**Eurodollar Reserve Percentage:** means, for any day during any Interest Period, the reserve percentage (expressed as a decimal, carried out to five decimal places) in effect on such day, whether or not applicable to any Lender, under regulations issued from time to time by the Board of Governors for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) with respect to Eurocurrency funding (currently referred to as “Eurocurrency liabilities”). The LIBO Rate shall be adjusted automatically as of the effective date of any change in the Eurodollar Reserve Percentage.

**Event of Default:** has the meaning set forth in **Section 11**.

**Excluded Taxes:** means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient (a) Taxes imposed on or measured by a Recipient’s net income (however denominated), franchise Taxes and branch profits Taxes, in each case (i) as a result of such Recipient being organized under the laws of, or

having its principal office or, in the case of any Lender, its applicable Lending Office located in, the jurisdiction imposing such Tax, or (ii) constituting Other Connection Taxes; (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of a Lender with respect to its interest in a Loan or Commitment pursuant to a law in effect when the Lender acquires such interest (except pursuant to an assignment request by Borrower Agent under **Section 13.4**) or changes its Lending Office, unless the Taxes were payable to its assignor immediately prior to such assignment or to the Lender immediately prior to its change in Lending Office; (c) Taxes attributable to a Recipient's failure to comply with **Section 5.10**; and (d) withholding Taxes imposed pursuant to FATCA. In no event shall "Excluded Taxes" include any non-U.S. withholding Tax imposed on amounts paid by or on behalf of a foreign Obligor to a Recipient that has complied with Section 5.10.2.

Existing Credit Documents: means the 2019 Convertible Senior Notes Indenture, the 2020 Senior Notes Indenture, the 2021 Senior Notes Indenture, the First Lien Term Loan Agreement and the Second Lien Term Loan Agreement.

Extraordinary Expenses: means all costs, expenses or advances that Agent may incur during a Default or Event of Default, or during the pendency of an Insolvency Proceeding of an Obligor, including those relating to (a) any audit, inspection, repossession, storage, repair, appraisal, insurance, manufacture, preparation or advertising for sale, sale, collection, or other preservation of or realization upon any Collateral; (b) any action, arbitration or other proceeding (whether instituted by or against Agent, any Lender, any Obligor, any representative of creditors of an Obligor or any other Person) in any way relating to any Collateral (including the validity, perfection, priority or avoidability of Agent's Liens with respect to any Collateral), Loan Documents or Obligations, including any lender liability or other claims; (c) the exercise, protection or enforcement of any rights or remedies of Agent in, or the monitoring of, any Insolvency Proceeding; (d) settlement or satisfaction of taxes, charges or Liens with respect to any Collateral; (e) any Enforcement Action; and (f) negotiation and documentation of any modification, waiver, workout, restructuring or forbearance with respect to any Loan Documents or Obligations; and (g) Protective Advances. Such costs, expenses and advances include transfer fees, Other Taxes, storage fees, insurance costs, permit fees, utility reservation and standby fees, legal fees, appraisal fees, brokers' fees and commissions and auctioneers' fees and commissions, accountants' fees, environmental study fees, wages and salaries paid to employees of any Obligor or independent contractors in liquidating any Collateral, and travel expenses.

FATCA: means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

FCPA: means the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

**Federal Funds Rate:** means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published by the Federal Reserve Bank on the Business Day next succeeding such day, provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, or (b) if no such rate is published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Agent or such day on such transactions, as determined by Agent, in its sole discretion; provided, that in no event shall such rate be less than zero.

**Field Examination Condition:** has the meaning set forth in the definition of “Tranche A-1 Receivables Formula Percentage”.

**First Lien Term Loan Agreement:** means that certain First Lien Term Loan Agreement, dated as of June 15, 2017, among Borrower, as parent borrower, Hornbeck Offshore Services, LLC, as co-borrower, Wilmington Trust, as administrative agent, Wilmington Trust, as collateral agent, and the lenders party thereto.

**Fiscal Year:** means the fiscal year of Borrower and Subsidiaries for accounting and tax purposes, ending on December 31 of each year.

**FLSA:** means the Fair Labor Standards Act of 1938.

**Foreign Collateral Security Document:** means each document relating to the Agent’s Lien over any (i) Receivable in respect of which the Obligor is organized or has its principal offices or assets outside the United States or (ii) bank account located outside of the United States.

**Foreign Lender:** means any Lender that is not a U.S. Person.

**Fronting Exposure:** means a Defaulting Lender’s interest in Protective Advances, except to the extent Cash Collateralized by the Defaulting Lender or allocated to other Lenders hereunder.

**Full Payment:** means, with respect to any Obligations (other than (i) Secured Bank Product Obligations, (ii) reimbursement obligations for which no claim has been made and (iii) contingent indemnity claims which have been asserted in good faith and in writing to the Borrower (“Asserted Contingent Claims”)), (a) the full cash payment thereof, including any interest, documented fees and other charges accruing during an Insolvency Proceeding (whether or not allowed in the proceeding); and (b) if such Obligations are Asserted Contingent Claims, Cash Collateralization thereof (or delivery of a standby letter of credit acceptable to Agent in its discretion, in the amount of required Cash Collateral). No Loans shall be deemed to have been paid in full unless all Commitments related to such Loans have expired or are terminated.

**Funded Debt** means all Debt of Borrower and its Restricted Subsidiaries for borrowed money that matures more than one year from the date of its creation or matures within one year from such date that is renewable or extendable, at the option of Borrower or any such Restricted Subsidiary, to a date more than one year from the date of its creation or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date (including all amounts of such Funded Debt required to be paid or prepaid within one year from the date of its creation), and, in the case of the Obligors, Debt in respect of the Loans.

**GAAP:** means generally accepted accounting principles in effect in the United States from time to time; provided that, if (a) Borrower notifies Agent in writing that Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof to GAAP or in the application thereof on the operation of such provision or (b) Agent notifies Borrower that the Required Lenders request an amendment to any provision hereof for such purpose, in either case regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn, or such provision amended in accordance herewith.

**Governmental Approvals:** means all authorizations, consents, approvals, licenses and exemptions of, registrations and filings with, and required reports to, all Governmental Authorities.

**Governmental Authority:** means the government of the United States of America, any other nation or any political subdivision thereof, whether foreign or domestic, federal, state or local, and any agency, authority, instrumentality, regulatory body, court, central bank, department, commissions, boards, officials and officers or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government over Borrower, any Subsidiary, any of their Properties, Agent or any Lender (including the Financial Conduct Authority, the Prudential Regulation Authority and any supra-national bodies such as the European Union or European Central Bank).

**Governmental Requirement:** means any law, statute, code, ordinance, order, determination, rule, regulation, judgment, decree, injunction, franchise, permit, certificate, license, authorization or other directive or requirement, whether now or hereafter in effect, including, without limitation, Environmental Laws, and occupational, safety and health standards or controls, of any Governmental Authority.

**Gross Receivables Amount:** means the aggregate balance of Receivables included in the balance sheet of Borrower and the Guarantors most recently delivered pursuant to **Section 10.1.2(a)** or Internal Financial Statements delivered pursuant to **Section 10.1.2(b)**, as the case may be.

**Guarantees:** means, collectively, the guarantees of the Obligations made by the Guarantors pursuant to the Guaranty and Security Agreement.

**Guarantors:** means HOS, Hornbeck Offshore Operators, LLC, HOS Port, LLC, Hornbeck Offshore Services de Mexico, S. de R.L. de C.V., Hornbeck Offshore Navegacao, Ltda. and each other Person that guarantees payment or performance of any portion of or all Obligations.

**Guaranty and Security Agreement:** means an agreement executed by Borrower, the Guarantors and the Agent in substantially the form of **Exhibit D** unconditionally guarantying on a joint and several basis, payment of the Obligations, as the same may be amended, modified or supplemented from time to time

Hazardous Materials: means:

- (i) any “hazardous waste” as defined by RCRA;
- (ii) any “hazardous substance” as defined by CERCLA;
- (iii) any “toxic substance” as defined by TSCA;
- (iv) any “hazardous material” as defined by HMTA;
- (v) asbestos;
- (vi) polychlorinated biphenyls;

(vii) any substance the presence of which on the vessels is prohibited by any lawful Governmental Requirement from time to time in force and effect relating to the vessels; and

(viii) any other substance which by any Governmental Requirement requires special handling in its collection, storage, treatment or disposal or defines or regulates as “hazardous,” “toxic” or words of similar import or effect.

Hedging Agreement: means a “swap agreement” as defined in Bankruptcy Code Section 101(53B)(A).

Hedging Obligations: means, with respect to any Person, the obligations of such Person under (a) interest rate swap agreements, interest rate cap agreements and interest rate collar agreements, (b) other agreements or arrangements designed to protect such Person against fluctuations in interest rates and (c) any foreign currency futures contract, option or similar agreement or arrangement designed to protect such Person against fluctuations in foreign currency rates, in each case to the extent such obligations are incurred in the ordinary course of business of such Person. For the avoidance of doubt, any Permitted Bond Hedge Transaction or any Permitted Warrant Transaction will not constitute Hedging Obligations.

HMTA: means the Hazardous Materials Transportation Act, as amended.

HOS: means Hornbeck Offshore Services, LLC, a Delaware limited liability company.

Indemnified Taxes: means (a) Taxes, other than Excluded Taxes, imposed on or relating to any payment of an Obligation; and (b) to the extent not otherwise described in clause (a), Other Taxes.

Indemnitees: means Agent Indemnitees, Lender Indemnitees and CNC Indemnitees.

Insolvency Proceeding: means any case or proceeding commenced by or against a Person under any state, federal or foreign law for, or any agreement of such Person to, (a) the entry of an order for relief under the Bankruptcy Code, or any other insolvency, debtor relief or debt adjustment law; (b) the appointment of a receiver, trustee, liquidator, administrator, conservator or other custodian for such Person or any part of its Property; or (c) an assignment or trust mortgage for the benefit of creditors.

**Intercreditor Agreement:** means that certain Revolver/Term Intercreditor Agreement, of even date herewith, among Agent, as “Initial ABL Collateral Agent”, Wilmington Trust, as “Initial Term Collateral Agent”, Wilmington Trust, as “Initial Junior Term Collateral Agent”, and acknowledged and agreed to by Borrower and the other “Grantors” referred to therein.

**Interest Period:** means each period of time from an Interest Reset Date to the immediately following Interest Reset Date; provided, however, the initial Interest Period shall be the period of time from the Closing Date to the first Interest Reset Date.

**Interest Reset Date:** means the first day of each calendar month or, if any such day is not a Business Day, the next succeeding Business Day.

**Internal Financial Statements:** means unaudited consolidated financial statements of Borrower and its consolidated Subsidiaries internally prepared in good faith in the ordinary course of business presenting fairly in all material respects the financial condition, results of operations and changes in cash flows of Borrower and its consolidated Subsidiaries in accordance with GAAP (subject only to normal fiscal period-end accounting adjustments and the absence of footnotes), and fully consistent with the audited financial statements of Borrower and its consolidated Subsidiaries delivered pursuant to **Section 10.1.2(a)**.

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



**Joint Venture:** means any Person that is not a direct or indirect Subsidiary of the Borrower in which the Borrower or any of its Restricted Subsidiaries owns an Equity Interest that constitutes a significant portion of the Equity Interests of such Person.

**Junior Lien:** means a Lien on the Collateral junior in priority to the Liens securing the Obligations as provided in the Junior Lien Intercreditor Agreement, granted by the Borrower or any Guarantor in favor of holders of Junior Lien Debt (or any collateral trustee or representative in connection therewith) at any time, upon any Property of the Borrower or any Guarantor to secure such Junior Lien Debt.

**Junior Lien Collateral Agent:** means the collateral trustee or other representative of lenders or holders of Junior Lien Debt designated pursuant to the terms of the Junior Lien Documents and the Junior Lien Intercreditor Agreement, together with its successors and assigns in such capacity.

**Junior Lien Debt:** means any Debt (other than intercompany Debt owing to Borrower or its Restricted Subsidiaries) of the Borrower or any Guarantor permitted to be incurred hereunder that is secured by a Junior Lien on any Collateral (and, in each case not by Liens on any assets that do not constitute Collateral); provided that, in the case of any Debt referred to in this definition (other than Debt under the First Lien Term Loan Agreement or the Second Lien Term Loan Agreement):

(a) such Debt does not mature and does not have any mandatory or scheduled payments or sinking fund obligations prior to 91 days after the later of the Tranche A Maturity Date or the Tranche B Maturity Date (except as a result of a customary change of control or asset sale repurchase offer provisions, subject to the prior making of any required payments on the Obligations hereunder); and

(b) on or before the date on which the first such Debt is incurred by Borrower or any Guarantor, (1) the Junior Lien Representative and Junior Lien Collateral Agent shall become a party to the Junior Lien Intercreditor Agreement and (2) any other requirements set forth in the Junior Lien Intercreditor Agreement shall have been satisfied.

**Junior Lien Documents:** means, collectively, any indenture, credit agreement or other agreement or instrument pursuant to which Junior Lien Debt is incurred and the documents pursuant to which such Junior Liens are granted.

**Junior Lien Intercreditor Agreement:** means a customary intercreditor agreement entered into by and among the Obligors, Agent and the representative under the Junior Lien Documents, in form and substance reasonably acceptable to Agent (it being understood and agreed that in order to be reasonably acceptable to such parties such intercreditor agreement at minimum must have customary "silent" second-lien provisions acceptable to Agent), as the same may be amended, supplemented, modified or restated in accordance with the terms thereof.

**Junior Lien Representative:** means, in the case of any Series of Junior Lien Debt, the trustee, agent or representative of the holders of such Series of Junior Lien Debt who maintains the transfer register for such Series of Junior Lien Debt and is appointed as a representative of the Junior Lien Debt (for purposes related to the administration of the security documents) pursuant to the indenture, credit agreement or other agreement governing such Series of Junior Lien Debt.

Lender Indemnitees: means Lenders and Secured Bank Product Providers (if any), and their officers, directors, employees, Affiliates, agents and attorneys.

Lenders: means lenders party to this Agreement and any Person who hereafter becomes a "Lender" pursuant to an Assignment, including any Lending Office of the foregoing.

Lending Office: means the office (including any domestic or foreign Affiliate or branch) designated as such by a Lender by notice to Agent and Borrower Agent.

LIBO Base Rate: means

(a) the rate per annum determined by Agent to be the offered rate that appears on the applicable Bloomberg page (or on any successor or substitute page or service providing quotations of interest rates applicable for deposits in Dollars (for delivery on the Interest Reset Date occurring on the first day of such Interest Period) with a term equivalent to such Interest Period, determined as of approximately 11:45 a.m. (London time) two (2) Business Days prior to such Interest Reset Date, or

(b) if the rate referenced in the preceding clause (a) does not appear through such page or service or such page or service shall not be available, the rate per annum equal to the rate determined by Agent to be the offered rate on the applicable Bloomberg page (or on any successor or substitute page or service providing quotations of interest rates applicable to dollar deposits in the London interbank market comparable to those currently provided on such page, as determined by the Agent from time to time) for the longest period that is shorter than such Interest Period, determined as of approximately 11:45 a.m. (London time) two (2) Business Days prior to such Interest Reset Date, or

(c) if the rates referenced in the preceding clauses (a) and (b) are not available, the rate per annum determined by Agent as the rate of interest at which deposits in Dollars for delivery on Interest Reset Date occurring on the first day of such Interest Period in same day funds in the approximate amount of the Loan being made, continued or converted by JPMorgan Chase Bank, N.A. and with a term equivalent to such Interest Period would be offered by JP Morgan Chase Bank, N.A.'s London Branch (or such other major bank as is acceptable to Agent if JPMorgan Chase Bank, N.A. is no longer offering to acquire or allow deposits in the London interbank eurodollar market) to major banks in the London interbank eurodollar market at their request at approximately 11:45 a.m. (London time) two (2) Business Days prior to such Interest Reset Date.

LIBO Rate: means, for any Interest Period with respect to any Loan, a rate per annum determined by Agent to be equal to the quotient obtained by dividing (i) the LIBO Base Rate for such Loan for such Interest Period by (ii) one minus the Eurodollar Reserve Percentage for such Loan for such Interest Period and; provided, however, that in no event shall the LIBO Rate equal less than 0.0%.

LIBOR: means the London Interbank Offered Rate.

**LIBOR Screen Rate:** means the LIBOR quote on the applicable screen page Agent designates to determine LIBOR (or such other commercially available source providing such quotations as may be designated by Agent from time to time).

**LIBOR Successor Rate:** has the meaning set forth in **Section 3.6.2**.

**LIBOR Successor Rate Conforming Changes:** means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Base Rate, LIBO Base Rate, Interest Period, timing and frequency of determining rates and making payments of interest and other administrative matters as may be appropriate, in the discretion of Agent, to reflect the adoption of such LIBOR Successor Rate and to permit the administration thereof by Agent in a manner substantially consistent with market practice (or, if Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as Agent determines in consultation with Borrower).

**Lien:** means a Person's interest in Property securing an obligation owed to, or a claim by, such Person, including any lien, security interest, pledge, hypothecation, assignment, trust, reservation, encroachment, easement, right-of-way, covenant, condition, restriction, lease, or other title exception or encumbrance.

**Lien Waiver:** means an agreement, in form and substance satisfactory to Agent, by which for any material Collateral located on leased premises, the lessor agrees to permit Agent to enter upon the premises and remove the Collateral or to use the premises to store or dispose of the Collateral.

**Liquidity:** means, on any date of determination, the sum as of such date of (i) all amounts available to be borrowed by any Obligor under this Agreement, plus (ii) the amount of unrestricted cash and Cash Equivalents (determined in accordance with GAAP) on the most recent consolidated balance sheet of the Obligors delivered to Agent pursuant to **Section 10.1.2(a)** or **Section 10.1.2(b)**, as applicable (including for the avoidance of doubt, cash and Cash Equivalents on deposit in the Collateral Accounts (other than the Blocked Accounts)).

**Liquidity Test:** means, with respect to any Investment (including a Permitted Acquisition), any asset acquisition, any sale or other disposition, any incurrence or Redemption of Debt, any Restricted Payment or any other event or action that in each case by the terms of this Agreement requires compliance with this test (each, a "**Liquidity Test Transaction**"), that Borrower satisfies each of the following requirements: (i) no Default or Event of Default shall occur or be continuing or would result from the Liquidity Test Transaction and (ii) Borrower shall have Liquidity of at least \$50,000,000 after giving pro forma effect to such Liquidity Test Transaction.

**Liquidity Test Transaction:** has the meaning assigned to such term in the definition of "Liquidity Test".

**Loan:** means a Tranche A Loan, a Tranche B Loan, or other loan made under the terms of this Agreement.

Loan Documents: means this Agreement, the Intercreditor Agreement, the Agreement Among Lenders, Other Agreements and Security Documents.

Loan Year: means each 12 month period commencing on the Closing Date or an anniversary thereof.

Margin Stock: as defined in Regulation U of the Board of Governors.

Material Adverse Effect: means a material adverse change in, or material adverse effect on (a) the business, Properties, condition (financial or otherwise) or results of operations of the Borrower and its Subsidiaries taken as a whole, (b) the value of any material portion of the Collateral, or on the validity or priority of Agent's Liens on any material portion of the Collateral, (c) the ability of the Borrower and the Guarantors, taken as a whole, to perform any of their payment or other obligations under the Loan Documents, (d) the validity or enforceability of any Loan Document or (e) the ability of Agent or any Lender to enforce any of their respective material rights under the Loan Documents.

Material Contract: any agreement or arrangement to which an Obligor or Subsidiary is party (other than the Loan Documents) (a) that is deemed to be a material contract under any securities law applicable to such Person, including the Securities Act of 1933 or (b) for which breach, termination, nonperformance or failure to renew could reasonably be expected to have a Material Adverse Effect.

Material Indebtedness: means Funded Debt (other than the Loans) or Hedging Obligations, of any one or more of Borrower and the Guarantors in an aggregate principal amount exceeding \$25,000,000. For purposes of determining Material Indebtedness, (i) the "principal amount" of any Hedging Obligations shall be the Swap Termination Value and (ii) Debt incurred under any Existing Credit Document shall be deemed to be Material Indebtedness regardless of maturity.

Minimum Fixed Charge Coverage Ratio Test: has the meaning set forth in **Section 10.2.1(a)**.

Moody's: means Moody's Investors Service, Inc. or any successor acceptable to Agent.

Multiemployer Plan: means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which an Obligor or ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

Multiple Employer Plan: means a Plan that has two or more contributing sponsors, including an Obligor or ERISA Affiliate, at least two of whom are not under common control, as described in Section 4064 of ERISA.

Net Income: means, for any period for Borrower and Subsidiaries on a consolidated basis, the net income of Borrower and its consolidated Subsidiaries for such period as determined in accordance with GAAP, provided that there shall be excluded from Net Income (a) the income (or deficit) of any Person (other than a Subsidiary of Borrower) in which Borrower or any of its consolidated Subsidiaries has an ownership interest, except to the extent that any such income is

actually received by Borrower or such Subsidiary in the form of cash dividends or similar cash distributions and (b) the undistributed earnings of any Subsidiary of Borrower to the extent that the declaration of payment or dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any contractual obligation, governing document or Applicable Law applicable to such Subsidiary.

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

Notice of Rebalancing: means (i) a request by Borrower Agent for a release of Tranche A Loan proceeds and Tranche B Loan proceeds from the Blocked Accounts or (ii) a confirmation of Borrower's obligation to remit funds from any Controlled Unrestricted Account to the Blocked Accounts, in each case in accordance with **Section 4.1.1**.

Obligations: means all (a) principal of and premium, if any, on the Loans, (b) interest, expenses, fees, indemnification obligations, Extraordinary Expenses and other amounts payable by Obligors under Loan Documents, (c) Secured Bank Product Obligations, (d) ABL Hedging Obligations (as defined in the Intercreditor Agreement) and (e) other Debts, obligations and liabilities of any kind owing by Obligors pursuant to the Loan Documents, whether now existing or hereafter arising, whether evidenced by a note or other writing, whether allowed in any Insolvency Proceeding, whether arising from an extension of credit, issuance of a letter of credit, acceptance, loan, guaranty, indemnification or otherwise, and whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, or joint or several.

Obligor: means Borrower and each Guarantor or other Person that is liable for payment of any Obligations or that has granted a Lien on its assets in favor of Agent to secure any Obligations.

OFAC: means the Office of Foreign Assets Control of the U.S. Treasury Department.

OPA: means the Oil Pollution Act of 1990, as amended.

Organic Documents: means, with respect to any Person, its charter, certificate or articles of incorporation or formation, bylaws, articles of organization, limited liability agreement, operating agreement, members agreement, shareholders agreement, partnership agreement, certificate of partnership, certificate of formation, voting trust agreement, or similar agreement or instrument governing the formation or operation of such Person.

OSHA: means the Occupational Safety and Hazard Act of 1970.

**Other Agreement:** means each of the Agent's Fee Letter, each other fee letter, Lien Waiver, Report, Compliance Certificate, Borrower Materials or other note, document, instrument or agreement (other than this Agreement or a Security Document) now or hereafter delivered by an Obligor or other Person to Agent or a Lender in connection with any transactions relating hereto.

**Other Connection Taxes:** means Taxes imposed on a Recipient due to a present or former connection between it and the taxing jurisdiction (other than connections arising from the Recipient having executed, delivered, become party to, performed obligations or received payments under, received or perfected a Lien or engaged in any other transaction pursuant to, enforced, or sold or assigned an interest in, any Loan or Loan Document).

**Other Taxes:** means all present or future stamp, court, documentary, ad valorem, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a Lien under, or otherwise with respect to, any Loan Document, except Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to **Section 13.4(c)**).

**Participant:** has the meaning set forth in **Section 13.2.1**.

**Patriot Act:** means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

**Payment Item:** means each check, draft or other item of payment payable to Borrower, including those constituting proceeds of any Collateral.

**PBGC:** means the Pension Benefit Guaranty Corporation.

**Pension Plan:** means any employee pension benefit plan (as defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Obligor or any ERISA Affiliate or to which the Obligor or ERISA Affiliate contributes or has an obligation to contribute, or in the case of a Multiple Employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the preceding five plan years.

**Permitted Acquisition:** has the meaning provided in clause (c) of the definition of Permitted Investment.

**Permitted Acquisition Indebtedness:** means Debt or Disqualified Stock (x) of Borrower or any of its Restricted Subsidiaries incurred, issued or assumed, or with respect to which any property is acquired, in each case (a) to finance, or (b) that is secured by the assets acquired pursuant to, a Permitted Acquisition of, or Permitted Investment in, a Permitted Business or an acquisition of one or more vessels, whether incurred, issued or assumed concurrently with or subsequent to such Permitted Acquisition of, or Permitted Investment in, a Permitted Business or an acquisition of one or more vessels, or (y) of Persons that are acquired by Borrower or any of its Restricted Subsidiaries or merged into, amalgamated with or consolidated with Borrower or any of its Restricted Subsidiaries in accordance with the terms of this Agreement if, in each case on

the date such Debt or Disqualified Stock was incurred, issued or assumed, whether concurrently with or subsequent to such Permitted Acquisition of, or Permitted Investment in, a Permitted Business or an acquisition of one or more vessels, either (1) Borrower would be permitted to incur at least \$1.00 of additional Debt pursuant to the Minimum Fixed Charge Coverage Ratio Test or (2) the Consolidated Fixed Charge Coverage Ratio for Borrower and its Restricted Subsidiaries immediately after such incurrence, issuance or assumption would be greater than the Consolidated Fixed Charge Coverage Ratio for Borrower and its Restricted Subsidiaries immediately prior to such incurrence, issuance or assumption; provided that any such Debt or Disqualified Stock described in clause (x) or (y) shall not be secured by any assets or Persons other than those being acquired pursuant to, a Permitted Acquisition of, or Permitted Investment in, a Permitted Business or an acquisition of productive assets (and, for the avoidance of doubt, shall not be secured by any Collateral).

Permitted Bond Hedge Transaction: means any call or capped call option (or substantively equivalent derivative transaction) on Borrower's common stock purchased by Borrower in connection with the issuance of any Convertible Indebtedness; provided that the purchase price for such Permitted Bond Hedge Transaction, less the proceeds received by Borrower from the sale of any related Permitted Warrant Transaction, does not exceed the net proceeds received by Borrower from the sale of such Convertible Indebtedness issued in connection with the Permitted Bond Hedge Transaction.

Permitted Business: means the business of providing marine transportation or marine logistics services or other businesses reasonably complementary or reasonably related thereto (as determined in good faith by Borrower's Board of Directors).

Permitted Business Investments: means Investments by Borrower or any of its Restricted Subsidiaries in any Restricted Subsidiary of Borrower that is not an Obligor, in any Unrestricted Subsidiary of Borrower or in any Joint Venture, provided that:

(a) such Investment consists of transfers (pursuant to one or more transactions) of (1) vessels for use in such Person's business (collectively, the "Investment Entity Vessels"), (2) any Equity Interests in any Person that owns no Property other than Investment Entity Vessels, (3) Equity Interests (other than Disqualified Stock) of Borrower, or (4) any combination of the foregoing;

(b) if any such non-Obligor Restricted Subsidiary, Unrestricted Subsidiary or Joint Venture has outstanding Debt at the time of such Investment, either (a) all such Debt is Non-Recourse Debt or (b) any such Debt of such non-Obligor Restricted Subsidiary, Unrestricted Subsidiary or Joint Venture that is recourse to Borrower or any of its Restricted Subsidiaries (which shall include, without limitation, all Debt of such non-Obligor, Unrestricted Subsidiary or Joint Venture for which Borrower or any of its Restricted Subsidiaries may be directly or indirectly, contingently or otherwise, obligated to pay, whether pursuant to the terms of such Debt, by law or pursuant to any guarantee, including, without limitation, any "claw back," "make-well" or "keep-well" arrangement) (x) could at the time such Investment is made, be incurred at that time by Borrower and its Restricted Subsidiaries under the Minimum Fixed Charge Coverage Ratio Test, provided that such Debt shall not be secured by any of the Collateral; and

(c) any such non-Obligor Restricted Subsidiary, Unrestricted Subsidiary or Joint Venture is principally engaged in a Permitted Business.

Permitted Investments: means

(a) any Investment in Borrower or in another Obligor;

(b) any Investment in Cash Equivalents;

(c) any Investment by Borrower or any Restricted Subsidiary of Borrower in a Person if such Person is in the Permitted Business and if as a result of such Investment

(i) such Person becomes an Obligor or (ii) such Person is merged or consolidated with or into, or transfers or conveys all or substantially all of its properties or assets to, or is liquidated into, Borrower or another Obligor (any such Investment, a "Permitted Acquisition"),

(d) any Investment (other than, in the case of clause (ii), Investments in the form of Specified Non-Cash Consideration) made as a result of the receipt of non-cash consideration from (i) a disposition of assets that does not constitute an Asset Sale or (ii) an Asset Sale,

(e) Permitted Business Investments,

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

(g) any Investment in a Person to the extent such Investment was made or entered into in exchange for the issuance of Equity Interests (other than Disqualified Stock) of Borrower,

(h) Investments in a Person that is not an Obligor, provided that if such Investment is being made with assets that constitute Collateral (i) no Event of Default shall have occurred and be continuing, (ii) no Cash Dominion Trigger Period then exists, or would exist after giving effect to such Investments and (iii) to the extent that the Tranche A Usage would exceed the Tranche A-1 Receivables Formula Amount, as adjusted for such Investment, the Borrower shall have either (x) repaid Tranche A Loans or (y) provided Agent with a Notice of Rebalancing requesting the release of amounts from the Blocked Accounts into the Tranche A Unrestricted Account (provided that such release shall not result in the amount on deposit in the (1) Tranche B-1 Blocked Account to be less than the Tranche B-1 Restricted Cash Formula Amount or (2) Tranche B-2 Blocked Account to be less than the Tranche B-2 Restricted Cash Formula Amount, in each case at such time after giving effect to such Investment), in the case of either (x) or (y), in the amount of such excess,



(i) any Permitted Bond Hedge Transactions which constitute Investments, and

(j) intercompany loans, capital contributions and/or advances made to consummate a foreign vessel reflagging.

Except as otherwise explicitly addressed in any exception to **Section 10.2.3**, for purposes of covenant compliance, the amount of any Investment at any time shall be (1) the amount actually invested (measured at the time made), without adjustment for subsequent increases or decreases in the value of such Investment minus (2) the amount of dividends or distributions received in connection with such Investment and any return of capital and any payment of principal received in respect of such Investment that in each case is received in cash or Cash Equivalents; provided, that if such Investment is made with Collateral or proceeds of Collateral, such cash or Cash Equivalents are received by an Obligor in a Collection Account.

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

Permitted Lien: means

(a) Liens on the Collateral securing the Obligations;

(b) second priority Liens on the Collateral in favor of the “Collateral Agent” and lenders under the First Lien Term Loan Agreement;

(c) third priority Liens on the Collateral in favor of the “Collateral Agent” and lenders under the Second Lien Term Loan Agreement; and

(d) Liens on any Property of the Obligors other than the Collateral.

Permitted Refinancing Indebtedness: means any Debt of Borrower or any of its Restricted Subsidiaries issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund other Debt of Borrower or any of its Restricted Subsidiaries; provided, however, that (a) the principal amount of such Permitted Refinancing Indebtedness does not exceed the principal amount of, plus premium, if any, and accrued interest on, the Debt so extended, refinanced, renewed, replaced, defeased or refunded (plus the amount of reasonable expenses incurred in connection therewith), (b) such Permitted Refinancing Indebtedness has a final maturity date no earlier than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Debt being extended, refinanced, renewed, replaced, defeased or refunded, (c) if the Debt being extended, refinanced, renewed, replaced, defeased or refunded is subordinated in right of payment to the Loans or the Guarantees, as the case may be, such Permitted Refinancing Indebtedness is subordinated in right of payment to the Loans or the Guarantees on terms at least as favorable, taken as a whole, to the Lenders as those contained in the documentation governing the Debt being extended, refinanced, renewed, replaced, defeased or refunded, and (d) such Debt is incurred either

by Borrower or any of its Restricted Subsidiaries that is the obligor on the Debt being extended, refinanced, renewed, replaced, defeased or refunded; provided, however, that Borrower or a Restricted Subsidiary of Borrower may guarantee Permitted Refinancing Indebtedness incurred by Borrower or a Restricted Subsidiary of Borrower, but only to the extent Borrower or such Restricted Subsidiary, as applicable, was an obligor or guarantor of the Debt being extended, refinanced, renewed, replaced, defeased or refunded; provided, further, however, that if such Permitted Refinancing Indebtedness is subordinated to the Loans, any such guarantee shall be subordinated to the Loans or such Restricted Subsidiary's guarantee (if any) of the Loans, if applicable, to at least the same extent.

Permitted Warrant Transaction: means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) on Borrower's common stock sold by Borrower substantially concurrently with any purchase by Borrower of a related Permitted Bond Hedge Transaction.

Person: means any individual, corporation, limited liability company, partnership, joint venture, association, trust, unincorporated organization, Governmental Authority or other entity.

Plan: means an employee benefit plan (as defined in Section 3(3) of ERISA) maintained for employees of an Obligor or ERISA Affiliate, or to which an Obligor or ERISA Affiliate is required to contribute on behalf of its employees.

Platform: has the meaning set forth in **Section 14.3.3**.

Post-Closing Conditions: means (a) Field Examination Condition and (b) the conditions set forth in **Part A of Schedule 10.1.12**.

Prepayment Fee: has the meaning set forth in the Agent's Fee Letter.

Prior Credit Agreement: means the Second Amended and Restated Credit Agreement dated as of February 6, 2015, by and among the Borrower, as parent guarantor, HOS, as borrower, Wells Fargo, as administrative agent, and the other parties thereto, as amended by the First Amendment thereto dated as of July 29, 2016 by and among the Borrower, as parent guarantor, HOS, as borrower, Wells Fargo, as administrative agent, and the other parties thereto.

Pro Rata: means, with respect to any Lender at any time, (a) with respect to the Tranche A Loans at any time, a share proportionate to the aggregate amount of such Lender's outstanding Tranche A-1 Loans or Tranche A-2 Loans, as the case may be, to Tranche A Usage at such time, (b) with respect to the Tranche B Loans, a share proportionate to the aggregate amount of such Lender's outstanding Tranche B-1 Loans or Tranche B-2 Loans, as the case may be, to Tranche B Usage at such time and (c) if all Loans have been paid in full and/or Cash Collateralized, a share proportionate to the aggregate amount of such Lender's and its Affiliates' remaining Obligations to the aggregate remaining Obligations.

Property: means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, including, without limitation, cash and Cash Equivalents and Receivables.

Protective Advances: has the meaning set forth in **Section 2.1.5**.

RCRA: means the Resource Conservation and Recovery Act (42 U.S.C. §§ 6991-6991i).

Receivables: means Accrued Revenue, trade receivables, amounts to be rebilled to customers, and any and all other general non-trade receivables as mutually agreed from time to time between the Lenders and Borrower, net of reserves; provided, that the foregoing shall not include any Tax Receivables.

Recipient: means Agent, any Lender or any other recipient of a payment to be made by an Obligor under a Loan Document or on account of an Obligation.

Redemption: means with respect to any Debt, the refinancing, repurchase, redemption, prepayment, repayment, or defeasance or any other acquisition or retirement for value (or the segregation of funds with respect to any of the foregoing) of such Debt. "Redeem" and "Redeemed" have the correlative meaning thereto.

Replacement Indenture: means any indenture or loan agreement that may be entered into as a restatement, renewal, refinance or rearrangement of any of the Unsecured Indentures.

Report: has the meaning set forth in **Section 12.2.3**.

Reporting Date: means, with respect to any Calculation Date, the fifteenth (15th) day of the immediately succeeding calendar month.

Required Lenders: has the meaning set forth in the Agreement Among Lenders.

Restricted Investment: means an Investment other than a Permitted Investment.

Restricted Subsidiary: means any Subsidiary of a Person that is not an Unrestricted Subsidiary.

S&P: means Standard & Poor's Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc., or any successor acceptable to Agent.

Sanctioned Country: means, at any time, a country or territory which is the subject or target of any Sanctions.

Sanctioned Person: means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, or by the United Nations Security Council, Her Majesty's Treasury of the United Kingdom, the European Union or any EU member state, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person controlled by, or owned 50 percent or more, directly or indirectly, by, any such Person or Persons.

Sanctions: means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State, or (b) the United Nations Security Council, the European Union or Her Majesty's Treasury of the United Kingdom.

Second Lien Term Loan Agreement: means that certain Second Lien Term Loan Agreement, dated as of February 7, 2019, among Borrower, as parent borrower, Hornbeck Offshore Services, LLC, as co-borrower, Wilmington Trust, as administrative agent, Wilmington Trust, as collateral agent, and the lenders party thereto.

Secured Bank Product Obligations: means Debt, obligations and other liabilities, if any, with respect to Bank Products owing by an Obligor or Subsidiary to a Secured Bank Product Provider.

Secured Bank Product Provider: means (a) the Bank, the Agent and any of their respective Affiliates; and (b) any other Lender or Affiliate of a Lender that is providing a Bank Product, provided such provider delivers written notice to Agent, in form and substance satisfactory to Agent, within 10 days following the later of the Closing Date or creation of the Bank Product, (i) describing the Bank Product and setting forth the maximum amount to be secured by the Collateral and the methodology to be used in calculating such amount, and (ii) agreeing to be bound by **Section 12.13**.

Secured Hedge Providers: means any “ABL Hedge Provider” as defined in the Intercreditor Agreement.

Secured Parties: means Agent, Lenders, Secured Hedge Providers and Secured Bank Product Providers (if any).

Securities Act: means the Securities Act of 1933, as amended.

Security Documents: means the Guaranty and Security Agreement, each Account Control Agreement, each Foreign Collateral Security Document, and all other documents, instruments and agreements now or hereafter securing (or given with the intent to secure) any Obligations.

Senior Officer: means the chairman of the board, president, chief executive officer or chief financial officer of Borrower or, if the context requires, an Obligor.

Series of Junior Lien Debt: means, severally, each issue or series of Junior Lien Debt for which a single transfer register is maintained.

Settlement Report: means a report summarizing (a) Tranche A Loans outstanding as of a given settlement date, allocated to Lenders on a Pro Rata basis and (b) Tranche B Loans outstanding as of a given settlement date, allocated to Lenders on a Pro Rata basis.

Solvent: means, as to any Person, such Person (a) owns Property whose fair salable value is greater than the amount required to pay all of its debts (including contingent, subordinated, unmatured and unliquidated liabilities); (b) owns Property whose present fair salable value (as defined below) is greater than the probable total liabilities (including contingent, subordinated, unmatured and unliquidated liabilities) of such Person as they become absolute and matured; (c) is able to pay all of its debts as they mature; (d) has capital that is not unreasonably small for its

business and is sufficient to carry on its business and transactions and all business and transactions in which it is about to engage; (e) is not “insolvent” within the meaning of Section 101(32) of the Bankruptcy Code; and (f) has not incurred (by way of assumption or otherwise) any obligations or liabilities (contingent or otherwise), or made any conveyance in connection therewith, with actual intent to hinder, delay or defraud either present or future creditors of such Person or any of its Affiliates. “Fair salable value” means the amount that could be obtained for assets within a reasonable time, either through collection or through sale under ordinary selling conditions by a capable and diligent seller to an interested buyer who is willing (but under no compulsion) to purchase.

Subsidiary: means any Person of which at least a majority of the outstanding Equity Interests having by the terms thereof ordinary voting power to elect a majority of the board of directors, manager or other governing body of such Person (irrespective of whether or not at the time Equity Interests of any other class or classes of such Person shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by Borrower or one or more of its Subsidiaries. Unless otherwise indicated herein, each reference to the term “Subsidiary” shall mean a direct or indirect Subsidiary of Borrower.

Swap Termination Value: means, in respect of any Hedging Obligation, after taking into account the effect of any legally enforceable netting agreement relating to such Hedging Obligations, (a) for any date on or after the date such Hedging Obligations have been closed out and termination value(s) determined in accordance therewith, such termination value(s) and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Hedging Obligations, as determined by the counterparties to such Hedging Obligations.

Taxes: means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

Tax Receivable: has the meaning set forth in the Guaranty and Security Agreement.

Test Period: means, for any date of determination, with respect to any determination of (a) Liquidity, the most recent month for which Internal Financial Statements have been delivered pursuant to **Section 10.1.2(b)**, and (b) the Consolidated Fixed Charge Coverage Ratio, the twelve-month period ending on the last day of the most recent month for which Internal Financial Statements have been delivered pursuant to **Section 10.1.2(b)**.

Tranche A Lender: means each Lender who holds Tranche A Loans.

Tranche A Loan: means a Tranche A-1 Loan or a Tranche A-2 Loan.

Tranche A Maturity Date: means June 28, 2022.

Tranche A Unrestricted Account: means account number 2080334462 held by HOS at Capital One, National Association, so long as such account is subject to an Account Control Agreement.

Tranche A Usage: means, at any time, the outstanding principal amount of Tranche A Loans at such time.

Tranche A-1 Loan: means a Tranche A Loan made by a Lender of Tranche A-1 Loans pursuant to **Section 2.1.2** or a transfer of proceeds from the Tranche B-1 Blocked Account to the Tranche A Unrestricted Account pursuant to **Section 2.1.3**.

Tranche A-1 Receivables Formula Amount: means, on any date of determination, an amount equal to the lesser of (a) \$50,000,000 and (b) the sum of (i) (A) the Gross Receivables Amount multiplied by (ii) the Tranche A-1 Receivables Formula Percentage, minus (iii) Agent's Reserves.

Tranche A-1 Receivables Formula Percentage: means a percentage equal to (a) until the conditions set forth in **Part A of Schedule 10.1.12** are met, 0%, (b) until the field examination provided for in **Section 6.1(i)(i)** has been completed with results satisfactory to the Agent (the "Field Examination Condition"), 40%, and (c) for the period beginning on the date the Field Examination Condition is satisfied, 70%, in each case as adjusted in Agent's reasonable discretion upon review of the composition of the Receivables.

Tranche A-2 Loan: means a Tranche A Loan made by a Lender of Tranche A-2 Loans pursuant to **Section 2.1.2** or a transfer of proceeds from the Tranche B-2 Blocked Account to the Tranche A Unrestricted Account pursuant to **Section 2.1.3**.

Tranche A-2 Receivables Formula Amount: means, on any date of determination, an amount equal to the sum of (a) (i) the Gross Receivables Amount multiplied by (ii) the Tranche A-2 Receivables Formula Percentage, minus (b) the Tranche A-1 Receivables Formula Amount.

Tranche A-2 Receivables Formula Percentage: means a percentage equal to (a) until the Post-Closing Conditions are met, 0%, (b) until the Field Examination Condition has been satisfied, 0%, and (c) for the period beginning on the date the Field Examination Condition is satisfied, 85%.

Tranche B Lender: means each Lender who holds Tranche B Loans.

Tranche B Loan: means a Tranche B-1 Loan or a Tranche B-2 Loan.

Tranche B Maturity Date: means the date that is 91 days after February 25, 2025.

Tranche B Usage: means, at any time, the outstanding principal amount of Tranche B Loans at such time.

Tranche B-1 Blocked Account: means the account named "ABL Tranche B Acct. No. 1", account no. 184100897, established by Borrower and HOS at Bank, over which Agent (solely on behalf of the applicable Lenders in their capacity as Tranche B Lenders) has exclusive control for withdrawal purposes, and subject to an Account Control Agreement.

Tranche B-1 Loan: means a Tranche B Loan made by a Lender of Tranche B-1 Loans pursuant to **Section 2.1.2** or a transfer of proceeds from the Tranche A Unrestricted Account to the Tranche B-1 Blocked Account pursuant to **Section 2.1.3**.

**Tranche B-1 Restricted Cash Formula Amount:** means, as of any date of determination, an amount equal to the sum of (a) \$50,000,000 minus (b) the Tranche A-1 Receivables Formula Amount as of such date.

**Tranche B-2 Blocked Account:** means the account named "ABL Tranche B Acct. No. 2", account no. 184100902, established by Borrower and HOS at Bank, over which Agent (solely on behalf of the applicable Lenders in their capacity as Tranche B Lenders) has exclusive control for withdrawal purposes, and subject to an Account Control Agreement.

**Tranche B-2 Loan:** means a Loan made by a Lender of Tranche B-2 Loans pursuant to **Section 2.1.2** or a transfer of proceeds from the Tranche A Unrestricted Account to the Tranche B-2 Blocked Account pursuant to **Section 2.1.3**.

**Tranche B-2 Restricted Cash Formula Amount:** means, as of any date of determination, an amount equal to the sum of (a) \$50,000,000 minus (b) the Tranche A-2 Receivables Formula Amount as of such date.

**Transaction Expenses:** means any fees, costs, or expenses incurred or paid by the Borrower in connection with the Transactions, this Agreement, and the other Loan Documents, and the transactions contemplated hereby and thereby.

**Transactions:** means, collectively, (a) the execution, delivery and performance by the Obligors of the Loan Documents to which they are a party and the making of the Loans hereunder, and (b) the payment of all related costs, fees and expenses.

**Transferee:** means any actual or potential Eligible Assignee, Participant or other Person acquiring an interest in any Obligations.

**Trigger Period:** means any period (a) commencing on any day that (i) an Event of Default occurs or (ii) Liquidity is less than \$20,000,000; and (b) continuing until (i) during each of the preceding 5 consecutive days, no Default or Event of Default has existed and (ii) Liquidity is greater than \$75,000,000.

**TSCA:** means the Toxic Substances Control Act, as amended.

**UCC:** means the Uniform Commercial Code as in effect in the State of New York or, when the laws of any other jurisdiction govern the perfection or enforcement of any Lien, the Uniform Commercial Code of such jurisdiction.

**Unrestricted Subsidiary:** means any Subsidiary of Borrower that is designated by the Board of Directors of Borrower as an Unrestricted Subsidiary pursuant to **Section 10.1.10** and any Subsidiary of an Unrestricted Subsidiary.

**Unsecured Indentures:** means the 2019 Convertible Senior Notes Indenture, the 2020 Senior Notes Indenture and the 2021 Senior Notes Indenture.

**Unused Line Fee Rate:** means a per annum rate equal to 0.5%, if average daily Combined Usage is less than 100% of the Commitments during the preceding calendar month.

U.S. Person: means “United States Person” as defined in Section 7701(a)(30) of the Code.

U.S. Tax Compliance Certificate: has the meaning set forth in **Section 5.10.2(b)(iii)**.

Value: means, with respect to a Receivable, the face amount of such Receivable, net of any returns, rebates, discounts (calculated on the shortest terms), credits, allowances or Taxes (including sales, excise or other taxes) that have been or could be claimed by the Account Debtor or any other Person, and with respect to cash that is Collateral, the aggregate Dollar value thereof.

Voting Stock: means, of any Person as of any date, the Equity Interest of such Person that is at the time entitled to vote in the election of the board of directors, managers or trustees of such Person.

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

Wells Fargo: means Wells Fargo Bank, National Association.

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

Wilmington Trust: means Wilmington Trust, National Association.

Withdrawal Liability: means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Title IV of ERISA.

Withholding Agent: means any Obligor and Agent.

Write-Down and Conversion Powers: means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.



**1.2 Accounting Terms.** Under the Loan Documents (except as otherwise specified therein), all accounting terms shall be interpreted, all accounting determinations shall be made, and all financial statements shall be prepared, in accordance with GAAP applied on a basis consistent with the most recent audited financial statements of Borrower delivered to Agent before the Closing Date and using the same valuation method as used in such financial statements, except for any change required or permitted by GAAP if Borrower's certified public accountants concur in such change, the change is disclosed to Agent, and all relevant provisions of the Loan Documents are amended to take into account the effects of the change.

**1.3 Uniform Commercial Code.** As used herein, the following terms are defined in accordance with the UCC. "Account," "Account Debtor," "Chattel Paper," "Commercial Tort Claim," "Deposit Account," "Document," "Equipment," "General Intangibles," "Goods," "Instrument," "Inventory," "Investment Property," "Letter-of-Credit Right," "Securities Account" and "Supporting Obligation."

**1.4 Certain Matters of Construction.** The terms "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. In the computation of periods of time from a specified date to a later specified date, "from" means "from and including," and "to" and "until" each mean "to but excluding." The terms "including" and "include" shall mean "including, without limitation". Section titles appear as a matter of convenience only and shall not affect the interpretation of any Loan Document. All references to (a) laws include all related regulations, interpretations, supplements, amendments and successor provisions; (b) any document, instrument or agreement include any amendments, waivers and other modifications, extensions or renewals (to the extent permitted by the Loan Documents); (c) any section mean, unless the context otherwise requires, a section of this Agreement; (d) any exhibits or schedules mean, unless the context otherwise requires, exhibits and schedules attached hereto, which are hereby incorporated by reference; (e) any Person include successors and assigns; (f) time of day means the time of day in New York, New York; or (g) discretion of Agent or any Lender mean the sole and absolute discretion of such Person exercised at any time. All references to Value, Borrowing Base components, Loans, Obligations and other amounts herein shall be denominated in Dollars, unless expressly provided otherwise, and all determinations (including financial covenants) made from time to time under the Loan Documents shall be made in light of the circumstances existing at such time. Borrowing Base calculations shall be consistent with historical methods of valuation and calculation, and otherwise satisfactory to Agent (and not necessarily calculated in accordance with GAAP). Borrower shall have the burden of establishing any alleged negligence, misconduct or lack of good faith by Agent or any Lender under any Loan Documents. No provision of any Loan Documents shall be construed against any party by reason of such party having, or being deemed to have, drafted the provision. Reference to Borrower's "knowledge" or similar concept means actual knowledge of a Senior Officer, or knowledge that a Senior Officer would have obtained if he or she had engaged in good faith and diligent performance of his or her duties, including reasonably specific inquiries of employees or agents and a good faith attempt to ascertain the matter.

## SECTION 2. CREDIT FACILITIES

### 2.1 Commitments; Loans on the Closing Date; Restricted and Unrestricted Loan Proceeds.

2.1.1 Commitments. Subject to the terms and conditions set forth herein:

(a) each Tranche A Lender agrees, severally and not jointly, to make Tranche A-1 Loans or Tranche A-2 Loans to Borrower from the Closing Date through the Tranche A Maturity Date (or the Commitment Termination Date, if earlier); and

(b) each Tranche B Lender agrees, severally and not jointly, to make Tranche B-1 Loans or Tranche B-2 Loans, as applicable, available to Borrower from the Closing Date through the Commitment Termination Date.

2.1.2 Loans on the Closing Date. On the Closing Date, each Tranche A Lender shall deposit into the Tranche A Unrestricted Account an amount equal to an amount equal to the Tranche A-1 Receivables Formula Amount or the Tranche A-2 Receivables Formula Amount, as applicable. On the Closing Date, each Tranche B Lender shall deposit into its respective Blocked Account an amount equal to the Tranche B-1 Restricted Cash Formula Amount or Tranche B-2 Restricted Cash Formula Amount, as applicable.

The parties acknowledge and agree that the Commitments shall be fully drawn on the Closing Date; provided, however, that in no event shall the aggregate amount of (1) Tranche A Loans outstanding at any time exceed the Aggregate Receivables Formula Amount, (2) Tranche B Loans outstanding at any time exceed the Aggregate Restricted Cash Formula Amount or (3) Loans outstanding at any time exceed (x) the Borrowing Base or (y) the Commitments. None of the Lenders shall be required to make Loans in excess of its Commitment. Delivery by Borrower of any Borrowing Base Report resulting in a release of any amounts from the Blocked Accounts into the Tranche A Unrestricted Account shall be deemed to be a Notice of Rebalancing in an aggregate amount equal to such requested release. The aggregate principal amount of the Tranche A-1 Loans and the Tranche B-1 Loans shall not exceed \$50,000,000 at any time. The aggregate principal amount of the Tranche A-2 Loans and the Tranche B-2 Loans shall not exceed \$50,000,000 at any time.

From the Closing Date until the conditions set forth in **Part A of Schedule 10.1.2** have been satisfied (the "Initial Release Conditions"), all of the Loans shall be held in the Blocked Accounts.

2.1.3 Restricted and Unrestricted Loan Proceeds. Within one (1) Business Day following (i) delivery of the first Borrowing Base Report following the date the Initial Release Conditions are satisfied and (ii) delivery of each subsequent Borrowing Base Report, in each case in form and substance satisfactory to Agent:

(a) if the Aggregate Receivables Formula Amount is greater than the Aggregate Receivables Formula Amount indicated on the immediately preceding Borrowing Base Report (and in the case of the initial Borrowing Base Report, greater than zero), and provided that, immediately before and after giving effect to such release, the conditions set forth in **Section 6.2** shall have been satisfied, Agent shall:

(i) release from the Tranche B-1 Blocked Account into the Tranche A Unrestricted Account an amount sufficient to ensure that the aggregate principal amount of the Tranche A Loans of such Lender outstanding at such time is equal to the Tranche A-1 Receivables Formula Amount; and

(ii) release from the Tranche B-2 Blocked Account into the Tranche A Unrestricted Account an amount sufficient to ensure that the aggregate principal amount of the Tranche A Loans of such Lender outstanding at such time is equal to the Tranche A-2 Receivables Formula Amount,

provided that Borrower may, concurrently with delivery of a Borrowing Base Report, request that amounts be held back in the Blocked Accounts for later release pursuant to a Notice of Rebalancing.

(b) If, based on any Borrowing Base Report other than the first such report, the Aggregate Receivables Formula Amount is less than the Aggregate Receivables Formula Amount indicated on the immediately preceding Borrowing Base Report, Borrower shall transfer or cause to be transferred, or Agent in its discretion may cause to be transferred, from the Tranche A Unrestricted Account:

(i) to the Tranche B-1 Blocked Account, an amount sufficient to ensure that the balance in the Tranche B-1 Blocked Account at such time is equal to the Tranche B-1 Restricted Cash Formula Amount at such time; and

(ii) to the Tranche B-2 Blocked Account, an amount sufficient to ensure that the balance in the Tranche B-2 Blocked Account at such time is equal to the Tranche B-2 Restricted Cash Formula Amount at such time.

2.1.4 Notes. Loans, and interest accruing thereon, shall be evidenced by the records of Agent and the applicable Lender. At the request of a Lender, Borrower shall deliver promissory note(s) to such Lender, evidencing its Tranche A-1 Loans, Tranche A-2 Loans, Tranche B-1 Loans or Tranche B-2 Loans, as applicable.

## **2.2 Voluntary Reduction or Termination of Commitments.**

(a) The (i) Commitments in respect of the Tranche A Loans shall terminate on the Tranche A Maturity Date and (ii) Commitments in respect of the Tranche B Loans shall terminate on the Tranche B Maturity Date, in each case unless sooner terminated in accordance with this Agreement. Upon at least 5 days prior written notice to Agent, Borrower may, at its option, terminate the Commitments. Any notice of termination given by Borrower shall be irrevocable; provided, however, that notice may be contingent on the occurrence of a financing or refinancing or the consummation of a sale, transfer, lease or other disposition of assets or the occurrence of a Change in Control and may be revoked or the termination date deferred if the financing or refinancing or sale, transfer, lease or other disposition of assets or Change in Control does not occur. On the applicable termination date, Borrower shall make Full Payment of all Obligations in respect of the Tranche A Loans or Tranche B Loans, as applicable, including the applicable Prepayment Fee, if any.

(b) Borrower may permanently reduce the Commitments for all Lenders, upon at least 5 days prior written notice to Agent, which notice shall specify the amount of the reduction and shall be irrevocable once given; provided, however, that notice may be contingent on the occurrence of a financing or refinancing or the consummation of a sale, transfer, lease or other disposition of assets or the occurrence of a Change in Control and may be revoked or the termination date deferred if the financing or refinancing or sale, transfer, lease or other disposition of assets or Change in Control does not occur. Each reduction shall be in a minimum amount of \$5,000,000, or an increment of \$100,000 in excess thereof. Any such reduction of Commitments shall be accompanied by the payment of the applicable Prepayment Fee, if any.

**2.3 Use of Proceeds.** The proceeds of the Tranche A Loans (if any) shall be held by Borrower in the Tranche A Unrestricted Account for use solely (a) to pay existing Debt; (b) to pay fees and transaction expenses associated with the closing of this Agreement; (c) to pay Obligations in accordance with this Agreement; and (d) for lawful corporate purposes of Borrower, including working capital. Borrower shall not, directly or indirectly, use any Loan proceeds, nor use, lend, contribute or otherwise make available any Loan proceeds to any Subsidiary, joint venture partner or other Person, (i) to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of funding of the Loan, is the subject of any Sanction; or (ii) in any manner that would result in a violation of a Sanction by any Person (including any Secured Party or other individual or entity participating in any transaction); or (iii) for any purpose that would breach the U.S. Foreign Corrupt Practices Act of 1977, UK Bribery Act 2010 or similar law in any jurisdiction.

**2.4 Protective Advances.** Agent shall be authorized, in its discretion, at any time, to make Tranche A-1 Loans from amounts on deposit in the Tranche B-1 Blocked Account (“Protective Advances”) (a) if Agent deems such Loans necessary or desirable to preserve or protect Collateral, or to enhance the collectability or repayment of Obligations; or (b) to pay any other amounts chargeable to Obligors under any Loan Documents, including interest, costs, fees and expenses, as long as such Loans do not cause (i) Tranche A Usage to exceed the Aggregate Receivables Formula Amount and (ii) Tranche A Usage and Tranche B Usage to exceed the Borrowing Base. Lenders of Tranche A-1 Loans shall participate on a Pro Rata basis in Protective Advances outstanding from time to time. Agent’s authority to make further Protective Advances under this **Section 2.4** may be revoked by instruction by the Required Lenders. Absent such revocation, Agent’s determination that funding of a Protective Advance is appropriate shall be conclusive.

## **SECTION 3. INTEREST, FEES AND CHARGES**

### **3.1 Interest.**

#### **3.1.1 Rates and Payment of Interest.**

(a) The Obligations shall bear interest (i) if the Loans bear interest based on the Base Rate in accordance with the terms of this Agreement, at the Base Rate in effect from time to time, plus the Applicable Margin, (ii) at any other time, at the LIBO Rate for the applicable Interest Period, plus the Applicable Margin, and (iii) if any other Obligation (including, to the extent permitted by law, interest not paid when due), at the Base Rate in effect from time to time, plus the Applicable Margin.

(b) During an Insolvency Proceeding with respect to Borrower, or during any other Event of Default if the Lenders so elect, Obligations shall bear interest at the Default Rate (whether before or after any judgment), payable **on demand**.

(c) Interest shall accrue from the date a Loan is advanced or Obligation is incurred or payable, until paid in full by Borrower, and shall in no event be less than zero at any time. Interest accrued on the Loans shall be due and payable in arrears, (i) on the last day of the Interest Period; (ii) on any date of prepayment, with respect to the principal amount being prepaid; (iii) with respect to the Tranche A Loans, on the Tranche A Maturity Date; and (iv) with respect to the Tranche B Loans, on the Tranche B Maturity Date. Interest accrued on any other Obligations shall be due and payable as provided in the Loan Documents or, if no payment date is specified, **on demand**.

### 3.1.2 Interest Periods.

(a) Each Interest Period shall be for a period of 30 days and shall be automatically continued at the end of each Interest Period; provided, however, that (i) the Interest Period shall begin on the first Business Day of each calendar month, and shall expire on the last day in such calendar month and (ii) the initial Interest Period shall be the period beginning on the Closing Date and ending on the first day of the succeeding Interest Period;

(b) no Interest Period shall extend beyond the Tranche A Maturity Date or the Tranche B Maturity Date, as applicable; and

(c) no Interest Period for any Loan may be established that would require repayment before the end of an Interest Period in order to make any scheduled principal payment on such Loan.

3.1.3 Interest Rate Not Ascertainable. If, due to any circumstance affecting the London interbank market, Agent determines that adequate and fair means do not exist for ascertaining LIBO Rate on any applicable date or that any Interest Period is not available on the basis provided herein, then Agent shall immediately notify Borrower of such determination. Until Agent notifies Borrower that such circumstance no longer exists, the Loans will bear interest at the Base Rate plus the Applicable Margin.

## 3.2 Fees.

3.2.1 Unused Line Fee. Borrower shall pay to Agent, for the benefit of Lenders, a fee equal to the Unused Line Fee Rate times the amount by which the Commitments exceed the average daily Combined Usage during the preceding month, calculated for the actual days elapsed. Such fee shall be payable in arrears, on the first day of each calendar month and on the Tranche A Maturity Date (with respect to the Tranche A Loans) and on the Tranche B Maturity Date (with respect to the Tranche B Loans).

3.2.2 Closing Fee. On the Closing Date, Borrower shall pay to Agent the closing fee set forth in the Agent's Fee Letter.

3.2.3 Fee Letters. Borrower shall pay all fees set forth in any fee letter executed in connection with this Agreement.

3.2.4 Wire Fees. Borrower shall pay Agent \$35.00 for any wire initiated by Agent.

**3.3 Computation of Interest, Fees, Yield Protection**. All interest, as well as fees and other charges calculated on a per annum basis, shall be computed for the actual days elapsed based on a year of 360 days, except that interest computed by reference to **clause (b)** of the definition of Base Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year). Each determination by Agent of any interest, fees or interest rate hereunder shall be final, conclusive and binding for all purposes, absent manifest error. All fees shall be fully earned when due and shall not be subject to rebate, refund or proration. All fees payable under **Section 3.2** are compensation for services and are not, and shall not be deemed to be, interest or any other charge for the use, forbearance or detention of money. A certificate as to amounts payable by Borrower under **Section 3.4, 3.6, 3.7, 3.9 or 5.9**, submitted to Borrower Agent by Agent or the affected Lender shall be final, conclusive and binding for all purposes, absent manifest error, and Borrower shall pay such amounts to the appropriate party within 10 days following receipt of the certificate.

**3.4 Reimbursement Obligations**. Borrower shall pay all Extraordinary Expenses promptly upon request. Borrower shall also reimburse (1) one counsel to Agent and (2) one counsel for the Lenders of the Tranche A-2 Loans and Tranche B-2 Loans for all legal, accounting, appraisal, consulting, and other fees and expenses incurred by it in connection with (a) negotiation and preparation of any Loan Documents, including any modification thereof; (b) administration of and actions relating to any Collateral, Loan Documents and transactions contemplated thereby, including any actions taken to perfect or maintain priority of Agent's Liens on any Collateral, to maintain any insurance required hereunder or to verify Collateral and any amendments or supplements to the Loan Documents; (c) subject to the limits of **Section 10.1.1(b)**, any examination or appraisal with respect to any Obligor or Collateral by Agent's personnel or a third party; and (d) enforcing rights and remedies and/or the provisions of this Agreement and the other Loan Documents, workouts, restructurings, any Insolvency Proceeding involving any of the Obligors, or defending any claims made or threatened against Agent or any Lender arising out of the transactions contemplated hereby and thereby (including preparations for and consultations concerning such matters). All legal, accounting and consulting fees shall be charged to Borrower by Agent's professionals at their standard hourly rates, regardless of any alternative fee arrangements that Agent, any Lender or any of their Affiliates may have with such professionals that otherwise might apply to this or any other transaction. Borrower acknowledge that counsel may provide Agent with a benefit (such as a discount, credit or accommodation for other matters) based on counsel's overall relationship with Agent, including fees paid hereunder. If, for any reason (including inaccurate reporting in any Borrower Materials), it is determined that a higher Applicable Margin should have applied to a period than was actually applied, then the proper margin shall be applied retroactively and Borrower shall immediately pay to Agent, for the ratable benefit of Lenders, an amount equal to the difference between the amount of interest and fees that would have accrued using the proper margin and the amount actually paid. All amounts payable by Borrower under this Section shall be due on demand.

**3.5 Illegality.** If any Lender determines that any Applicable Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender to perform any of its obligations hereunder, to make, maintain, fund or charge applicable interest or fees with respect to any Loan, or to determine or charge interest based on LIBO Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to Agent, any obligation of such Lender to perform such obligations, to make, maintain or fund the Loan, shall be suspended until such Lender notifies Agent that the circumstances giving rise to such determination no longer exist. Upon delivery of such notice, the applicable Loan(s) of such Lender shall bear interest at the Base Rate plus the Applicable Margin, with effect either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Loan based on the LIBO Rate to such day, or immediately, if such Lender may not lawfully continue to maintain the Loan based on the LIBO Rate. Upon any such prepayment or conversion, Borrower shall also pay accrued interest on the amount so prepaid or converted.

**3.6 Inability to Determine Rates; LIBOR Successor Rate.**

3.6.1 Inability to Determine Rates Generally. If Agent notifies Borrower that for any reason (a) Agent determines Dollar deposits are not being offered to banks in the London interbank Eurodollar market for the applicable Loan amount or Interest Period, (b) Agent determines adequate and reasonable means do not exist for determining LIBO Rate for the applicable Interest Period, or (c) Agent or Lenders determine LIBOR for the applicable Interest Period does not adequately and fairly reflect the cost to Lenders of funding the Loans, Agent shall notify Borrower of the same and the Loans will bear interest at the Base Rate plus the Applicable Margin until the circumstance giving rise to such notice shall have ceased.

3.6.2 LIBOR Successor Rate. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, if Agent (which determination shall be conclusive absent manifest error), or the Borrower Agent or Lenders notify Agent that Borrower Agent or Lenders (as applicable) have determined, that:

(a) adequate and reasonable means do not exist for ascertaining LIBOR for any requested Interest Period, including, without limitation, because the LIBOR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary;

(b) the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over the Agent has made a public statement identifying a specific date after which LIBOR or the LIBOR Screen Rate shall no longer be made available, or used for determining the interest rate of loans (such specific date, the “Scheduled Unavailability Date”); or

(c) syndicated loans currently being executed, or that include language similar to that contained in this **Section 3.6.2** are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR;

then, reasonably promptly after such determination by Agent or receipt by Agent of such notice, as applicable, Agent and Borrower Agent may amend this Agreement to replace LIBOR with an alternate benchmark rate (including any mathematical or other adjustments to the benchmark (if any) incorporated therein) (any such proposed rate, a “LIBOR Successor Rate”), together with any proposed LIBOR Successor Rate Conforming Changes and notwithstanding anything to the contrary in this Agreement (including **Section 14.1.1**) any such amendment shall become effective without any further action or consent of any other party to this Agreement at 5:00 p.m. (New York time) on the fifth Business Day after Agent posts or otherwise discloses such proposed amendment to all Lenders unless, prior to such time, the Lenders have delivered to Agent written notice that such Lenders do not accept such amendment.

If no LIBOR Successor Rate has been determined and the circumstances under clause (a) above exist or the Scheduled Unavailability Date has occurred (as applicable), Agent will promptly so notify Borrower Agent and each Lender. Thereafter, Loans and all other Obligations will bear interest at the Base Rate plus the Applicable Margin. Notwithstanding anything else herein, any definition of LIBOR Successor Rate shall provide that in no event shall such LIBOR Successor Rate be less than zero for purposes of this Agreement.

### **3.7 Increased Costs; Capital Adequacy.**

3.7.1 Increased Costs Generally. If any Change in Law shall:

(a) impose, modify or deem applicable any reserve, liquidity, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in calculating LIBO Rate);

(b) subject any Recipient to Taxes (other than (i) Indemnified Taxes, (ii) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes, and (iii) Connection Income Taxes) with respect to any Loan, Commitment or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(c) impose on any Lender or interbank market any other condition, cost or expense affecting any Loan, Commitment or Loan Document; and the result thereof shall be to increase the cost to a Lender of making or maintaining any Loan or Commitment, or converting to or continuing any interest option for a Loan, or to reduce the amount of any sum received or receivable by a Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, Borrower will pay to it such additional amount(s) as will compensate it for the additional costs incurred or reduction suffered.

3.7.2 Capital Requirements. If a Lender determines that a Change in Law affecting such Lender or its holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender’s or holding company’s capital as a consequence of this Agreement, or such Lender’s Commitments, Loans, or participations in Loans, to a level below that which such Lender or holding company could have achieved but for such Change in Law (taking into consideration its policies with respect to capital adequacy), then from time to time Borrower will pay to such Lender such additional amounts as will compensate it or its holding company for the reduction suffered.



**3.7.3 LIBOR Reserves.** If any Lender is required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits, Borrower shall pay additional interest to such Lender equal to the costs of such reserves allocated to the Loan by the Lender (as determined by it in good faith, which determination shall be conclusive). The additional interest shall be due and payable on each interest payment date for the Loan; provided, however, that if the Lender notifies Borrower (with a copy to Agent) of the additional interest less than 10 days prior to the interest payment date, then such interest shall be payable 10 days after Borrower's receipt of the notice.

**3.7.4 Compensation.** Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of its right to demand such compensation, but Borrower shall not be required to compensate a Lender for any increased costs or reductions suffered more than nine months (plus any period of retroactivity of the Change in Law giving rise to the demand) prior to the date that the Lender notifies Borrower Agent of the applicable Change in Law and of such Lender's intention to claim compensation therefor.

**3.8 Mitigation.** If any Lender gives a notice under **Section 3.5** or requests compensation under **Section 3.7**, or if Borrower is required to pay any Indemnified Taxes or additional amounts with respect to a Lender under **Section 5.9**, then at the request of Borrower Agent, such Lender shall use reasonable efforts to designate a different Lending Office or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgment of such Lender, such designation or assignment (a) would eliminate the need for such notice or reduce amounts payable or to be withheld in the future, as applicable; and (b) would not subject the Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to it or unlawful. Borrower shall pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

**3.9 Funding Losses.** If for any reason (a) any borrowing, does not occur on the date specified therefor in a Notice of Rebalancing (whether or not withdrawn), (b) any repayment or conversion of a Loan occurs on a day other than the end of its Interest Period, (c) Borrower fails to repay a Loan when required hereunder, or (d) a Lender (other than a Defaulting Lender) is required to assign a Loan prior to the end of its Interest Period pursuant to **Section 13.4**, then Borrower shall pay to Agent its customary administrative charge and to each Lender all losses, expenses and fees arising from redeployment of funds or termination of match funding. For purposes of calculating amounts payable under this Section, a Lender shall be deemed to have funded a Loan by a matching deposit or other borrowing in the London interbank market for a comparable amount and period, whether or not the Loan was in fact so funded.

**3.10 Maximum Interest.** Regardless of any provision contained in any of the Loan Documents, in no contingency or event whatsoever shall the aggregate of all amounts that are contracted for, charged or received by Agent or any Lender pursuant to the terms of this Agreement or any of the other Loan Documents and that are deemed interest under Applicable Law exceed the highest rate permissible under any Applicable Law (the "Maximum Rate"). No agreements, conditions, provisions or stipulations contained in this Agreement or any of the other Loan

Documents or the exercise by Agent of the right to accelerate the payment or the maturity of all or any portion of the Obligations, or the exercise of any option whatsoever contained in any of the Loan Documents, or the prepayment by any Obligor of any of the Obligations, or the occurrence of any contingency whatsoever, shall entitle Agent or Lenders to charge or receive in any event, interest or any charges, amounts, premiums or fees deemed interest by Applicable Law (such interest, charges, amounts, premiums and fees referred to herein collectively as “Interest”) in excess of the Maximum Rate and in no event shall any Obligor be obligated to pay Interest exceeding such Maximum Rate, and all agreements, conditions or stipulations, if any, which may in any event or contingency whatsoever operate to bind, obligate or compel any Obligor to pay Interest exceeding the Maximum Rate shall be without binding force or effect, at law or in equity, to the extent only of the excess of Interest over such Maximum Rate. If any Interest is charged or received with respect to the Obligations in excess of the Maximum Rate (“Excess”), each Obligor stipulates that any such charge or receipt shall be the result of an accident and bona fide error, and such Excess, to the extent received, shall be applied first to reduce the principal Obligations and the balance, if any, returned to the Obligors, it being the intent of the parties hereto not to enter into an usurious or otherwise illegal relationship. The right to accelerate the maturity of any of the Obligations does not include the right to accelerate any Interest that has not otherwise accrued on the date of such acceleration, and neither Agent nor any Lender intends to collect any unearned Interest in the event of any such acceleration. Each Obligor recognizes that, with fluctuations in the rates of interest set forth in this Agreement, and the Maximum Rate, such an unintentional result could inadvertently occur. All monies paid to Agent or any Lender hereunder or under any of the other Loan Documents, whether at maturity or by prepayment, shall be subject to any rebate of unearned Interest as and to the extent required by Applicable Law. By the execution of this Agreement, each Obligor covenants that (i) the credit or return of any Excess shall constitute the acceptance by each Obligor of such Excess, and (ii) each Obligor shall not seek or pursue any other remedy, legal or equitable, against Agent or any Lender, based in whole or in part upon contracting for, charging or receiving any Interest in excess of the Maximum Rate. For the purpose of determining whether or not any Excess has been contracted for, charged or received by Agent or any Lender, all Interest at any time contracted for, charged or received from any Obligor in connection with any of the Loan Documents shall, to the extent permitted by Applicable Law, be amortized, prorated, allocated and spread in equal parts throughout the full term of the Obligations. Obligors, Agent and Lenders shall, to the maximum extent permitted under Applicable Law, (i) characterize any non-principal payment as an expense, fee or premium rather than as Interest and (ii) exclude voluntary prepayments and the effects thereof. The provisions of this **Section 3.10** shall be deemed to be incorporated into every Loan Document (whether or not any provision of this Section is referred to therein). All such Loan Documents and communications relating to any Interest owed by any Obligor and all figures set forth therein shall, for the sole purpose of computing the extent of Obligations, be automatically recomputed by the Obligors, and by any court considering the same, to give effect to the adjustments or credits required by this **Section 3.10**.

## SECTION 4. LOAN ADMINISTRATION

### 4.1 Manner of Borrowing and Funding Loans.

#### 4.1.1 Notice of Rebalancing.

(a) To request Loans during any Cash Dominion Trigger Period, Borrower Agent shall notify Agent of such request by telephone or email (or, if permitted by Agent, by request posted to Agent's StuckyNet System) a Notice of Rebalancing by 10:30 a.m. at least two Business Days prior to the requested funding date. Notices received by Agent after such time shall be deemed received on the next Business Day. Each such telephone (or posted) Notice of Rebalancing shall be irrevocable and the Borrower Agent agrees to promptly confirm any such telephone request by hand delivery, facsimile or electronic transmission to the Agent of a written Notice of Rebalancing in a form approved by the Agent, and signed by the Borrower Agent. Each such Notice of Rebalancing shall specify (A) the borrowing amount, (B) the requested funding date (which must be a Business Day), and (C) the components of the Borrowing Base after giving effect to the borrowing.

(b) Unless payment is otherwise made by Borrower, the becoming due of any Obligation (whether principal, interest, fees or other charges, including Extraordinary Expenses, Cash Collateral and Secured Bank Product Obligations) shall be deemed to be a request for release of a Tranche A Loan and a Tranche B Loan on the due date in the amount due and the Loan proceeds shall be disbursed as direct payment of such Obligation. In addition, Agent may, at its option, charge such amount against any operating, investment or other account of Borrower maintained with Agent or any of its Affiliates.

(c) If Borrower maintains a disbursement account with Agent or any of its Affiliates, then presentation for payment in the account of a Payment Item when there are insufficient funds to cover it shall be deemed to be a request for a Tranche A Loan on the presentation date, in the amount of the Payment Item. Proceeds of the Tranche A Loan may be disbursed directly to the account.

4.1.2 Settlement. Settlement of Loans among Lenders and Agent shall take place on a date determined from time to time by Agent (but at least monthly, unless the settlement amount is *de minimis*), on a Pro Rata basis and in accordance with the Settlement Report delivered by Agent to Lenders. If a Loan cannot be settled among Lenders, whether due to an Obligor's Insolvency Proceeding or for any other reason, each Lender shall pay the amount of its participation in the Loan to Agent, in immediately available funds, within one Business Day after Agent's request therefor. Lenders' obligations to make settlements and to fund participations are absolute, irrevocable and unconditional, without offset, counterclaim or other defense, and whether or not (x) the Commitments have terminated, (y) the Tranche A Usage exceeds the Aggregate Receivables Formula Amount or the Commitments in respect of the Tranche A Loans (in the case of any Tranche A Lenders) and (z) the Tranche B Usage exceeds the Aggregate Restricted Cash Formula Amount or the Commitments in respect of the Tranche B Loans (in the case of any Tranche B Lenders) or the conditions in **Section 6** are satisfied.

4.1.3 Notices. If Borrower requests, continue Loans, select interest rates or transfer funds based on telephonic or electronic instructions to Agent, Borrower shall confirm each such request by prompt delivery to Agent of a Notice of Rebalancing. Neither Agent nor any Lender shall have any liability for any loss suffered by Borrower as a result of Agent or any Lender acting upon its understanding of telephonic or electronic instructions from a person believed in good faith by Agent or any Lender to be authorized to give such instructions on Borrower's behalf.

**4.2 Defaulting Lender.** Notwithstanding anything herein to the contrary:

4.2.1 **Reallocation of Pro Rata Shares; Amendments.** For purposes of determining Lenders' obligations or rights to fund, participate in or receive collections with respect to: (a) Tranche A Loans, Agent may in its discretion reallocate Pro Rata shares of Tranche A Loans by excluding a Defaulting Lender's Commitments and Tranche A Loans from the calculation of shares and (b) Tranche B Loans, Agent may in its discretion reallocate the Pro Rata shares of Tranche B Loans by excluding a Defaulting Lender's Commitments and Tranche B Loans from the calculation of shares. A Defaulting Lender shall have no right to vote on any amendment, waiver or other modification of a Loan Document.

4.2.2 **Payments; Fees.** Agent may, in its discretion, receive and retain any amounts payable to a Defaulting Lender under the Loan Documents, and a Defaulting Lender shall be deemed to have assigned to Agent such amounts until all Obligations owing to Agent, the non-Defaulting Lenders and other Secured Parties have been paid in full. Agent may use such amounts to cover the Defaulting Lender's defaulted obligations, to Cash Collateralize such Lender's Fronting Exposure, to readvance the amounts to Borrower or to repay Obligations. A Lender shall not be entitled to receive any fees accruing hereunder while it is a Defaulting Lender and its unfunded Commitments shall be disregarded for purposes of calculating the unused line fee under **Section 3.2.1**.

4.2.3 **Status; Cure.** Agent may determine in its discretion that a Lender constitutes a Defaulting Lender and, in each case, the effective date of such status shall be conclusive and binding on all parties, absent manifest error. Borrower and Agent agree in writing that a Lender has ceased to be a Defaulting Lender, whereupon (i) in respect of a the Tranche A Loans, such Defaulting Lender's Pro Rata share shall be reallocated without exclusion of the reinstated Lender's Commitments, Tranche A Loans and the Tranche A Usage and other exposures under the Commitments shall be reallocated among Tranche A Lenders and settled by Agent (with appropriate payments by the reinstated Tranche A Lender, including its payment of breakage costs), and (ii) in respect of the Tranche B Loans, such Defaulting Lender's Pro Rata shares shall be reallocated without exclusion of the reinstated Lender's Commitments, Tranche B Loans and the Tranche B Usage and other exposures under the Commitments shall be reallocated among Lenders and settled by Agent (with appropriate payments by the reinstated Tranche B Lender, including its payment of breakage costs), in each case in accordance with the readjusted Pro Rata shares. Unless expressly agreed by Borrower and Agent, or as expressly provided herein with respect to Bail-In Actions and related matters, no reallocation of Commitments and Loans to non-Defaulting Lenders or reinstatement of a Defaulting Lender shall constitute a waiver or release of claims against such Lender. The failure of any Lender to fund a Loan or otherwise to perform obligations hereunder shall not relieve any other Lender of its obligations under any Loan Document. No Lender shall be responsible for default by another Lender.

**4.3 Number and Amount of Loans; Determination of Rate.** Each rebalancing of (i) Tranche A Loans when made shall be in a minimum amount of \$500,000, plus an increment of \$100,000 in excess thereof and (ii) Tranche B Loans when made shall be in a minimum amount of \$500,000, plus an increment of \$100,000 in excess thereof. Upon determining LIBO Rate for each Interest Period, Agent shall promptly notify Borrower thereof by telephone or electronically and, if requested by Borrower, shall confirm any telephonic notice in writing.

**4.4 Borrower Agent.** Borrower hereby designates Borrower (“Borrower Agent”) as its representative and agent for all purposes under the Loan Documents, including requests for and receipt of Loans, designation of interest rates, delivery or receipt of communications, delivery of Borrower Materials, payment of Obligations, requests for waivers, amendments or other accommodations, actions under the Loan Documents (including in respect of compliance with covenants), and all other dealings with Agent or any Lender. Borrower Agent hereby accepts such appointment. Agent and Lenders shall be entitled to rely upon, and shall be fully protected in relying upon, any notice or communication (including any Notice of Rebalancing) delivered by Borrower Agent on behalf of Borrower. Agent and Lenders may give any notice or communication with Borrower hereunder to Borrower Agent on behalf of Borrower. Each of Agent and each Lender shall have the right, in its discretion, to deal exclusively with Borrower Agent for all purposes under the Loan Documents. Borrower agrees that any notice, election, communication, delivery, representation, agreement, action, omission or undertaking by Borrower Agent shall be binding upon and enforceable against Borrower.

**4.5 One Obligation.** Loans and other Obligations related thereto constitute one general obligation of Borrower and are secured by Agent’s Lien on all Collateral.

**4.6 Effect of Termination.** On the effective date of the termination of all Commitments, the Obligations relating thereto shall be immediately due and payable. Each Secured Bank Product Provider may terminate its Bank Products upon termination of all Commitments. Until Full Payment of the Obligations, all undertakings of Borrower and Guarantors contained in the Loan Documents shall continue, and Agent shall retain its Liens on the Collateral, and Agent shall retain all of its rights and remedies under the Loan Documents. Agent shall not be required to terminate its Liens unless the Obligations have been paid in full in cash, the Commitments have been terminated and it receives Cash Collateral or a written agreement, in each case satisfactory to it, protecting Agent and the Lenders from dishonor or return of any Payment Item previously applied to the Obligations. **Sections 2.3, 3.4, 3.6, 3.7, 3.9, 5.5, 5.9, 5.10, 12, 14.2**, this Section, and each indemnity or waiver given by an Obligor or Lender in any Loan Document, shall survive Full Payment of the Obligations.

## **SECTION 5. PAYMENTS**

**5.1 General Payment Provisions.** All payments of Obligations shall be made in Dollars, without offset, counterclaim or defense of any kind, free and clear of (and without deduction for) any Taxes (subject to **Section 5.9**), and in immediately available funds, not later than 12:00 noon on the due date. Any payment after such time shall be deemed made on the next Business Day. Any payment of a Loan prior to the end of its Interest Period shall be accompanied by all amounts due under **Section 3.9**. Borrower agrees that Agent shall have the continuing, exclusive right to apply and reapply payments and proceeds of Collateral against the Obligations, in such manner as Agent deems advisable, but whenever possible, any prepayment of Loans shall be applied first to Tranche A Loans and then to Tranche B Loans unless the Borrower expressly designates any payment otherwise.

## **5.2 Repayment of Loans.**

5.2.1 Tranche A Loans. Tranche A Loans shall be due and payable in full on the Tranche A Maturity Date, unless payment is sooner required hereunder. Tranche A Loans may be prepaid from time to time, without penalty or premium, other than (a) any applicable Prepayment Fee arising in connection with **Section 5.3**, (b) any applicable Prepayment Fee if such prepayment occurs in connection with any involuntary termination of all Commitments, including after acceleration of any of the Obligations, termination of the Commitments and/or termination of this Agreement and (c) if applicable, amounts due under **Section 3.9**. Notwithstanding anything herein to the contrary and without limiting **Section 2.1.3**, if Tranche A Usage exceeds the Aggregate Receivables Formula Amount at any time, Borrower shall, on Agent's demand, repay Tranche A Loans or deposit or cause to be deposited into the Blocked Accounts (on a Pro Rata basis) an amount sufficient to reduce Tranche A Usage to the Aggregate Receivables Formula Amount.

5.2.2 Tranche B Loans. Tranche B Loans shall be due and payable in full on the Tranche B Maturity Date, unless payment is sooner required hereunder. Tranche B Loans may be prepaid from time to time, without penalty or premium, other than, if applicable, amounts due under **Section 3.9**. Notwithstanding anything herein to the contrary and without limiting **Section 2.1.3**, if Tranche B Usage exceeds the Aggregate Restricted Cash Formula Amount at any time, Borrower shall, on Agent's demand, repay Tranche B Loans or remit to Agent for deposit in the Blocked Accounts (on a Pro Rata basis) an amount sufficient to reduce Tranche B Usage to the Aggregate Restricted Cash Formula Amount.

5.2.3 Interest. Any prepayment of any Loans for any reason, including after acceleration of any of the Obligations, termination of the Commitments, and/or termination of this Agreement, shall be accompanied by all interest accrued thereon, payment of the applicable Prepayment Fee, if any, and any amounts payable under **Section 3.9**, and (except as otherwise specifically provided for herein) shall be applied to such of the Tranche A Loans or Tranche B Loans, as applicable, as shall be determined by the Agent, in its discretion, and shall be applied to principal in inverse order of maturity.

## **5.3 Prepayments.**

5.3.1 Mandatory Prepayments. Concurrently with the receipt of any proceeds of any sale or other disposition of any Collateral, insurance proceeds or awards of any kind paid in respect of any Collateral, Borrower shall remit or cause to be remitted an amount equal to such proceeds with Agent for deposit in the Blocked Accounts on a Pro Rata basis (determined in accordance with clause (a) of the definition of "Pro Rata"); and

5.3.2 Optional Prepayments. Borrower may, at its option from time to time, prepay Tranche A Loans or Tranche B Loans, which prepayment must be at least \$5,000,000, plus any increment of \$1,000,000 in excess thereof. Borrower shall give written notice (to Agent, which notice shall (i) specify the amount of the prepayment and the Prepayment Fee, if any, payable with respect thereto, (ii) be irrevocable once given, (iii) be given at least 10 Business Days prior to the end of a month and (iv) be effective as of the first day of the next month. Prepayments under this **Section 5.3.2** shall be applied in accordance with the Agreement Among Lenders.

**5.4 Payment of Other Obligations.** Obligations other than Loans, including Extraordinary Expenses, shall be paid by Borrower as provided in the Loan Documents or, if no payment date is specified, **on demand**.

**5.5 Marshaling; Payments Set Aside.** None of Agent or Lenders shall be under any obligation to marshal any assets in favor of any Obligor or against any Obligations. If any payment by or on behalf of Borrower is made to Agent or any Lender, or if Agent or any Lender exercises a right of setoff, and any of such payment or setoff is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Agent or a Lender in its discretion) to be repaid to a trustee, receiver or any other Person, then the Obligation originally intended to be satisfied, and all Liens, rights and remedies relating thereto, shall be revived and continued in full force and effect as if such payment or setoff had not occurred.

**5.6 Application of Payments.**

5.6.1 Application. Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, any amounts received on account of the Obligations shall be applied in accordance with the Agreement Among Lenders.

5.6.2 Erroneous Application. Agent shall not be liable for any application of amounts made by it in good faith and, if any such application is subsequently determined to have been made in error, the sole recourse of any Lender or other Person to which such amount should have been paid shall be to recover the amount from the Person that actually received it (and, if such amount was received by a Secured Party, the Secured Party agrees to return it).

**5.7 [Reserved].**

**5.8 Account Stated.** Agent shall maintain, in accordance with its customary practices, loan account(s) evidencing the Debt of Borrower hereunder. Any failure of Agent to record anything in a loan account, or any error in doing so, shall not limit or otherwise affect the obligation of Borrower to pay any amount owing hereunder. Entries made in a loan account shall constitute presumptive evidence of the information contained therein. If any information contained in a loan account is provided to or inspected by any Person, the information shall be conclusive and binding on such Person for all purposes absent manifest error, except to the extent such Person notifies Agent in writing within 30 days after receipt or inspection that specific information is subject to dispute.

**5.9 Taxes.**

5.9.1 Payments Free of Taxes; Obligation to Withhold; Tax Payment.

(a) All payments of Obligations by Obligors shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If Applicable Law (as determined by the applicable Withholding Agent in its good faith discretion) requires the deduction or withholding of any Tax from any such payment by the applicable Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding.

(b) If the applicable Withholding Agent is required by the Code to withhold or deduct Taxes, including backup withholding and withholding taxes, from any payment, then (i) the applicable Withholding Agent shall pay the full amount that so withheld or deducted to the relevant Governmental Authority in accordance with Applicable Law, and (ii) to the extent the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Obligor shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(c) If the applicable Withholding Agent is required by any Applicable Law other than the Code to withhold or deduct Taxes from any payment, then (i) the applicable Withholding Agent shall timely pay the full amount to be withheld or deducted to the relevant Governmental Authority in accordance with Applicable Law, and (ii) to the extent the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Obligor shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

5.9.2 Payment of Other Taxes. Without limiting the foregoing, Borrower shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at Agent's option, timely reimburse Agent for payment of, any Other Taxes.

5.9.3 Tax Indemnification.

(a) Each Obligor shall indemnify and hold harmless, on a joint and several basis, each Recipient for the full amount of any Indemnified Taxes (including those imposed or asserted on or attributable to amounts payable under this Section) payable or paid by a Recipient or required to be withheld or deducted from a payment to a Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. The applicable Obligor shall make payment within 10 days after demand for any amount or liability payable under this Section. A certificate as to the amount of such payment or liability delivered to Borrower by a Lender (with a copy to the applicable Agent), or by Agent on its own behalf or on behalf of any Recipient, shall be conclusive absent manifest error.

(b) Each Lender shall indemnify and hold harmless, on a several basis, (i) Agent against any Indemnified Taxes attributable to such Lender (but only to the extent that the Obligors have not already paid or reimbursed Agent therefor and without limiting the Obligors' obligation to do so), (ii) Agent against any Taxes attributable to such Lender's failure to maintain a Participant register as required hereunder, and (iii) Agent against any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Each Lender shall make payment within 10 days after demand for any amount or liability payable under this Section. A certificate as to the amount of such payment or liability



delivered to any Lender by Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Agent to the Lender from any other source against any amount due to the Agent under this clause (b).

5.9.4 Evidence of Payments. As soon as practicable after any payment of Taxes by any Obligor to a Governmental Authority pursuant to this Section 5.9, such Obligor shall deliver to the Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Agent.

5.9.5 Treatment of Certain Refunds. Unless required by Applicable Law, at no time shall Agent have any obligation to file for or otherwise pursue on behalf of a Lender, nor have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of a Lender. If a Recipient determines in its sole discretion that it has received a refund of Taxes that were indemnified by any Obligor or with respect to which any Obligor paid additional amounts pursuant to this **Section 5.9**, it shall pay the amount of such refund to such Obligor (but only to the extent of indemnity payments or additional amounts actually paid by such Obligor with respect to the Taxes giving rise to the refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient and without interest (other than interest paid by the relevant Governmental Authority with respect to such refund). Such Obligor shall, upon request by the Recipient, repay to the Recipient such amount paid over to such Obligor (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) if the Recipient is required to repay such refund to the Governmental Authority. Notwithstanding anything herein to the contrary, no Recipient shall be required to pay any amount to any Obligor if such payment would place it in a less favorable net after-Tax position than it would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. In no event shall Agent or any Recipient be required to make its tax returns (or any other information relating to its taxes that it deems confidential) available to any Obligor or other Person.

5.9.6 Survival. Each party's obligations under **Sections 5.9** and **5.10** shall survive the resignation or replacement of Agent or any assignment of rights by or replacement of a Lender, the termination of the Commitments, and the repayment, satisfaction, discharge or Full Payment of any Obligations.

#### **5.10 Lender Tax Information**

5.10.1 Status of Lenders. Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments of Obligations shall deliver to Borrower and each applicable Agent, at the time or times reasonably requested by the Borrower or the Agent, properly completed and executed documentation reasonably requested by Borrower or each Agent as will permit such payments to be made without or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower or Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by Borrower or Agent to enable them to determine whether such Lender is subject to backup withholding or information reporting

requirements. Notwithstanding the foregoing, such documentation (other than documentation described in **Sections 5.10.2(a), (b) and (d)**) shall not be required if a Lender reasonably believes delivery of the documentation would subject it to any material unreimbursed cost or expense or would materially prejudice its legal or commercial position.

5.10.2 Documentation. Without limiting the foregoing, so long as Borrower is a U.S. Person,

(a) Any Lender that is a U.S. Person shall deliver to Borrower and Agent on or about the date on which such Lender becomes a Lender hereunder (and from time to time thereafter upon reasonable request of Borrower or Agent), executed copies of IRS Form W 9, certifying that such Lender is exempt from U.S. federal backup withholding Tax;

(b) Any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Agent (in such number of copies as shall be requested by the recipient) on or about the date on which such Foreign Lender becomes a Lender hereunder (and from time to time thereafter upon reasonable request of Borrower or Agent), whichever of the following is applicable:

(i) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party, (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W 8BEN or IRS Form W 8BEN-E establishing an exemption from or reduction of U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty, and (y) with respect to other payments under the Loan Documents, IRS Form W 8BEN or IRS Form W 8BEN-E establishing an exemption from or reduction of U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(ii) executed copies of IRS Form W-8ECI;

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate in form satisfactory to Agent to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (“U.S. Tax Compliance Certificate”), and (y) executed copies of IRS Form W 8BEN or IRS Form W 8BEN-E; or

(iv) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W 8IMY, accompanied by IRS Form W 8ECI, IRS Form W 8BEN-E, a U.S. Tax Compliance Certificate in form satisfactory to Agent, IRS Form W 9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more of its direct or indirect partners is claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate on behalf of each such partner;

(c) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Agent (in such number of copies as shall be requested by the recipient) on or about the date on which such Foreign Lender becomes a Lender hereunder (and from time to time thereafter upon reasonable request), executed copies of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit Borrower or Agent to determine the withholding or deduction required to be made;

(d) if payment of an Obligation to a Lender would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code), such Lender shall deliver to Borrower and Agent, at the time(s) prescribed by law and otherwise upon reasonable request, such documentation prescribed by Applicable Law (including Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrower or Agent to comply with their obligations under FATCA and to determine that such Lender has complied with its obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (d), "FATCA" shall include any amendments made to FATCA after the date hereof; and

(e) Agent (and any assignee or successor) will deliver, to Borrower, on or about the Closing Date (or, assignment or succession, if applicable), either (i) (A) two (2) executed copies of IRS Form W-8ECl with respect to any amounts payable to Agent for its own account and (B) two (2) duly completed copies of IRS Form W- 8IMY (certifying that it is either a "qualified intermediary" or a "U.S. branch") for the amounts Agent receives for the account of others, or (ii) two (2) executed copies of IRS Form W-9, whichever is applicable.

5.10.3 Redelivery of Documentation. If any form or certification previously delivered by a Lender pursuant to this Section expires or becomes obsolete or inaccurate in any respect, such Lender shall promptly update the form or certification or notify Borrower and Agent in writing of its inability to do so.

## SECTION 6. CONDITIONS PRECEDENT

**6.1 Conditions Precedent to Initial Loans**. In addition to the conditions set forth in **Section 6.2**, Lenders shall not be required to fund any requested Loan, or otherwise extend credit to Borrower hereunder, until the date ("Closing Date") that each of the following conditions has been satisfied:

(a) Each Loan Document shall have been duly executed and delivered to Agent by each of the signatories thereto, and each Obligor shall be in compliance with all terms thereof.

(b) (i) Arrangements satisfactory to Agent shall have been made for all filings or recordations necessary to perfect the Liens in the Collateral and (ii) Agent shall have received UCC and Lien searches and other evidence satisfactory to Agent that such Liens are the only Liens upon the Collateral, except Permitted Liens.

(c) (i) Agent and Lenders shall have received duly executed Account Control Agreements with respect to each Collateral Account and each Blocked Account, in form and substance, and with financial institutions, satisfactory to Agent and (ii) Lenders of Tranche A-2 Loans and Tranche B-2 Loans shall have received duly executed agreements establishing the Tranche B-2 Blocked Account.

(d) Agent and Lenders shall have received certificates, in form and substance satisfactory to it, from a knowledgeable Senior Officer of Borrower certifying that, after giving effect to the initial Loans and Transactions hereunder, (i) Borrower and the Guarantors, on a consolidated basis, are Solvent; (ii) no Default or Event of Default or Cash Dominion Trigger Period or Trigger Period exists; (iii) the representations and warranties set forth in **Section 9** are true and correct; and (iv) Borrower has complied with all agreements and conditions to be satisfied by it under the Loan Documents on or prior to the Closing Date.

(e) Agent shall have received a certificate of a duly authorized officer of each Obligor, certifying (i) that attached copies of such Obligor's Organic Documents are true and complete, and in full force and effect, without amendment except as shown; (ii) that an attached copy of resolutions authorizing execution and delivery of the Loan Documents is true and complete, and that such resolutions are in full force and effect, were duly adopted, have not been amended, modified or revoked, and constitute all resolutions adopted with respect to this Agreement; and (iii) to the title, name and signature of each Person authorized to sign the Loan Documents. Agent may conclusively rely on this certificate until it is otherwise notified by the applicable Obligor in writing.

(f) Agent and Lenders shall have received a written opinion of Latham & Watkins LLP in form and substance satisfactory to Agent.

(g) Agent shall have received (i) copies of the charter documents of each Obligor, certified by the Secretary of State or other appropriate official of such Obligor's jurisdiction of organization and (ii) good standing certificates for each Obligor, issued by the Secretary of State or other appropriate official of such Obligor's jurisdiction of organization.

(h) Agent and Lenders shall have received (i) copies of policies or certificates of insurance for the business interruption insurance, credit insurance policies with respect to Receivables and any other insurance policies related to the Collateral carried by Borrower and each applicable Guarantor, all in compliance with the Loan Documents and (ii) evidence reasonably satisfactory to Agent that Agent has been named as loss payee with respect to credit insurance on each Receivable in respect of which the Account Debtor is organized or has its principal offices or assets outside the United States.

(i) Agent shall have completed and be satisfied with its business, financial and legal due diligence of Obligors, including but not limited to, (i) a field examination of the books, records and operations of Borrower and the other Obligors, provided that such field examination may be completed on a date subsequent to the Closing Date but in no case later than the date set forth in **Part B of Schedule 10.1.12**; (ii) management background review; (iii) receipt of audited financial statements of Borrower and Subsidiaries for the last three Fiscal Years with publically filed Forms 10-K of the Borrower satisfying this condition; (iv) review of material contracts of Borrower and the other Obligors; (v) receipt of a balance sheet of Borrower and Subsidiaries as of the most recent date for which Internal Financial Statements are available pro forma for the Debt under this Agreement; (vi) interim financial statements for Borrower and Subsidiaries for the most recent fiscal quarter ending more than 45 days prior to the Closing Date with Borrower's public filings of Form 10-Q satisfying this condition; and (vii) monthly financial projections of Borrower and Subsidiaries for the next 12 calendar months and annual projections of Borrower and Subsidiaries for the next 3 Fiscal Years, including balance sheets, income statements and cash flow statements. No material adverse change in the financial condition of the Obligors, taken as a whole, or in the quality, quantity or value of any Collateral shall have occurred since March 31, 2019.

(j) Borrower shall have paid all fees and expenses to be paid to Agent and Lenders on the Closing Date.

(k) Agent and Lenders shall have received a Borrowing Base Report dated as of May 31, 2019. Upon giving effect to the initial funding of Loans, and the payment by Borrower of all fees and expenses incurred in connection herewith, as well as any payables stretched beyond their customary payment practices, Closing Liquidity shall be at least \$100,000,000.

(l) Agent and Lenders shall have received the Intercreditor Agreement, duly executed by the parties thereto.

(m) Agent and Lenders shall have entered into a satisfactory agreement among lenders, acknowledged by Borrower, with respect to this Agreement and the Transactions in form and substance satisfactory to Agent (such agreement, the "Agreement Among Lenders").

(n) Agent and Lenders, shall have each received at least five (5) Business Days prior to the Closing Date, all documentation and other information about the Obligors required under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act, that has been requested by Agent and the Lenders at least five (5) Business Days prior to the Closing Date.

(o) Agent and Lenders shall have received a certificate of the Borrower Agent's chief financial officer, in form, substance and detail satisfactory to Agent, demonstrating that the Consolidated EBITDA of Borrower and Subsidiaries (as adjusted in a manner satisfactory to Agent), for the twelve month period ended May 31, 2019 is equal to or greater than \$25,000,000.

(p) No action, suit, investigation, litigation or proceeding pending or threatened in any court or before any arbitrator or Governmental Authority that, in Agent's judgment, (i) could reasonably be expected to have a Material Adverse Effect or (ii) could reasonably be expected to materially and adversely affect the transactions contemplated by this Agreement and the other Loan Documents.

(q) Agent and Lenders shall (i) be satisfied with the ownership, organizational, legal, tax management, capitalization, and capital structure of Borrower and Subsidiaries after giving effect to the Transactions and (ii) shall have received evidence reasonably satisfactory to it that, before and after giving effect to the Transactions on the Closing Date, (x) the Obligors are adequately capitalized, (y) the fair saleable value of the Obligors' assets will exceed their liabilities and (z) the Obligors will have sufficient working capital to pay their debts as they become due.

(r) Agent shall have received evidence reasonably satisfactory to it that each Obligor shall be in good standing with its vendors with satisfactory status of accounts payable relative to vendor terms/agreements and industry standards.

(s) The respective credit committees of each Lender shall have approved the provision of the credit facilities under this Agreement.

(t) Subject to **Section 10.1.12**, Agent shall have received evidence that Borrower has received all governmental and third party consents and approvals, if any, as may be appropriate in connection with the transactions contemplated by this Agreement and the other Loan Documents.

**6.2 Conditions Precedent to Release of Loans from the Blocked Accounts.** Agent shall not release, or cause any Tranche B Lender to release (provided that any Tranche B Lender may so release such cash in its sole discretion), any cash from a Blocked Account, if the following conditions are not satisfied on such date and upon giving effect to such release:

(a) No Default or Event of Default or Trigger Period exists;

(b) The representations and warranties of each Obligor in the Loan Documents are true and correct (except for representations and warranties that relate solely to an earlier date);

(c) All conditions precedent in any Loan Document are satisfied; and

(d) Immediately before and after giving effect to such release, Borrower shall satisfy the Liquidity Test.

Each request (or deemed request) by Borrower for any such release of cash shall constitute a representation by Borrower that the foregoing conditions are satisfied on the date of such request and on the date of the release after giving effect thereto.

## **SECTION 7. [RESERVED].**

## **SECTION 8. BORROWING BASE**

**8.1 Borrowing Base Reports.** Borrower shall deliver to Agent a Borrowing Base Report (i) as of the close of business of the previous Calculation Date of the related Reporting Date, provided that Borrower shall not be in default under this clause (i) with respect to any Reporting Date if Borrower delivers such Borrowing Base Report within five (5) days following such Reporting Date, (ii) weekly during a Trigger Period by the third Business Day of each week, and (iii) at such other times as Agent may request (including, without limitation, following the occurrence and during the continuance of any Event of Default). Each Borrowing Base Report shall (a) separately report all (i) Receivables and (ii) general ledger cash balances in each Collateral Account and (b) be accompanied by (i) in the event the aggregate Value of the Receivables certified to on a Borrowing Base Report has increased or decreased by more than 5% from the amount indicated on the preceding Borrowing Base Report, be accompanied by schedules which provide detail supporting such Borrowing Base Report, including, without limitation, a Receivables aging and a detailed report of all Receivables that do not meet eligibility criteria acceptable to Agent and notified to Borrower, and (ii) in any event, such schedules and other information or reports as Agent may reasonably request to support such Borrowing Base Report. All information in a Borrowing Base Report shall be certified by Borrower. Upon request by any Lender, Agent shall promptly deliver Borrowing Base Reports (and all related schedules and all details supporting any Borrowing Base Reports received by Agent) to such Lender.

Agent may from time to time establish reserves (“Agent’s Reserves”) (x) to reflect Agent’s reasonable estimate of declines in value of Collateral, collections received in the Controlled Unrestricted Accounts or otherwise; (y) to adjust advance rates to reflect changes in dilution, quality, mix and other factors affecting Collateral; and (z) to the extent any information or calculation does not comply with this Agreement.

## **8.2 Receivables.**

8.2.1 Records and Schedules of Receivables. Borrower shall keep accurate and complete records of the Receivables, including all payments and collections thereon, and shall submit to Agent sales, collection and reconciliation in form satisfactory to Agent, on such periodic basis as Agent may request. Borrower shall also provide to Agent, on or before each Reporting Date, a detailed aged trial balance of all Receivables as of the end of the preceding month, showing the amount, invoice date and due date, any discount, allowance, credit, authorized return or dispute. Borrower shall also provide such further information and material as reasonably requested by Agent including, without limitation, such proof of delivery, copies of invoices and invoice registers, copies of related documents, repayment histories, status reports and other information as Agent may reasonably request. Upon request by any Lender, Agent shall promptly deliver to such Lender all sales, collection and reconciliation reports, detailed aged trial balance of all Receivables and any other information regarding Receivables requested by Agent, including all copies of invoices and invoice registers, related documents, repayment histories, and status reports and any notices delivered to Agent pursuant to this **Section 8.2.1**.

8.2.2 Taxes. If a Receivable includes a charge for any Taxes, after the occurrence and during the continuance of an Event of Default or during and Cash Dominion Trigger Period, Agent is authorized, in its discretion, to pay the amount thereof to the proper taxing authority for the account of Borrower and to charge Borrower therefor; provided, however, that neither Agent nor any Lender shall be liable for any Taxes that may be due from Borrower or any Guarantor or with respect to any Collateral.

8.2.3 Receivable Verification. After the occurrence and during the continuance of an Event of Default or during any Cash Dominion Trigger Period, Agent shall have the right at any time with reasonable advance notice to the Borrower, in the name of Agent, any designee of Agent or Borrower, to verify the validity, amount or any other matter relating to any Receivables of Borrower by mail, telephone or otherwise. Borrower shall cooperate fully with Agent in an effort to facilitate and promptly conclude any such verification process.

8.2.4 Maintenance of Collateral Accounts. Obligors shall maintain Collateral Accounts pursuant to arrangements acceptable to Agent and, in the case of the Tranche B-2 Blocked Account, acceptable to the Tranche B-2 Lenders. Obligors shall obtain an agreement (in form and substance satisfactory to Agent) from each Collateral Account bank, establishing (i) Agent’s control over and Lien in the each Controlled Unrestricted Account in its capacity as Agent, which may be exercised by Agent during any Cash Dominion Trigger Period, requiring immediate transfer deposit of all remittances received in such Controlled Unrestricted Account to

Agent for immediate application to repayment of the Loans in accordance with the priorities set forth in the Agreement Among Lenders, and waiving offset rights of such servicer or bank, except for customary administrative charges and (ii) Agent's control (and dominion) over all Blocked Accounts. If a Controlled Unrestricted Account is not maintained with Bank, Agent may, during any Cash Dominion Trigger Period, require immediate transfer of all funds in such account to Agent for immediate application to repayment of the Loans in accordance with the priorities set forth in the Agreement Among Lenders. Agent and Lenders assume no responsibility to Obligor for any Collateral Account, including any claim of accord and satisfaction or release with respect to any Payment Items accepted by any bank.

8.2.5 Proceeds of Collateral. Obligor shall request in writing and otherwise take all necessary steps to ensure that all payments on Receivables or otherwise relating to Collateral are made directly to the Collection Account (or, after the occurrence and during the continuance of an Event of Default or during the Cash Dominion Trigger Period, at Agent's discretion, a lockbox relating to the Collection Account). If any Obligor or Subsidiary receives cash or Payment Items with respect to any Collateral, it shall hold same in trust for Agent and promptly (not later than the next Business Day) deposit same into a Collection Account.

**8.3 Collateral Accounts.** Each Obligor shall take all actions necessary to establish Agent's first priority Lien on each Collateral Account. Obligor shall be the sole account holders of each Collateral Account and shall not allow any Person (other than Agent and the depository bank) to have control over their Collateral Accounts or any Property deposited therein.

#### **8.4 General Provisions.**

##### 8.4.1 Insurance of Collateral.

(a) Each Obligor shall maintain credit insurance with respect to each Receivable in respect of which the Account Debtor is organized or has its principal offices or assets outside the United States (such policies, "Collateral Insurance") in amounts, with endorsements and with insurers (with a Best rating of at least A+, unless otherwise approved by Agent in its discretion) satisfactory to Agent. All proceeds under each policy shall be payable to Agent to be deposited in the Blocked Accounts on a Pro Rata basis (determined in accordance with clause (a) of the definition of "Pro Rata"). From time to time upon request, Obligor shall deliver to Agent the originals or certified copies of the insurance policies required pursuant to this **Section 8.4.1**. Unless Agent shall agree otherwise, each policy shall include satisfactory endorsements (i) showing Agent as loss payee; (ii) requiring 30 days prior written notice to Agent in the event of cancellation of the policy for any reason whatsoever; and (iii) specifying that the interest of Agent shall not be impaired or invalidated by any act or neglect of any Obligor or the owner of the Property. If any Obligor fails to provide and pay for any Collateral Insurance on such Receivable, Agent may, at its option, but shall not be required to, procure the insurance and charge Obligor therefor. Each Obligor agrees to deliver to Agent, promptly as rendered, copies of all reports made to insurance companies. While no Event of Default or Cash Dominion Trigger Period exists, Obligor may settle, adjust or compromise any insurance claim under any Collateral Insurance, as long as the proceeds are deposited into a Collateral Account. If an Event of Default exists, only Agent shall be authorized to settle, adjust and compromise such claims.



(b) Any proceeds of Collateral Insurance shall be paid to Agent for deposit into the Blocked Accounts on a Pro Rata basis (determined in accordance with clause (a) of the definition of “Pro Rata”).

**8.4.2 Protection of Collateral.** All expenses of protecting, storing, warehousing, insuring, handling, maintaining and shipping any Collateral, all Taxes payable with respect to any Collateral (including any sale thereof), and all other payments required to be made by Agent to any Person to realize upon any Collateral, shall be borne and paid by Borrower. Agent shall not be liable or responsible in any way for the safekeeping of any Collateral, for any loss or damage thereto (except for reasonable care in its custody while Collateral is in Agent’s actual possession), for any diminution in the value thereof, or for any act or default of any warehouseman, carrier, forwarding agency or other Person whatsoever, but the same shall be at Obligors’ sole risk.

**8.4.3 Defense of Title.** Each Obligor shall defend its title to Collateral and Agent’s Liens therein against all Persons, claims and demands, except Permitted Liens.

**8.5 Power of Attorney.** Each Obligor hereby irrevocably constitutes and appoints Agent (and all Persons designated by Agent) as such Obligor’s true and lawful attorney (and agent-in-fact) for the purposes provided in this Section which power is coupled with an interest. After an Event of Default has occurred and is continuing (provided that any actions of Agent permitted pursuant to clauses (a) and (b) below initiated but not completed during the continuance of an Event of Default shall be authorized as if such Event of Default were continuing), Agent, or Agent’s designee, may, without notice and in either its or an Obligor’s name, but at the cost and expense of Borrower:

(a) Endorse an Obligor’s name on any Payment Item or other proceeds of Collateral (including proceeds of insurance) that come into Agent’s possession or control; and

(b) During an Event of Default, (i) notify any Account Debtors of the assignment of their Receivables, demand and enforce payment of Receivables by legal proceedings or otherwise, and generally exercise any rights and remedies with respect to Receivables; (ii) settle, adjust, modify, compromise, discharge or release any Receivables or other Collateral, or any legal proceedings brought to collect Receivables or other Collateral; (iii) sell or assign any Receivables or other Collateral upon such terms, for such amounts and at such times as Agent deems advisable; (iv) collect, liquidate and receive balances in Deposit Accounts or investment accounts, and take control, in any manner, of proceeds of Collateral; (v) prepare, file and sign an Obligor’s name to a proof of claim or other document in a bankruptcy of an Account Debtor, or to any notice, assignment or satisfaction of Lien or similar document; (vi) receive, open and dispose of mail addressed to an Obligor, and notify postal authorities to deliver any such mail to an address designated by Agent; (vii) endorse any Chattel Paper, Document, Instrument, bill of lading, or other document or agreement relating to any Collateral; (viii) use an Obligor’s stationery and sign its name to verifications of Receivables and notices to Account Debtors; (ix) use information contained in any data processing, electronic or information systems relating to Collateral; (x) make and adjust claims under insurance policies; (xi) take any action as may be necessary or appropriate to obtain payment under any letter of credit, banker’s acceptance or other instrument with respect to an Obligor’s Receivables for which an Obligor is a beneficiary; and (xii) take all other actions as Agent deems appropriate to fulfill any Obligor’s obligations under the Loan Documents.

## SECTION 9. REPRESENTATIONS AND WARRANTIES

**9.1 General Representations and Warranties.** To induce Agent and Lenders to enter into this Agreement and to make available the Commitments and Loans as provided for herein, Borrower represents and warrants that:

9.1.1 Organization and Qualification. Each Obligor (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite corporate or limited liability company power and authority, and has all material governmental licenses, authorizations, consents and approvals necessary, to own its Property and to carry on its business as now conducted, and (b) is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except where failure to have such power, authority, licenses, authorizations, consents, approvals and qualifications could not reasonably be expected to have a Material Adverse Effect.

9.1.2 Power and Authority. The Transactions are within Borrower's and each other Obligor's limited liability company, corporate or partnership powers and have been duly authorized by all necessary limited liability company or corporate and, if required, member, or shareholder action.

9.1.3 Enforceability. Each Loan Document to which any Obligor is a party has been duly executed and delivered by such Obligor and constitutes a legal, valid and binding obligation of such Obligor, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

9.1.4 Capital Structure. **Schedule 9.1.4** shows, for each Obligor and Subsidiary, its name, jurisdiction of organization, authorized and issued Equity Interests, holders of its Equity Interests, and agreements binding on such holders with respect to such Equity Interests. Each Obligor has good title to its Equity Interests in its Subsidiaries, subject only to Permitted Liens, and all such Equity Interests are duly issued, fully paid and non-assessable. There are no outstanding purchase options, warrants, subscription rights, agreements to issue or sell, convertible interests, phantom rights or powers of attorney relating to Equity Interests of any Obligor or Subsidiary.

9.1.5 Title to Properties.

(a) Location of Businesses. As of the Closing Date, Borrower's and each Subsidiary's jurisdiction of organization, name as listed in the public records of its jurisdiction of organization, organizational identification number in its jurisdiction of organization, and the location of its principal place of business and chief executive office is stated on **Schedule 9.1.5**.

(b) Title to Properties. All of the material Properties of Borrower and its Restricted Subsidiaries which are reasonably necessary for the operation of their businesses (other than stacked vessels) are in good working condition, ordinary wear and tear excepted (other than stacked vessels), and are maintained in accordance with reasonable commercial business standards, except (i) as set forth in **Schedule 9.1.5** or (ii) where the failure to be in such condition or maintain such Property could not reasonably be expected to have a Material Adverse Effect.

9.1.6 Receivables. Agent may rely, in determining (i) which Receivables are eligible for inclusion in the Borrowing Base or (ii) establishing Agent's Reserves with respect to any Receivable, on all statements and representations made by Borrower with respect thereto. Borrower warrants, with respect to each Receivable at the time that it is included in a Borrowing Base Report, that:

(a) it is (i) genuine and in all respects what it purports to be and (ii) subject to a perfected first-priority Lien in favor of Agent;

(b) it arises out of a completed, *bona fide* sale and delivery of goods or rendition of services in the ordinary course of business consistent with Obligor's past practices, and substantially in accordance with any purchase order, contract or other document relating thereto;

(c) it is for a sum certain, maturing as stated in the applicable invoice, a copy of which has been furnished or is available to Agent on request;

(d) it is not subject to any offset, Lien (other than (x) Agent's Lien and (y) Liens permitted pursuant to Section 10.2.2 (including a second priority lien for the secured parties under the First Lien Term Loan Agreement and a third priority lien for the secured parties under the Second Lien Term Loan Agreement) which do not have priority over (and are not *pari passu* with) the Lien in favor of the Agent), deduction, defense, dispute, counterclaim or other adverse condition except as arising in the ordinary course of business consistent with Obligor's past practices and disclosed to Agent; and it is absolutely owing by the Account Debtor, without contingency of any kind;

(e) no purchase order, agreement, document or Applicable Law restricts assignment of the Receivable to Agent (regardless of whether, under the UCC, the restriction is ineffective), and the applicable Obligor is the sole payee or remittance party shown on the invoice;

(f) no extension, compromise, settlement, modification, credit, deduction or return has been authorized or is in process with respect to the Receivable, except discounts or allowances granted in the ordinary course of business and consistent with Obligor's past practices for prompt payment that are reflected on the face of the invoice related thereto and in the reports submitted to Agent hereunder;

(g) the Account Debtor is not Borrower, any of its Restricted Subsidiaries or any Affiliate;

(h) with respect to any Foreign Receivable, such Foreign Receivable is supported by credit insurance naming Agent as loss payee; and

(i) to the best of Borrower's knowledge, (i) there are no facts or circumstances that are reasonably likely to impair the enforceability or collectability of such Receivable; (ii) the Account Debtor had the capacity to contract when the Receivable arose, continues to meet Borrower's customary credit standards, is Solvent, is not contemplating or subject to an Insolvency Proceeding, and has not failed, or suspended or ceased doing business; and (iii) there are no proceedings or actions threatened or pending against any Account Debtor that could reasonably be expected to have a material adverse effect on the Account Debtor's financial condition.

9.1.7 Financial Statements; No Material Adverse Change; Solvency.

(a) Financial Statements. The consolidated and consolidating balance sheets, and related statements of income, cash flow and stockholders equity, of Borrower and its consolidated Subsidiaries that have been and are hereafter delivered to Agent and Lenders (including any such financial statements deemed delivered pursuant to **Section 10.1.2(a)**), are prepared in accordance with GAAP, and fairly present the financial positions and results of operations of Borrower and its consolidated Subsidiaries at the dates and for the periods indicated. All projections delivered from time to time to Agent and Lenders have been prepared in good faith, based on reasonable assumptions in light of the circumstances at such time. No financial statement delivered to Agent or any Lender at any time contains any untrue statement of a material fact, nor fails to disclose any material fact necessary to make such statement not materially misleading.

(b) No Material Adverse Change. Since December 31, 2018, there has been no change in the condition, financial or otherwise, of Borrower or any Subsidiary that could reasonably be expected to have a Material Adverse Effect.

(c) Solvency. After giving effect to the Transactions contemplated hereby that had been effected through the date of determination, (a) the aggregate assets (after giving effect to amounts that could reasonably be received by reason of indemnity, offset, insurance or any similar arrangement), at a fair valuation, of Borrower and the Guarantors, taken as a whole, will exceed the aggregate Debt of Borrower and the Guarantors on a consolidated basis, as the Debt becomes absolute and matures, (b) each of Borrower and the Guarantors will not have incurred or intended to incur, and will not believe that it will incur, Debt beyond its ability to pay such Debt (after taking into account the timing and amounts of cash to be received by each of Borrower and the Guarantors and the amounts to be payable on or in respect of its liabilities, and giving effect to amounts that could reasonably be received by reason of indemnity, offset, insurance or any similar arrangement) as such Debt becomes absolute and matures and (c) each of Borrower and the Guarantors will not have (and will have no reason to believe that it will have thereafter) unreasonably small capital for the conduct of its business.

9.1.8 [Reserved].

9.1.9 Taxes. Each of Borrower and its Restricted Subsidiaries has timely filed (including any applicable extension properly exercised in accordance with Applicable Law) or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which Borrower or such Restricted Subsidiary, as applicable, has set aside on its books adequate accruals in accordance with GAAP (to the extent such accrual may be set up under GAAP) or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect. The charges and accruals on the books of Borrower and its Restricted Subsidiaries in respect of Taxes and other governmental charges are, in the reasonable opinion of Borrower, adequate.

9.1.10 [Reserved].

9.1.11 [Reserved].

9.1.12 Governmental Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority or any other third Person (including members, partners or shareholders of Borrower, any Guarantor or any other Person), nor is any such consent, approval, registration, filing or other action necessary for the validity or enforceability of any Loan Document or the consummation of the transactions contemplated thereby, except such as have been obtained or made and are in full force and effect other than the recording and filing of the Security Documents as required thereby or by this Agreement, (b) will not violate (i) any applicable law or regulation, (ii) the Organic Documents of Borrower, any Guarantor or any Restricted Subsidiary of Borrower or (iii) any order of any Governmental Authority, (c) will not violate or result in a default under any indenture, agreement or other instrument evidencing Material Indebtedness binding upon Borrower or any Restricted Subsidiary of Borrower or their Properties, or give rise to a right thereunder to require any material payment to be made by Borrower or such Restricted Subsidiary of Borrower and (d) will not result in the creation or imposition of any Lien on any Property of Borrower or any Restricted Subsidiary of Borrower (other than the Liens created by the Loan Documents).

9.1.13 Compliance with Laws. Borrower and each of its Restricted Subsidiaries is in compliance with all Governmental Requirements applicable to it or its Property and all agreements and other instruments binding upon it or its Property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, and possesses all licenses, permits, franchises, exemptions, approvals and other governmental authorizations necessary for the ownership of its Property and the conduct of its business, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

9.1.14 Compliance with Environmental Laws. Except as disclosed on **Schedule 9.1.14**, or as could not be reasonably expected to have a Material Adverse Effect (or with respect to (c), (d) and (e) below, where the failure to take such actions could not be reasonably expected to have a Material Adverse Effect):

(a) Neither any Property of Borrower or any of its Restricted Subsidiaries nor any operations conducted by Borrower or any of its Restricted Subsidiaries violate or has violated any Environmental Laws;

(b) Neither any Property of Borrower or any of its Restricted Subsidiaries nor the operations conducted thereon or, to the knowledge of Borrower, any prior owner or operator of such Property or operation, are subject to any existing, pending or threatened action, suit, investigation, inquiry or proceeding by or before any court or Governmental Authority or to any remedial obligations or other liabilities under Environmental Laws;

(c) All notices, permits, licenses, exemptions, approvals or similar authorizations, if any, required to be obtained or filed in connection with the operation or use of any and all Property of Borrower and each of its Restricted Subsidiaries, including, without limitation, past or present treatment, storage, disposal or release of a Hazardous Material into the environment, have been duly obtained or filed, and Borrower and each of its Restricted Subsidiaries are in compliance with the terms and conditions of all such notices, permits, licenses and similar authorizations;

(d) All Hazardous Material, if any, generated by Borrower or any of its Restricted Subsidiaries or by any other Person at any and all Property of Borrower or any of its Restricted Subsidiaries, has been transported, treated and disposed of in accordance with Environmental Laws and so as not to pose an imminent and substantial endangerment to public health or welfare or the environment, and, to the knowledge of Borrower, all such transport carriers and treatment and disposal facilities have been and are operating in compliance with Environmental Laws and so as not to pose an imminent and substantial endangerment to public health or welfare or the environment, and are not the subject of any existing, pending or threatened action, investigation or inquiry by any Governmental Authority pursuant to any Environmental Laws;

(e) Borrower has no knowledge that any Hazardous Materials are now located on or in any vessel owned by Borrower or any of its Restricted Subsidiaries, or that any other Person has ever caused or permitted any Hazardous Materials to be placed, held, located or disposed of on, any vessel owned by Borrower or any of its Restricted Subsidiaries or any part thereof, except for such Hazardous Materials that may have been placed, held, or located on any vessel owned by Borrower or any of its Restricted Subsidiaries in accordance with and otherwise not in violation of or in a manner reasonably likely to give rise to liability under Environmental Laws;

(f) To the extent applicable under OPA, all Property of Borrower and each of its Restricted Subsidiaries currently satisfies all requirements imposed by OPA and, except as set forth on **Schedule 9.1.14**, Borrower does not have any reason to believe that such Property, to the extent subject to OPA, will not be able to maintain compliance with OPA requirements during the term of this Agreement;

(g) To the knowledge of Borrower, there has been no exposure of any Person or Property to any Hazardous Materials in connection with any Property or operation of Borrower or any Subsidiary that could reasonably be expected to form the basis of a claim for damages or compensation.

9.1.15 [Reserved].

9.1.16 Litigation. Except as shown on **Schedule 9.1.16**, there are no actions, suits, investigations or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of Borrower, threatened against or affecting Borrower or any of its Restricted Subsidiaries or any of their Properties: (i) as to which there is a reasonable possibility of an adverse determination that could reasonably be expected to have a Material Adverse Effect, (ii) that involve any Loan Document or the Transactions or (iii) that otherwise constitutes a significant action, suit, investigation or proceeding so pending, or to the knowledge of Borrower, threatened.

9.1.17 **No Defaults.** Neither Borrower nor any of its Restricted Subsidiaries is in default nor has any event or circumstance occurred which, but for the expiration of any applicable grace period or the giving of notice, or both, would constitute a default under, or would require Borrower or any of its Restricted Subsidiaries to Redeem or make any offer to Redeem under any indenture, note, credit agreement or instrument pursuant to which any Material Indebtedness is outstanding or by which Borrower or any such Restricted Subsidiary or any of their Properties is bound. No Default or Event of Default has occurred and is continuing.

9.1.18 **ERISA.** Except as disclosed on **Schedule 9.1.18:**

(a) Borrower, its Restricted Subsidiaries and each ERISA Affiliate have complied in all material respects with ERISA and, where applicable, the Code regarding each Plan.

(b) Each Plan is, and has been, maintained in substantial compliance with ERISA and, where applicable, the Code.

(c) No act, omission or transaction has occurred which could result in imposition on Borrower, any of its Restricted Subsidiaries or any ERISA Affiliate (whether directly or indirectly) of (i) either a material civil penalty assessed pursuant to subsections (c), (i), (l) or (m) of Section 502 of ERISA or a tax imposed pursuant to Chapter 43 of Subtitle D of the Code or (ii) material breach of fiduciary duty liability damages under Section 409 of ERISA.

(d) No Plan (other than a defined contribution plan) or any trust created under any such Plan has been terminated since September 2, 1974. No liability to the PBGC (other than for the payment of current premiums which are not past due) by Borrower, any of its Restricted Subsidiaries or any ERISA Affiliate has been or is expected by Borrower, any such Restricted Subsidiary or any ERISA Affiliate to be incurred with respect to any Plan. No ERISA Event has occurred or is reasonably expected to occur.

(e) Full payment when due has been made of all material amounts which Borrower, its Restricted Subsidiaries or any ERISA Affiliate is required under the terms of each Plan or applicable law to have been paid as contributions to such Plan, and no waived funding deficiency (as defined in Section 302 of ERISA and Section 412 of the Code), which could reasonably be expected to have a Material Adverse Effect, exists with respect to any Plan. The actuarial present value of the benefit liabilities under each Plan which is subject to Title IV of ERISA does not, as of the end of Borrower's most recently ended fiscal year, exceed the current value of the assets (computed on a plan termination basis in accordance with Title IV of ERISA) of such Plan allocable to such benefit liabilities by a material amount, and the sum of such excesses for all such Plans is not material. The term "actuarial present value of the benefit liabilities" shall have the meaning specified in Section 4041 of ERISA.

(f) None of Borrower, its Restricted Subsidiaries or any ERISA Affiliate sponsors, maintains, or contributes to an employee welfare benefit plan, as defined in Section 3(1) of ERISA, including, without limitation, any such plan maintained to provide benefits to former employees of such entities, that may not be terminated by Borrower, any of its Restricted Subsidiaries or any ERISA Affiliate in its sole discretion at any time without any material liability.

(g) None of Borrower, its Restricted Subsidiaries or any ERISA Affiliate is required to contribute to, or has any other absolute or contingent liability in respect of, any Multiemployer Plan that, when taken together with all other such contribution obligations and liabilities, has resulted in, or could reasonably be expected to have, a Material Adverse Effect.

9.1.19 [Reserved].

9.1.20 [Reserved].

9.1.21 [Reserved].

9.1.22 Not a Regulated Entity. No Obligor is (a) an “investment company” or a “person directly or indirectly controlled by or acting on behalf of an investment company” within the meaning of the Investment Company Act of 1940; or (b) subject to regulation under the Federal Power Act, the Interstate Commerce Act, any public utilities code or any other Applicable Law regarding its authority to incur Debt.

9.1.23 Use of Proceeds; Margin Stock. The proceeds of the Loans shall be used for working capital and general corporate purposes of Borrower and each of its Restricted Subsidiaries, including the repayment or refinancing of Debt, and capital expenditures (including vessel construction or conversions and acquisitions). Neither Borrower nor any of its Restricted Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying Margin Stock. No part of the proceeds of the Loans will be used for any purpose which violates the provisions of Regulations T, U or X of the Board of Governors of the Federal Reserve System of the United States of America.

9.1.24 Anti-Terrorism Laws and Sanctions.

(a) No Obligor nor any Subsidiary of any Obligor nor, to the knowledge of Borrower, any director, officer, agent or employee of any Obligor or any Subsidiary of any Obligor is in violation of any Anti-Terrorism Law or Sanctions or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law or Sanctions;

(b) No Obligor nor any Subsidiary of any Obligor nor, to the knowledge of Borrower, any director, officer, agent or employee of any Obligor or any Subsidiary of any Obligor acting or benefiting in any capacity in connection with the Loans, the Transactions or the other transactions hereunder, is a Sanctioned Person;

(c) No Obligor nor any Subsidiary of any Obligor nor, to the knowledge of Borrower, any director, officer, agent or employee of any Obligor conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Sanctioned Person;

(d) Borrower has implemented and maintains in effect policies and procedures designed to promote and achieve compliance by Borrower and its Subsidiaries and their respective directors, officers, agents and employees with Sanctions and Anti-Terrorism Laws in all respects.



9.1.25 **Anti-Corruption Laws.** No Obligor nor any Subsidiary of any Obligor nor, to the knowledge of Borrower, any director, officer, agent or employee of any Obligor or any Subsidiary of any Obligor is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the FCPA or any other applicable anti-corruption laws of any jurisdiction, domestic or foreign, including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization or approval of the payment of any money, or other property, gift, promise to give or authorization of the giving of anything of value, directly or indirectly, to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office in contravention of the FCPA or any other applicable anti-corruption laws. Each Obligor and its Subsidiaries has conducted their businesses in compliance with applicable anti-corruption laws and the FCPA in all material respects and will maintain policies and procedures designed to promote and achieve compliance with such laws and with the representation and warranty contained herein. No Loan, use of proceeds or other transaction contemplated by this Agreement will violate the FCPA or any other applicable anti-corruption laws or applicable Sanctions.

9.1.26 **Insurance.** Borrower has, and has caused its Restricted Subsidiaries to have, (a) all insurance policies sufficient for the compliance by each of them with all material Governmental Requirements, all material agreements and all other Loan Documents and (b) insurance coverage in at least amounts and against such risk (including, without limitation, public liability) that are reasonably consistent with other companies in the industry performing the same or a similar business for the assets and operations of Borrower and its Restricted Subsidiaries. Agent, as agent for the Lenders, has been named as loss payee with respect to credit insurance on each Receivable in respect of which the Account Debtor is organized or has its principal offices or assets outside the United States.

9.1.27 **Accounts.** **Schedule 9.1.27** (i) lists all deposit or investment accounts of Borrower and its Restricted Subsidiaries, (ii) identifies each deposit or investment account into which Borrower or any Restricted Subsidiary receives payment under any Receivable and (iii) indicates whether each such account is subject to an Account Control Agreement.

**9.2 Complete Disclosure.** None of the written reports, financial statements, certificates or other written information (other than the Projections, as defined below, other forward looking information and information of a general economic or industry specific nature) furnished or otherwise made available by Borrower or any Restricted Subsidiary of Borrower to Agent or any of its Affiliates and/or any Lender (or any of its Affiliates) in connection with the negotiation or performance of this Agreement or any other Loan Document (as modified or supplemented by other information so furnished or made available) when considered as a whole contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading as of the date such information is furnished or made available. All financial projections concerning Borrower and its Restricted Subsidiaries, that have been furnished or otherwise made available by or on behalf of Borrower to Agent or any of its Affiliates and/or any Lender (or any of its Affiliates) in connection with the negotiation or performance of this Agreement or any other Loan Document (the "Projections") have been prepared in good faith based upon assumptions believed by Borrower to be reasonable at the time made available to such Persons, it being understood that actual results may vary materially from the Projections. For the avoidance of doubt, it is understood that Agent shall not have any duty to examine or investigate any written reports, financial statements, certificates or other written information delivered by Borrower pursuant to **Section 9**.

## SECTION 10. COVENANTS AND CONTINUING AGREEMENTS

**10.1 Affirmative Covenants.** Each Obligor hereby covenants and agrees that from the Closing Date and thereafter, until the Commitments have terminated and Full Payment has occurred, that such Obligor shall:

### 10.1.1 Inspections; Appraisals.

(a) Permit, and cause each of its Restricted Subsidiaries to permit, Agent from time to time, subject (unless a Default or Event of Default exists) to reasonable notice and normal business hours, to visit and inspect the Properties of any Obligor or Subsidiary, inspect, audit and make extracts from any Obligor's or Subsidiary's books and records, and discuss with its officers, employees, agents, advisors and independent accountants such Obligor's or Subsidiary's business, financial condition, assets, prospects and results of operations. Lenders may participate in any such visit or inspection, at their own expense. Secured Parties shall have no duty to any Obligor to make any inspection, nor to share any results of any inspection, appraisal or report with any Obligor. Obligors acknowledge that all inspections, appraisals and reports are prepared by Agent and Lenders for their purposes, and Obligors shall not be entitled to rely upon them.

(b) Reimburse Agent for all its charges, costs and expenses in connection with examinations of Obligors' books and records or any other financial or Collateral matters as it deems appropriate, up to two times per Loan Year and in an aggregate amount not to exceed \$75,000 in any Loan Year; provided, however, that if an examination or appraisal is initiated during a Default or Event of Default, all charges, costs and expenses relating thereto shall be reimbursed by Borrower without regard to such limits. Borrower shall pay Agent's then standard charges for examination activities, including charges for its internal examination and appraisal groups, as well as the charges of any third party used for such purposes, subject to the foregoing limitations.

10.1.2 Financial and Other Information. Keep, and Borrower shall cause each of its Restricted Subsidiaries to keep, adequate records and books of account with respect to its business activities, in which proper entries are made in accordance with GAAP reflecting all financial transactions; and furnish to Agent (and Agent shall promptly furnish to each Lender upon its request):

(a) Annual and Quarterly Reports; Monthly Financial Statements. whether or not the Borrower is required to do so by the rules and regulations of the SEC, so long as any Obligations remains outstanding, the Borrower will file with the SEC within the time periods specified in the SEC's rules and regulations (unless the SEC will not accept such a filing, in which case the following financial statements, reports, opinions and certificates shall be delivered directly to Agent) and, within 15 days of filing, or attempting to file, the same with the SEC, (i) all quarterly and annual financial and other information with respect to the Borrower and its Subsidiaries that

would be required to be contained in a filing with the SEC on Forms 10-Q and 10-K if the Borrower were required to file such forms, including a “Management’s Discussion and Analysis of Financial Condition and Results of Operations”, (ii) all current reports that would be required to be filed with the SEC on Form 8-K if the Borrower were required to file such reports, (iii) in the case of annual financial information that would be required to be contained in a filing with the SEC on Form 10-K, accompanied by the audit opinions of Ernst & Young LLP or another independent certified public accountant acceptable to Agent and (iv) in the case of quarterly financial information that would be required to be contained in a filing with the SEC on Form 10-Q, certified by the chief financial officer of Borrower as presenting fairly in all material respects the financial condition, results of operations and changes in cash flows of Borrower in accordance with GAAP (subject only to normal fiscal period-end accounting adjustments and the absence of footnotes). The information required to be delivered pursuant to this **Section 10.1.2(a)** shall be deemed to have been delivered to the extent such information, or one or more annual or quarterly reports containing such information, shall be available on the website of the SEC at www.sec.gov or on the Parent Borrower’s website at www.hornbeckoffshore.com, in each case within the time periods required hereby;

(b) Internal Financial Statements. for each calendar month, as soon as available and in any event by the date a Borrowing Base Report is delivered in following calendar month, the Internal Financial Statements for such month; it being understood that any information provided pursuant to this Section 10.1.2(b) constitutes material non-public information with respect to Borrower and its securities and shall be deemed “Information” for purposes of **Section 14.12**.

(c) Compliance Certificates. concurrently with delivery of financial statements under clause(a) or (b) above, or more frequently if requested by Agent while a Default or Event of Default exists, a Compliance Certificate executed by the chief financial officer of Borrower certifying, among other things, as to (1) Borrower’s compliance with the Consolidated Fixed Charge Coverage Ratio to the extent required under **Section 10.3**, (2) Borrower’s calculation of Liquidity and (3) and stating that there is no Default, Event of Default, Cash Dominion Trigger Period or Trigger Period then in existence;

(d) Accountants’ Materials. concurrently with delivery of financial statements under clause (a) above, copies of all management letters and other material reports submitted to Borrower by their accountants in connection with such financial statements;

(e) Unrestricted Subsidiaries. if Borrower has designated any of its Subsidiaries as Unrestricted Subsidiaries, then, upon request of Agent, Borrower shall deliver, together with each delivery of financial statements under clause (a) above, the related unaudited consolidating financial information reflecting adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries from such consolidated financial statements;

(f) Quarterly Projections. not later than 30 days following the end of each Fiscal Year, projections of Borrower’s consolidated balance sheets, results of operations and cash flow for the next Fiscal Year, on a quarterly basis;

(g) Trade Payables. at Agent's request, a listing of Borrower's and each Guarantor's trade payables, specifying the creditor and balance due, and a detailed trade payable aging, all in form satisfactory to Agent;

(h) Other Information. such other reports and information (financial or otherwise) as Agent may request from time to time in connection with any Collateral or Borrower's, any Subsidiary's or any other Obligor's financial condition or business.

10.1.3 Notices. Notify, and Borrower shall cause each of its Restricted Subsidiaries to notify, Agent (and Agent shall promptly send such written notice to each Lender that requests to receive the notices (or any subset thereof) referenced in this **Section 10.1.3**, promptly after such Obligor's or such Restricted Subsidiary's obtaining knowledge thereof, of any of the following that materially affects an Obligor: (a) the threat or commencement of any proceeding or investigation, whether or not covered by insurance, if an adverse determination could reasonably be expected to have a Material Adverse Effect; (b) any pending or threatened labor dispute, strike or walkout, or the expiration of any material labor contract; (c) any termination of a Material Contract the termination of which would impact the Collateral; (d) the existence of any Default or Event of Default; (e) any judgment in an amount exceeding \$10,000,000; (f) any violation or asserted violation of any Applicable Law (including ERISA, OSHA, FLSA, or any Environmental Laws), if an adverse resolution could have a Material Adverse Effect; (g) any Environmental Release by an Obligor or on any Property owned, leased or occupied by an Obligor; or receipt of any Environmental Notice, in each case that could reasonably be expected to have a Material Adverse Effect; (i) the occurrence of any ERISA Event that could reasonably be expected to have a Material Adverse Effect; or (j) the discharge of or any withdrawal or resignation by Borrower's independent accountants.

10.1.4 Maintenance of Properties. Except as set forth in **Schedule 10.1.4**, Borrower and the Guarantors shall maintain (other than stacked vessels) and preserve all of their respective Properties (and any Property leased by or consigned to any of them or held under title retention or conditional sales contracts) that are used or useful in the conduct of their respective business in the ordinary course in good working order and condition at all times, ordinary wear and tear excepted, and make all repairs, replacements, additions, betterments and improvements to their respective Properties to the extent necessary so that any failure will not reasonably be expected to have a Material Adverse Effect.

10.1.5 Compliance with Laws. Comply, and Borrower shall cause each of its Restricted Subsidiaries to comply, with all Applicable Laws, including ERISA, Environmental Laws, FLSA, OSHA, Anti-Terrorism Laws, and laws regarding collection and payment of Taxes, and maintain all Governmental Approvals necessary to the ownership of its Properties or conduct of its business, unless failure to comply (other than failure to comply with Anti-Terrorism Laws) or maintain could not reasonably be expected to have a Material Adverse Effect.

10.1.6 Taxes. Borrower and the Guarantors will pay and discharge promptly when due all Taxes imposed upon Borrower or any Guarantor or upon its income or upon any of its Property as well as all claims of any kind (including claims for labor, materials, supplies and rent) which, if unpaid, might become a Lien (other than Permitted Liens) upon any or all of its Property; provided that Borrower and the Guarantors shall not be required to pay any such Tax if the amount, applicability or validity thereof shall concurrently be contested in good faith by appropriate proceedings diligently conducted and if the contesting party shall have set up accruals therefor adequate under GAAP.

10.1.7 Insurance. In addition to the insurance required hereunder with respect to Collateral, maintain, and Borrower shall cause each of its Restricted Subsidiaries to maintain, with financially sound and reputable insurance companies not Affiliates of the Borrower insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or a similar business of such types and in such amounts (after giving effect to any self-insurance compatible with the following standards) as are customarily carried under similar circumstances by such other Persons, and as required to be maintained under the terms of any Existing Credit Documents.

10.1.8 Existence. Except as permitted by **Section 10.2.4** and except to the extent any change therein is not otherwise prohibited hereunder, Borrower and each Guarantor will maintain its limited liability company or corporate existence and rights.

10.1.9 ERISA Information and Compliance. Borrower will furnish to the Agent (i) as soon as is administratively practicable following a request from Agent copies of each annual or other report filed with the United States Secretary of Labor or the PBGC, copies of each annual and other report with respect to any Plan sponsored or maintained by Borrower, any of its Restricted Subsidiaries, or any ERISA Affiliate and (ii) as soon as is administratively practicable upon becoming aware of the occurrence of any (A) ERISA Event or (B) "prohibited transaction," as such term is defined in Section 4975 of the Code, in connection with any Plan sponsored or maintained by Borrower, any of its Restricted Subsidiaries or any ERISA Affiliate that could reasonably be expected to have a Material Adverse Effect, a written notice signed by a Senior Officer of Borrower specifying the nature thereof, what action Borrower is taking or proposes to take with respect thereto, and, when known, any action taken by the Internal Revenue Service with respect thereto. Borrower will comply with all of the applicable funding and other requirements of ERISA as such requirements relate to the Plans of Borrower or any of its Restricted Subsidiaries.

10.1.10 Future Unrestricted Subsidiaries.

(a) The Board of Directors of Borrower may designate any Subsidiary (other than any Guarantor (other than Hornbeck Offshore Navegacao, Ltda.)) to be an Unrestricted Subsidiary; provided that at the time of such designation, Borrower shall satisfy the Liquidity Test. No Subsidiary may be designated as an Unrestricted Subsidiary unless (i) both at the time of such designation and immediately after giving effect thereto, no Default, Event of Default, Cash Dominion Trigger Period or Trigger Period shall have occurred and be continuing. **Schedule 9.1.4** identifies all Unrestricted Subsidiaries (i) as of the Closing Date and (ii) as of each subsequent date the representations and warranties of Borrower are made or repeated.

(b) Any designation of an Unrestricted Subsidiary shall be evidenced to the Agent by delivery to the Agent of a resolution of the Board of Directors giving effect to such action and evidencing the valuation of any Investment relating thereto (as determined in good faith by the Board of Directors) and an officer's certificate certifying that such action complied with this **Section 10.1.10**.

10.1.11 Use of Proceeds.

(a) Borrower shall use the proceeds of the Loans only for the purposes specified in **Section 9.1.23**. In addition, Borrower shall not use, and shall procure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Loan (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any anti-corruption laws specified in **Section 9.1.25**, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country or (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

(b) Borrower shall maintain in effect the policies and procedures with respect to Sanctions and Anti-Terrorism Laws specified in **Section 9.1.24** and the anti-corruption laws specified in **Section 9.1.25**.

10.1.12 Post-Closing Undertakings. Within the time periods specified on **Schedule 10.1.12** (or such later date to which the Lenders consent), comply, and cause each of its Restricted Subsidiaries, to the extent applicable, to comply, with the provisions set forth in **Schedule 10.1.12**.

**10.2 Negative Covenants.** Each Obligor hereby covenants and agrees that from the Closing Date and thereafter, until the Commitments have terminated and Full Payment has occurred:

10.2.1 Incurrence of Debt and Issuance of Disqualified Stock.

(a) Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, “incur” or an “incurrence”) any Debt and Borrower shall not issue any Disqualified Stock and shall not permit any of its Restricted Subsidiaries to issue any Disqualified Stock; provided, however, that Borrower and its Restricted Subsidiaries may incur Debt, and Borrower may issue Disqualified Stock, in each case if the Consolidated Fixed Charge Coverage Ratio for the Test Period preceding the date on which such additional Debt is incurred or such Disqualified Stock is issued would have been at least 2.0 to 1.0 (the “Minimum Fixed Charge Coverage Ratio Test”) at the time such additional Debt is incurred or such Disqualified Stock is issued, in each case as determined on a pro forma basis (including a pro forma application of the net proceeds therefrom), as if the additional Debt or Disqualified Stock had been issued or incurred, as the case may be, at the beginning of such Test Period;

(b) The foregoing provisions shall not apply to the incurrence by Borrower or any of its Restricted Subsidiaries of any of the following:

(i) Junior Lien Debt or unsecured Debt of Borrower or any Guarantor (provided that such unsecured Debt satisfies the conditions set forth in clause (a) of the definition of “Junior Lien Debt”) under Credit Facilities, in an aggregate principal amount at any one time outstanding not to exceed, together with any outstanding Permitted Refinancing Indebtedness in respect thereof the greater of (1) \$600,000,000 and (2) 25% of Borrower’s Consolidated Net Tangible Assets determined as of the end of Borrower’s most recently completed fiscal quarter for which internal financial statements are available;

(ii) existing Debt;

(iii) Hedging Obligations;

(iv) Debt under this Agreement and the other Loan Documents;

(v) intercompany Debt between or among Borrower and any of its Restricted Subsidiaries; provided that (1) if Borrower is the obligor on such Debt and the obligee is not a Guarantor, such Debt must be expressly subordinated to the prior payment in full in cash of all obligations with respect to the Loans; (2) if a Guarantor is the obligor on such Debt and the obligee is neither Borrower nor a Guarantor, such Debt must be expressly subordinated to the prior payment in full in cash of all obligations of such Guarantor with respect to its Guarantee; and (3)(i) any subsequent issuance or transfer of Equity Interests that results in any such Debt being held by a Person other than Borrower or a Restricted Subsidiary of Borrower, or (ii) any sale or other transfer of any such Debt to a Person that is neither Borrower nor a Restricted Subsidiary of Borrower, shall be deemed, in each case, to constitute an incurrence of such Debt by Borrower or such Restricted Subsidiary, as the case may be, as of the date of such issuance, sale or other transfer that is not permitted by this clause (v);

(vi) Debt in respect of bid, performance or surety bonds issued for the account of Borrower or any Restricted Subsidiary thereof with respect to letters of credit or bank guarantees supporting such bid, performance or surety obligations (in each case other than for an obligation for money borrowed) or other forms of security or credit enhancement supporting performance obligations, including guarantees or obligations of Borrower or any Restricted Subsidiary thereof, under trade or custom obligations, third party maritime claims, contractual commitments, service contracts, or credit cards or purchase cards utilized for purchases and, for the avoidance of doubt, the obligations set forth on **Schedule 10.2.1(b)(vi)**;

(vii) the guarantee (A) by Borrower of Debt of any of its Restricted Subsidiaries that was permitted to be incurred by another provision of this **Section 10.2.1** or (B) by any Restricted Subsidiary of Borrower of Debt of Borrower or another Restricted Subsidiary of Borrower that was permitted to be incurred by another provision of this **Section 10.2.1**; provided, that this clause (vii) shall not permit the guarantee by any Restricted Subsidiary of Borrower that is not an Obligor of any Debt incurred under **Section 10.2.1(b)(i)** (or any Permitted Refinancing Indebtedness in respect thereof) or **Section 10.2.1(b)(x)**;

(viii) Permitted Refinancing Indebtedness incurred in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund Debt incurred pursuant to **Sections 10.2.1(a), 10.2.1(b)(i) or 10.2.1(b)(ii)**, this clause (viii) or **Section 10.2.1(b)(xi)**;

(ix) Permitted Acquisition Indebtedness and any Permitted Refinancing Indebtedness in respect thereof (including any subsequent Permitted Refinancing Indebtedness in respect of any Debt previously incurred under this **Section 10.2.1(b)(ix)**);

(x) [Reserved]; and

(xi) other Debt and/or Disqualified Stock in an aggregate principal amount and/or liquidation preference, as applicable, that, when taken together with the aggregate principal amount and/or liquidation preference, as applicable, of all other Debt and/or Disqualified Stock incurred pursuant to this clause (xi) and then outstanding will not exceed, together with any outstanding Permitted Refinancing Indebtedness in respect thereof the greater of (1) \$100,000,000 and (2) 2.5% of Borrower's Consolidated Net Tangible Assets determined as of the end of Borrower's most recently completed fiscal quarter for which internal financial statements are available; provided that (i) any such Debt or Disqualified Stock shall not be secured by any assets that are Collateral and (ii) any such Debt or Disqualified Stock of an Obligor referred to in this clause (xi) does not mature and does not have any mandatory or scheduled principal payments or sinking fund obligations prior to 91 days after the Tranche B Maturity Date (except as a result of a customary change of control or asset sale repurchase offer provisions, subject to the prior making of any required payments on the Debt hereunder).

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

(d) For purposes of determining compliance with this **Section 10.2.1**, in the event that an item of proposed Debt meets the criteria of more than one of the categories of Debt described in **Section 10.2.1(b)(i)** through **(xi)**, or is entitled to be incurred pursuant to **Section 10.2.1(a)**, Borrower shall be permitted to divide or classify such item of Debt on the date of its incurrence, or later divide or reclassify all or a portion of such item of Debt, in any manner that complies with this **Section 10.2.1**, and such item of Debt will be treated as having been incurred pursuant to one or more of such categories; provided that all Debt under this Agreement and the other Loan Documents shall at all times be deemed outstanding under **Section 10.2.1(b)(iv)**, all Junior Lien Debt under Credit Facilities shall at all times be deemed outstanding under **Section 10.2.1(b)(i)**. Accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of original issue discount and the payment of interest or dividends in the form of additional Debt or Disqualified Stock will not be deemed to be an incurrence of Debt or Disqualified Stock for purposes of this covenant.

10.2.2 Permitted Liens. Obligors shall not, directly or indirectly, create or suffer to exist any Lien upon any Collateral, except Permitted Liens.



### 10.2.3 Restricted Payments.

(a) Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, (i) declare or pay any dividend or make any other payment or distribution on account of Borrower's or any of its Restricted Subsidiaries' Equity Interests (including, without limitation, any such payment in connection with any merger or consolidation involving Borrower) or to the direct or indirect holders of Borrower's Equity Interests in their capacity as such (other than dividends or distributions payable in Equity Interests (other than Disqualified Stock) of Borrower); (ii) Redeem (including, without limitation, in connection with any merger or consolidation involving the Borrower) any Equity Interests of Borrower or any direct or indirect parent of Borrower (other than any such Equity Interests owned by Borrower or any Restricted Subsidiary of the Borrower); (iii) Redeem (x) the 2019 Convertible Senior Notes, the 2020 Senior Notes, the 2021 Senior Notes or any Debt incurred under a Replacement Indenture in respect thereof, (y) Junior Lien Debt, or (z) any Debt that is subordinated in right of payment to the Obligations or the Guarantees, as the case may be, except a payment of interest (including any AHYDO catch up payments) or a payment of principal at its stated maturity; or (iv) make any Restricted Investment (all such payments and other actions set forth in clauses (i) through (iv) above being collectively referred to as "Restricted Payments") unless at the time of and after giving effect to such Restricted Payment:

(A) no Default or Event of Default shall have occurred and be continuing or would occur as a consequence thereof; and

(B) Borrower would, at the time of such Restricted Payment and after giving pro forma effect thereto as if such Restricted Payment had been made at the beginning of the Test Period immediately preceding such Restricted Payment, (x) have been permitted to incur at least \$1.00 of additional Debt pursuant to the Minimum Fixed Charge Coverage Ratio Test and (y) satisfied the Liquidity Test.

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

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

(ii) the Redemption of any Debt of Borrower or any Guarantor (including the 2019 Convertible Senior Notes, the 2020 Senior Notes, the 2021 Senior Notes or any Debt incurred under a Replacement Indenture in respect thereof) or any Equity Interests of Borrower or any of its Restricted Subsidiaries in exchange for, or out of the net cash proceeds of the substantially concurrent sale (other than to a Restricted Subsidiary of Borrower) of, other Equity Interests of Borrower (other than any Disqualified Stock);

(iii) the Redemption of Debt of Borrower or any Guarantor (including the 2019 Convertible Senior Notes, the 2020 Senior Notes, the 2021 Senior Notes or any Debt incurred under a Replacement Indenture in respect thereof) with the net cash proceeds from an incurrence of, or in exchange for, Permitted Refinancing Indebtedness;

(iv) the payment of any Distribution (other than with Collateral or the proceeds thereof) by a Restricted Subsidiary of Borrower to Borrower or any of its other Restricted Subsidiaries, and if such Restricted Subsidiary is not a Wholly-Owned Restricted Subsidiary, to minority holders of the Equity Interests of such Restricted Subsidiary so long as Borrower or another Restricted Subsidiary receives at least its pro rata share of such Distribution;

(v) so long as no Default or Event of Default has occurred and is continuing, the Redemption of any Equity Interests (other than with Collateral or the proceeds thereof) of Borrower held by any employee, director or consultant of Borrower or any of its Restricted Subsidiaries pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or other agreement or arrangement, provided that the aggregate price paid for all such Redeemed Equity Interests shall not exceed \$500,000 in any calendar year (with unused amounts in any fiscal year being carried over to succeeding fiscal years);

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

(vii) in connection with an acquisition by Borrower or by any of its Restricted Subsidiaries, the return to Borrower or any of its Restricted Subsidiaries of Equity Interests of Borrower or any of its Restricted Subsidiaries constituting a portion of the purchase price consideration in settlement of indemnification claims;

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

(ix) so long as Borrower shall satisfy the Liquidity Test, the making of cash payments in connection with any conversion of Convertible Indebtedness in an aggregate amount since the Closing Date not to exceed the sum of (a) the principal amount of such Convertible Indebtedness plus (b) payments received by Borrower or any of its Restricted Subsidiaries pursuant to the exercise, settlement or termination of any related Permitted Bond Hedge Transaction;

(x) (a) any cash payments in connection with a Permitted Bond Hedge Transaction and (b) the settlement of any related Permitted Warrant Transaction (i) by delivery of shares of Borrower's common stock upon settlement thereof or (ii) by (A) set-off against the related Permitted Bond Hedge Transaction or (B) payment of an early termination amount thereof in common stock upon any early termination thereof;

(xi) so long as Borrower shall satisfy the Liquidity Test, the Redemption of Debt (other than with Collateral or the proceeds thereof) of Borrower or any Guarantor (including the 2019 Convertible Senior Notes, the 2020 Senior Notes, the 2021 Senior Notes or any Debt incurred under a Replacement Indenture in respect thereof);

(xii) so long as Borrower shall satisfy the Liquidity Test, the payment of any cash dividend or distribution by Borrower with respect to any preferred Equity Interest that does not constitute Disqualified Stock or any Disqualified Stock that is permitted to be incurred under **Section 10.2.1**; so long as (A) such cash dividend or distribution does not exceed a percentage reasonably acceptable to Agent, (B) the proceeds of the issuance of such preferred Equity Interests or permitted Disqualified Stock were or are being used to finance a Permitted

Acquisition of, or Permitted Investment in, a Permitted Business or an acquisition of one or more vessels, and (C) in each case on the date of such Permitted Acquisition, Permitted Investment or the date such vessel(s) or person was acquired or merged, consolidated or amalgamated with or into Borrower or a Restricted Subsidiary of Borrower, as applicable, after giving pro forma effect thereto as if such transaction had been made at the beginning of the Test Period, the Consolidated Fixed Charge Coverage Ratio for Borrower and its Restricted Subsidiaries immediately after the date of such Permitted Acquisition, Permitted Investment or acquisition of one or more vessels, as applicable, would be no worse than the Consolidated Fixed Charge Coverage Ratio for Borrower and its Restricted Subsidiaries immediately prior to such issuance;

(xiii) Restricted Payments (other than with Collateral or the proceeds thereof), including repurchases of Equity Interests in Borrower, in an aggregate amount not to exceed the amount available at such time for Permitted Investments made in reliance on clause (h) of the definition thereof so long as Borrower shall satisfy the Liquidity Test;

(xiv) redemption of any rights under Borrower's Rights Agreement dated July 1, 2013; and

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

#### 10.2.4 Merger or Consolidation.

(a) Borrower shall not consolidate or merge with or into (whether or not Borrower is the surviving corporation), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to, another Person unless (i) Borrower is the survivor or the Person formed by or surviving any such consolidation or merger (if other than Borrower) or to which such sale, assignment, transfer, lease, conveyance or other disposition shall have been made (the "Successor Company") is a corporation, partnership or limited liability company organized or existing under the laws of the United States, any state thereof or the District of Columbia, (ii) the Successor Company (if other than Borrower) assumes all the obligations of Borrower under this Agreement pursuant to a customary assumption agreement, (iii) immediately after such transaction no Default or Event of Default or Cash Dominion Trigger Period exists, (iv) except in the case of a merger of Borrower with or into a Wholly-Owned Restricted Subsidiary of Borrower that is an Obligor, immediately after giving pro forma effect to the transaction as if the same had occurred at the beginning of the applicable Test Period, either (1) the Successor Company may incur at least \$1.00 of additional Debt pursuant to the Consolidated Fixed Charge Coverage Ratio, or (2) the Consolidated Fixed Charge Coverage Ratio of the Successor Company is no less than the Consolidated Fixed Charge Coverage Ratio of Borrower immediately before such transaction, and (v) if Borrower is not the Successor Company in such transaction, each Guarantor (unless it is the Successor Company, in which case clause (ii) above will apply) confirms in a customary writing that its Guarantee and the Liens granted by it pursuant to the Security Documents will apply to the Successor Company's obligations in respect of this Agreement and that its Guarantee and such Liens will continue to be in effect.

(b) Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the properties or assets of Borrower in accordance with clause (a) above, the Successor Company formed by such consolidation or into or with which such Borrower is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, assignment, transfer, lease, conveyance or other disposition, the provisions of this Agreement referring to the "Borrower" shall refer instead to the Successor Company and not to Borrower), and may exercise every right and power of Borrower under this Agreement with the same effect as if such successor corporation had been named as Borrower herein; provided, however, that the predecessor Borrower shall not be relieved from its obligations under this Agreement in the case of any such lease. For the purposes of this **Section 10.2.4**, a time charter, bareboat charter or vessel management or similar agreement involving providing vessels and related services to customers in the ordinary course of business shall not be deemed a lease.

10.2.5 Disposition of Assets. Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, consummate an Asset Sale unless (i) Borrower or such Restricted Subsidiary, as the case may be, receives consideration at the time of such Asset Sale at least equal to the fair market value (the calculation of which shall be set forth in an officer's certificate delivered to the Agent) of the Property subject to such Asset Sale; (ii) (A) at least 75% of the aggregate consideration received by Borrower and its Restricted Subsidiaries from such Asset Sale and all other Asset Sales since the Closing Date on a cumulative basis is in the form of cash or Cash Equivalents and (iii) (A) no Event of Default shall have occurred and be continuing, (B) no Cash Dominion Trigger Period then exists and (C) to the extent that the Tranche A Usage would exceed the Tranche A-1 Receivables Formula Amount, as adjusted for such Asset Sale, the Borrower shall have either (x) repaid Tranche A Loans or (y) provided Agent with a Notice of Rebalancing requesting the release of amounts from the Blocked Accounts into the Tranche A Unrestricted Account (provided that such release shall not result in the amount on deposit in the (1) Tranche B-1 Blocked Account to be less than the Tranche B-1 Restricted Cash Formula Amount or (2) Tranche B-2 Blocked Account to be less than the Tranche B-2 Restricted Cash Formula Amount, in each case at such time after giving effect to such Asset Sale), in the case of either (x) or (y), in the amount of such excess.

10.2.6 Accounting Changes. Make any material change in accounting treatment or reporting practices, except as required by GAAP and in accordance with **Section 1.2**; or change its Fiscal Year.

10.2.7 Burdensome Restrictions. Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any encumbrance or restriction on the ability of any Restricted Subsidiary of Borrower to do any of the following: (a)(i) pay dividends or make any other distributions to Borrower or any of its Restricted Subsidiaries on its Equity Interests or (ii) pay any Debt owed to Borrower or any of its Restricted Subsidiaries (it being understood that the priority of any preferred stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock shall not be deemed a restriction on the ability to pay dividends or make any other distributions on Equity Interests); (b) make loans or advances to Borrower or any of its Restricted Subsidiaries or (c) transfer any of its properties or assets to Borrower or any of its Restricted Subsidiaries, except for such encumbrances or restrictions existing under or by reason of:

- (1) existing Obligations;
- (2) this Agreement and the Guaranty and Security Agreement;
- (3) applicable law;
- (4) any instrument governing (x) Debt or Equity Interests of a Person acquired by Borrower or any of its Restricted Subsidiaries as in effect at the time of such acquisition (except to the extent such Debt was incurred in connection with or in contemplation of such acquisition), which encumbrance or restriction is not applicable to any Person or the assets of any Person, other than the Person, or the assets of the Person, so acquired, provided that, in the case of Debt, such Debt was permitted by the terms of this Agreement to be incurred and (y) Permitted Acquisition Indebtedness to the extent applicable only to the acquired assets or to assets subject to such Debt;
- (5) by reason of customary non-assignment provisions in leases entered into in the ordinary course of business and consistent with past practices;
- (6) by reason of customary provisions restricting the transfer of copyrighted or patented materials consistent with industry practice;
- (7) purchase money obligations for property acquired in the ordinary course of business that impose restrictions of the nature described in clause (c) above on the property so acquired;
- (8) customary provisions in any agreement (x) creating any Hedging Obligations permitted under this Agreement or (y) governing any Junior Lien Debt or the First Lien Term Loan Agreement;
- (9) Permitted Refinancing Indebtedness with respect to any Debt referred to in clauses (1), (2), (4) and (8)(y) above, provided that the restrictions referred to in this **Section 10.2.7** that are contained in the agreements governing such Permitted Refinancing Indebtedness are not materially more restrictive, taken as a whole, than those contained in the agreements governing the Debt being refinanced;
- (10) provisions with respect to the disposition or distribution of assets in joint venture agreements, asset sale agreements, stock sale agreements and other similar agreements; or
- (11) those contracts, agreements or understandings that will govern Permitted Investments;
- (12) the First Lien Term Loan Agreement and related "Loan Documents" (as defined therein) thereunder; or

(13) the Second Lien Term Loan Agreement and related “Loan Documents” (as defined therein) thereunder.

10.2.8 Conduct of Business. Engage in any business, other than a Permitted Business.

10.2.9 Affiliate Transactions. Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its Property to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate (each of the foregoing, an “Affiliate Transaction”), unless (a) such Affiliate Transaction is on terms that are no less favorable to Borrower or its relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by Borrower or such Restricted Subsidiary with an unrelated Person or, if there is no such comparable transaction, on terms that are fair and reasonable to Borrower or such Restricted Subsidiary and (b) Borrower delivers to the Agent (i) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$20,000,000, a resolution of the Board of Directors of Borrower set forth in a certificate of a Senior Officer certifying that such Affiliate Transaction complies with clause (a) above and that such Affiliate Transaction has been approved by a majority of the disinterested members of the Board of Directors and (ii) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$50,000,000, an opinion as to the fairness to Borrower or the relevant Subsidiary of such Affiliate Transaction from a financial point of view issued by an accounting, appraisal or investment banking firm that is, in the judgment of the Board of Directors, qualified to render such opinion and is independent with respect to Borrower, provided that such opinion will not be required with respect to any Affiliate Transaction or series of related Affiliate Transactions involving either (i) shipyard contracts that are awarded following a competitive bidding process and approved by a majority of the disinterested members of the Board of Directors or (ii) an Affiliate in which an unrelated third person owns Voting Stock in excess of that owned by Borrower or any of its Restricted Subsidiaries; provided, however, that the following shall be deemed not to be Affiliate Transactions:

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

(B) transactions between or among the Obligor;

(C) Permitted Investments and Restricted Payments that are permitted by the provisions of **Section 10.2.2** of this Agreement;

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

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

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

(G) registration rights or similar agreements with officers, directors or significant shareholders of Borrower or any of its Restricted Subsidiaries;

(H) issuance of Equity Interests (other than Disqualified Stock) by Borrower;

(I) the payment of reasonable and customary regular fees to directors of Borrower or any of its Restricted Subsidiaries who are not employees of the Borrower or any Affiliate;

(J) transaction with a Person that is an Affiliate of Borrower or any of its Restricted Subsidiaries solely because Borrower or any of its Restricted Subsidiaries owns an Equity Interest in such Person;

(K) time charter, bareboat charter or management agreements related to vessels between Borrower or any of its Restricted Subsidiaries and a Joint Venture or Unrestricted Subsidiary or a Restricted Subsidiary that is not an Obligor, in each case made on terms generally consistent with terms available in an arms-length transaction with an unrelated third party; and

(L) (i) any other transaction with an Affiliate reported in any Form 10-K, Form 10-Q or proxy statement filed by Borrower with the SEC since December 31, 2011 that was approved by the Board of Directors of Borrower and (ii) any other transaction with an Affiliate reported in any Form 10-K, Form 10-Q or proxy statement filed by Borrower with the SEC following the Closing Date that (x) is approved by the Board of Directors and (y) is substantially similar to any transaction described in clause (i) above.

10.2.10 Transfer of Collateral. Notwithstanding anything to the contrary in the foregoing Sections 10.1 and 10.2, no Obligor shall undertake any transaction that, directly or indirectly, results in the transfer or disposition of any Collateral to any Person that is not an Obligor (a "Collateral Transfer"), including, without limitation, pursuant to any Asset Sale, Investment, Permitted Investment, Permitted Lien, incurrence of Permitted Refinancing Indebtedness, Restricted Investment, Restricted Payment, designation of any Unrestricted Subsidiary, or otherwise, until Borrower shall have provided evidence satisfactory to Agent in its sole discretion that either (i) such Collateral Transfer shall not result in (x) Tranche A Usage exceeding the Aggregate Receivables Formula Amount or (y) Tranche A Usage and Tranche B Usage exceeding the Borrowing Base, or (ii) prior to giving effect to such Collateral Transfer, Borrower shall have deposited, or shall have caused to be deposited, such amounts as directed by Agent in (x) the Tranche B-1 Restricted Blocked Account and the Tranche B-2 Blocked Account sufficient to ensure that the Tranche B-1 Restricted Cash Formula Amount.

**10.3 Financial Covenants.** From the Closing Date and thereafter, until the Commitments have terminated and Full Payment has occurred, Borrower shall:

10.3.1 **Consolidated Fixed Charge Coverage Ratio.** Maintain a Consolidated Fixed Charge Coverage Ratio for each 12 month period of at least 1.0 to 1.0 while a Trigger Period is in effect, measured for the most recent period for which Internal Financial Statements were delivered hereunder prior to the Trigger Period and each period ending thereafter until the Trigger Period is no longer in effect.

## **SECTION 11. EVENTS OF DEFAULT; REMEDIES ON DEFAULT**

**11.1 Events of Default.** Each of the following shall be an “Event of Default” if it occurs for any reason whatsoever, whether voluntary or involuntary, by operation of law or otherwise:

(a) Any Obligor fails to pay its Obligations when due (whether at stated maturity, on demand, upon acceleration or otherwise);

(b) any representation or warranty made (or repeated pursuant to **Section 6.2**) by or on behalf of Borrower or any Guarantor in or in connection with any Loan Document or any amendment or modification of any Loan Document or waiver under such Loan Document, or in any report, certificate, financial statement or other document furnished pursuant to any Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material adverse respect when made or deemed made pursuant to **Section 6.2**;

(c) any Obligor breaches or fails to perform any covenant contained in **Section 10.1.3**, **Section 10.1.8** (with respect to the existence of Borrower), **Section 10.1.11** or **Section 10.2**;

(d) any Obligor shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in clauses **11.1(a)** through **Section 11.1(c)**) or any other Loan Document, and such failure shall continue unremedied for a period of thirty (30) days after the earlier to occur of (i) written notice thereof from the Agent to the Borrower (which notice will be given at the request of the Lenders) or (ii) the chief executive officer or the chief financial officer (or a person holding a similar title) of Borrower or any Guarantor otherwise becoming aware of such default;

(e) Borrower or any Guarantor shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable;

(f) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (after the giving of notice, the lapse of time or both) the holder or holders of such Material Indebtedness or any trustee or administrative agent on its or their behalf to cause such Material Indebtedness to become due, or to require the redemption thereof or any offer to redeem to be made in respect thereof, prior to its scheduled maturity or require Borrower or any Guarantor being required to make an offer in respect thereof;



(g) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of Borrower or any Guarantor or its debts, or of a substantial part of its assets, under any federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Borrower or any Guarantor or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(h) Borrower or any Guarantor shall:

(i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect,

(ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in **Section 11.1(g)**,

(iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for Borrower or any Guarantor or for a substantial part of its assets,

(iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding,

(v) make a general assignment for the benefit of creditors or

(vi) take any action for the purpose of effecting any of the foregoing;

(i) one or more judgments for the payment of money in an aggregate amount in excess of \$25,000,000 (to the extent not covered by independent third party insurance provided by insurers of the highest claims paying rating or financial strength as to which the insurer does not dispute coverage and is not subject to an Insolvency Proceeding) shall be rendered against Borrower or any Guarantor or any combination thereof and the same shall remain undischarged (or Borrower and the Guarantor shall not have provided for its discharge) for a period of sixty (60) consecutive days during which execution shall not be effectively stayed and, if stayed pending appeal, for such longer period during such appeal while providing such accruals as may be required by GAAP;

(j) any material provision of the Loan Documents, after delivery thereof, shall for any reason, except to the extent permitted by the terms thereof, cease to be in full force and effect and valid, binding and enforceable in accordance with their terms against Borrower or any Guarantor or shall be repudiated by any of them, or cease to create a valid and perfected Lien of the priority required thereby on any material part of the collateral purported to be covered thereby,

(except to the extent permitted by the terms of this Agreement) and such invalidity, lack of binding effect or priority is not cured within thirty (30) days after the earliest to occur of (x) notice from Agent concerning its belief that a material provision is not valid and binding or asserting the lack of priority of a Lien, or (y) the chief executive officer or chief financial officer of Borrower otherwise becomes aware that any material provision is not valid and binding or that a Lien lacks the intended priority;

(k) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan that has resulted or could reasonably be expected to result in liability of an Obligor to a Pension Plan, Multiemployer Plan or PBGC, or that constitutes grounds for appointment of a trustee for or termination by the PBGC of any Pension Plan or Multiemployer Plan; an Obligor or ERISA Affiliate fails to pay when due any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan; or any event similar to the foregoing occurs or exists with respect to a Foreign Plan, in the case of any of the foregoing that has resulted in, or could reasonably be expected to result in, liability of Borrower and any Guarantor in an aggregate amount that could reasonably be expected to have a Material Adverse Effect;

(l) An Obligor or any of its Senior Officers is criminally indicted or convicted for (i) a felony committed in the conduct of the Obligor's business, or (ii) violating any state or federal law (including the Controlled Substances Act, Money Laundering Control Act of 1986 and Illegal Exportation of War Materials Act) that could lead to forfeiture of any material Property or any Collateral; or

(m) A Change in Control occurs.

**11.2 Remedies upon Default.** If an Event of Default described in **Section 11.1(g)** or **Section 11.1(h)** occurs with respect to any Obligor, then to the extent permitted by Applicable Law, all Obligations (other than Secured Bank Product Obligations) shall become automatically due and payable, and all Commitments shall terminate, without any action by Agent or notice of any kind. In addition, or if any other Event of Default exists, Agent may in its discretion (and shall upon direction of the Lenders) do any one or more of the following from time to time:

(a) declare any Obligations (other than Secured Bank Product Obligations) immediately due and payable, whereupon they shall be due and payable without diligence, presentment, demand, protest or notice of any kind, all of which are hereby waived by Borrower to the fullest extent permitted by law;

(b) terminate, reduce or condition any Commitment or adjust the Borrowing Base;

(c) require Obligors to Cash Collateralize their Secured Bank Product Obligations and other Obligations that are contingent or not yet due and payable, and if Obligors fail promptly to deposit such Cash Collateral, Agent may (and shall upon the direction of Lenders) advance the required Cash Collateral as Loans (whether or not at such time Combined Usage exceeds the Borrowing Base or will exceed the Borrowing Base with the making of such Loans, or the conditions in **Section 6** are satisfied); and

(d) exercise any other rights or remedies afforded under any agreement, by law, at equity or otherwise, including the rights and remedies of a secured party under the UCC. Such rights and remedies include the rights to (i) take possession of any Collateral; (ii) require Obligors to assemble Collateral, at Borrower's expense, and make it available to Agent at a place designated by Agent; (iii) enter any premises where Collateral is located and store Collateral on such premises until sold (and if the premises are owned or leased by an Obligor, Obligors agree not to charge for such storage); (iv) sell, assign, lease, license (on an exclusive or nonexclusive basis) as Agent in its discretion deems advisable or otherwise dispose of any Collateral in its then condition at public or private sale, with such notice as may be required by Applicable Law, in lots or in bulk, at such locations, as Agent in its discretion deems advisable and (v) bring suit or otherwise commence any action or proceeding to enforce any Receivable or contractual right, all as Agent, in its discretion, deems advisable. Each Obligor agrees that 10 days notice of any proposed sale or other disposition of Collateral by Agent shall be reasonable, and that any sale conducted on the internet shall be commercially reasonable. Agent may conduct sales on any Obligor's premises, without charge, and any sale may be adjourned from time to time in accordance with Applicable Law. Agent shall have the right to sell, lease or otherwise dispose of any Collateral for cash, credit or any combination thereof, and Agent may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may credit bid and set off the amount of such price against the Obligations. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of any Obligor, and each Obligor hereby waives (to the extent permitted by Applicable Law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Each Obligor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days notice to such Obligor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. Each Obligor agrees that it would not be commercially unreasonable for Agent to dispose of the Collateral or any portion thereof by using Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets. Each Obligor hereby waives any claims against Agent arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if Agent accepts the first offer received and does not offer such Collateral to more than one offeree. If the proceeds of any sale or other disposition of the Collateral are insufficient to pay all the Obligations, Obligors shall be liable for the deficiency and the fees of any attorneys employed by Agent to collect such deficiency. Each Obligor further agrees that a breach of any of the covenants contained in this **Section 11.2** will cause irreparable injury to Agent, that Agent has no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this **Section 11.2** shall be specifically enforceable against such Obligor, and such Obligor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants, except for a defense that no Default has occurred giving rise to the Obligations becoming due and payable prior to their stated maturities. Nothing in this **Section 11.2** shall in any way alter the rights of Agent hereunder. Agent may sell the Collateral without giving any warranties as to the Collateral. If Agent sells any of the Collateral upon credit, Obligor will be credited only with payments actually made by purchaser and received by Agent and applied to indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Agent may resell the Collateral and Obligor shall be credited with proceeds of the sale.

**11.3 License.** After an Event of Default has occurred and is continuing, Agent is hereby granted an irrevocable, non-exclusive license or other right to use, license or sub-license (without payment of royalty or other compensation to any Person), computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, packaging materials and other Property, in advertising for sale, marketing, selling, collecting, or otherwise exercising any rights or remedies with respect to, any Collateral.

**11.4 Setoff.** At any time during an Event of Default, Agent, Lenders, and any of their Affiliates are authorized, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by Agent, such Lender or such Affiliate to or for the credit or the account of an Obligor against its Obligations, whether or not Agent, such Lender or such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or are owed to a branch or office of Agent, such Lender or such Affiliate different from the branch or office holding such deposit or obligated on such indebtedness. The rights of Agent, each Lender and each such Affiliate under this Section are in addition to other rights and remedies (including other rights of setoff) that such Person may have.

**11.5 Remedies Cumulative; No Waiver.**

11.5.1 Cumulative Rights. All agreements, warranties, guaranties, indemnities and other undertakings of Obligors under the Loan Documents are cumulative and not in derogation of each other. The rights and remedies of Agent and Lenders are cumulative, may be exercised at any time and from time to time, concurrently or in any order, and are not exclusive of any other rights or remedies available by agreement, by law, at equity or otherwise. All such rights and remedies shall continue in full force and effect until Full Payment of all Obligations.

11.5.2 Waivers. No waiver or course of dealing shall be established by (a) the failure or delay of Agent or any Lender to require strict performance by any Obligor under any Loan Document, or to exercise any rights or remedies with respect to Collateral or otherwise; (b) the making of any Loan during a Default, Event of Default or other failure to satisfy any conditions precedent; or (c) acceptance by Agent or any Lender of any payment or performance by an Obligor under any Loan Documents in a manner other than that specified therein. Any failure to satisfy a financial covenant on a measurement date shall not be cured or remedied by satisfaction of such covenant on a subsequent date.

**SECTION 12. AGENT**

**12.1 Appointment, Authority and Duties of Agent.**

12.1.1 Appointment and Authority. Each Secured Party irrevocably appoints and designates CNC as Agent under all Loan Documents. Agent may, and each Secured Party irrevocably authorizes Agent to, enter into all Loan Documents to which Agent is intended to be a party and accept all Security Documents. Any action taken by Agent in accordance with the

provisions of the Loan Documents, and the exercise by Agent of any rights or remedies set forth therein, together with all other powers reasonably incidental thereto, shall be authorized by and binding upon all Secured Parties. Without limiting the generality of the foregoing, Agent shall have the sole and exclusive authority to (a) act as the disbursing and collecting agent for Lenders under the Loans with respect to all payments and collections arising in connection with the Loan Documents; (b) execute and deliver as Agent each Loan Document, including the Intercreditor Agreement and any other intercreditor or subordination agreement, and accept delivery of each Loan Document; (c) act as collateral agent for Secured Parties for purposes of perfecting and administering Liens under the Loan Documents, and for all other purposes stated therein; (d) manage, supervise or otherwise deal with Collateral; and (e) following the occurrence and during the continuance of an Event of Default, take any Enforcement Action or otherwise exercise any rights or remedies with respect to any Collateral or under any Loan Documents, Applicable Law or otherwise. Agent alone shall be authorized to determine eligibility and applicable advance rates under the Borrowing Base, whether to impose or release any reserve, which determinations and judgments, if exercised in good faith, shall exonerate Agent from liability to any Secured Party or other Person for any error in judgment.

12.1.2 Duties. The title of “Agent” is used solely as a matter of market custom and the duties of Agent are administrative in nature only. Agent has no duties except those expressly set forth in the Loan Documents, and in no event does Agent have any agency, fiduciary or implied duty to or relationship with any Secured Party or other Person by reason of any Loan Document or related transaction. The conferral upon Agent of any right shall not imply a duty to exercise such right, unless instructed to do so by Lenders in accordance with this Agreement.

12.1.3 Agent Professionals. Agent may perform its duties through agents and employees. Agent may consult with and employ Agent Professionals, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by an Agent Professional. Agent shall not be responsible for the negligence or misconduct of any agents, employees or Agent Professionals that it selects in the absence of the Agent’s gross negligence or willful misconduct (as finally determined in a non-appealable decision of a court of competent jurisdiction).

12.1.4 Instructions of Lenders. The rights and remedies conferred upon Agent under the Loan Documents may be exercised without the necessity of joining any other party, unless required by Applicable Law. In determining compliance with a condition for any action hereunder, including satisfaction of any condition in **Section 6**, Agent may presume that the condition is satisfactory to a Secured Party unless Agent has received notice to the contrary from such Secured Party before Agent takes the action. Agent may request instructions from Lenders or other Secured Parties with respect to any act (including the failure to act) in connection with any Loan Documents or Collateral, and may seek assurances to its satisfaction from Secured Parties of their indemnification obligations against claims that could be incurred by Agent. Agent may refrain from any act until it has received such instructions or assurances, and shall not incur liability to any Person by reason of so refraining. Instructions of Lenders shall be binding upon all Secured Parties, and no Secured Party shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting pursuant to instructions of Lenders delivered in accordance with this Agreement. In no event shall Agent be required to take any action that it determines in its discretion is contrary to Applicable Law or any Loan Documents or could subject any Agent Indemnitee to liability.

12.1.5 Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Obligor, the Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Agent shall have made any demand on the Obligors) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of Secured Parties and Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Secured Parties and the Agent and their respective agents and counsel and all other amounts due Secured Parties and the Agent under **Sections 3.2, 3.4** and **10.1.1(b)**).

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Secured Party to make such payments to Agent and, in the event that Agent shall consent to the making of such payments directly to Secured Parties, to pay to Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Agent and its agents and counsel, and any other amounts due Agent under **Sections 3.2, 3.4** and **10.1.1(b)**.

## **12.2 Agreements Regarding Collateral; Borrower Materials; Credit Bidding.**

12.2.1 Lien Releases; Care of Collateral. Secured Parties authorize Agent to release any Lien on any Collateral (a) upon Full Payment of the Obligations; (b) that is the subject of a disposition that is permitted hereunder (other than to another Obligor); (c) that does not constitute a material part of the Collateral; or (d) with the consent of Lenders, and to execute in connection with such events such payoff letters and related documentation in form and substance satisfactory to Agent in its sole discretion, as shall in Agent's sole discretion be deemed advisable. Secured Parties authorize Agent to subordinate its Liens to any Lien entitled to priority hereunder. Agent has no obligation to assure that any Collateral exists or is owned by an Obligor, or is cared for, protected or insured, nor to assure that Agent's Liens have been properly created, perfected or enforced, or are entitled to any particular priority, nor to exercise any duty of care with respect to any Collateral.

12.2.2 Possession of Collateral. Agent and Secured Parties appoint each Secured Party as agent (for the benefit of Secured Parties) for the purpose of perfecting Liens in Collateral held or controlled by it, to the extent such Liens are perfected by possession or control. If a Secured Party obtains possession or control of any Collateral, it shall notify Agent thereof and, promptly upon Agent's request, deliver such Collateral to Agent or otherwise deal with it in accordance with Agent's instructions.

12.2.3 Reports. Agent shall promptly provide to Lenders (upon request), when complete, any field examination, audit or appraisal report prepared for Agent with respect to any Obligor or Collateral ("Report"). Reports and other Borrower Materials may be made available to Lenders (upon their request to Agent) by providing access to them on the Platform, but Agent shall not be responsible for system failures or access issues that may occur from time to time. Each Lender agrees (a) that Reports are not intended to be comprehensive audits or examinations, and that Agent or any other Person performing an audit or examination will inspect only limited information and will rely significantly upon Borrower's books, records and representations; (b) that Agent makes no representation or warranty as to the accuracy or completeness of any Borrower Materials and shall not be liable for any information contained in or omitted from any Borrower Materials, including any Report; and (c) to keep all Borrower Materials confidential and strictly for such Lender's internal use, not to distribute any Report or other Borrower Materials (or the contents thereof) to any Person (except to such Lender's Participants, attorneys, accountants and other professionals), and to use all Borrower Materials solely for administration of the Obligations. Each Lender shall indemnify and hold harmless Agent and any other Person preparing a Report from any action such Lender may take as a result of or any conclusion it may draw from any Borrower Materials, as well as from any Claims arising as a direct or indirect result of Agent furnishing same to such Lender, via the Platform or otherwise.

12.2.4 Credit Bidding. Secured Parties hereby irrevocably authorize Agent (absent, with respect to any particular transaction, Agent receiving contrary written bidding instructions from the Lenders before such transaction), to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Section 363, 1123 or 1129 of the Bankruptcy Code, or any similar laws in any other jurisdictions to which an Obligor is subject, (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) Agent (whether by judicial action or otherwise) in accordance with any Applicable Law. In connection with any such credit bid and purchase, the Obligations owed to Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interest or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid Agent shall be authorized (i) to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interest thereof, shall be governed, directly or indirectly, by the vote of Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by Lenders contained in the Agreement Among Lenders), and (iii) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of

another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interest and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

**12.3 Reliance By Agent.**

(a) Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to any Obligor), independent accountants and other experts selected by Agent. Agent shall have a reasonable and practicable amount of time to act upon any instruction, notice or other communication under any Loan Document and shall not be liable for any delay in acting. Agent shall be fully justified in failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence of Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by Secured Parties against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all Secured Parties. Notwithstanding the foregoing, Agent shall not be required to take, or to omit to take, any action that is, in the opinion of Agent or its counsel, contrary to any Loan Document or Applicable Law.

(b) For purposes of determining compliance with the conditions specified in Article 6, each Lender that has signed this Agreement (or an addendum or joinder to this Agreement) shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

**12.4 Action Upon Default.** Agent shall not be deemed to have knowledge of any Default or Event of Default, or of any failure to satisfy any conditions in **Section 6**, unless it has received written notice from Borrower or from Lenders, specifying the occurrence and nature thereof. If a Lender acquires knowledge of a Default, Event of Default or failure of such conditions, it shall promptly notify Agent and the other Lenders thereof in writing. Each Secured Party agrees that, except as otherwise provided in any Loan Documents or with the written consent of Agent and from Lenders, it will not take any Enforcement Action, accelerate Obligations (other than Secured Bank Product Obligations) or assert any rights relating to any Collateral.



**12.5 Ratable Sharing.** If any Lender obtains any payment or reduction of any Obligation, whether through set-off or otherwise, in excess of its ratable share of such Obligation, such Lender shall forthwith purchase from Secured Parties participations in the affected Obligation as are necessary to share the excess payment or reduction on a Pro Rata basis or in accordance with **Section 5.6.1**, as applicable. If any of such payment or reduction is thereafter recovered from the purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest. Notwithstanding the foregoing, if a Defaulting Lender obtains a payment or reduction of any Obligation, it shall immediately turn over the full amount thereof to Agent for application under **Section 4.2.2** and it shall provide a written statement to Agent describing the Obligation affected by such payment or reduction. No Lender shall set off against a Collateral Account without Agent's prior consent.

**12.6 Indemnification.** EACH SECURED PARTY SHALL INDEMNIFY AND HOLD HARMLESS EACH AGENT INDEMNITEE, TO THE EXTENT NOT REIMBURSED BY OBLIGORS, ON A PRO RATA BASIS, AGAINST ALL CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY SUCH INDEMNITEE, PROVIDED THAT ANY CLAIM AGAINST AN AGENT INDEMNITEE RELATES TO OR ARISES FROM ITS ACTING AS OR FOR AGENT (IN THE CAPACITY OF AGENT). In Agent's discretion, it may reserve for any claims made against an Agent Indemnitee, and may satisfy any judgment, order or settlement relating thereto, from proceeds of Collateral prior to making any distribution of Collateral proceeds to Secured Parties. If Agent is sued by any receiver, trustee or other Person for any alleged preference or fraudulent transfer, then any monies paid by Agent in settlement or satisfaction of such proceeding, together with all interest, costs and expenses (including attorneys' fees) incurred in the defense of same, shall be promptly reimbursed to Agent by each Secured Party to the extent of its Pro Rata share, provided that such Secured Party received payments or transfers from Agent or Obligors in connection with such alleged preference or fraudulent transfer. No Lender shall be liable for the payment to any Indemnitee of any portion of such claims to the extent determined in a final, non-appealable judgment by a court of competent jurisdiction to have resulted primarily from such Indemnitee's own gross negligence or willful misconduct; provided, however, that no action taken in furtherance of the directions of Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this **Section 12.6**. Without limitation of the foregoing, each Lender shall reimburse each Indemnitee upon demand for its ratable share of any costs or out-of-pocket expenses (including attorney costs) incurred by any Indemnitee in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein. The obligations of Lenders hereunder shall not diminish the obligations of Obligors to indemnify and reimburse the Indemnitees for such amounts. Agent may in its discretion first seek payment from Lenders hereunder before seeking payment from the Obligors for such amounts or may seek payments first from Obligors. In any event, any amounts received from Obligors as reimbursement for amounts already reimbursed by Lenders shall be paid to Lenders in accordance with the terms hereof. The undertaking in this **Section 12.6** shall survive the termination of this Agreement and the resignation of Agent.

**12.7 Limitation on Responsibilities of Agent.** Agent shall not be liable to any Secured Party for any action taken or omitted to be taken under the Loan Documents, except for losses directly and solely caused by Agent's gross negligence or willful misconduct. Agent assumes no responsibility for any failure or delay in performance or any breach by any Obligor, Lender or other Secured Party of any obligations under the Loan Documents. Agent makes no express or implied representation, warranty or guarantee to Secured Parties with respect to any Obligations,

Collateral, Liens, Loan Documents or Obligor. Without limitation of the foregoing, no Agent Indemnitee shall be responsible to Secured Parties for any recitals, statements, information, representations or warranties contained in any Loan Documents or Borrower Materials; the execution, validity, genuineness, effectiveness or enforceability of any Loan Documents; the genuineness, enforceability, collectability, value, sufficiency, ownership, state or condition, insurance regarding, location or existence of any Collateral, or the validity, creation, extent, perfection, continuation, or priority of any Lien therein; any assignment or participation of the Obligations, or disclosure of any information to any Secured Party or such Secured Party's representatives or Affiliates; the validity, enforceability or collectability of any Obligations; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor or Account Debtor. No Agent Indemnitee shall have any obligation to any Secured Party to ascertain or inquire into the existence of any Default or Event of Default, the observance by any Obligor of any terms of the Loan Documents, or the satisfaction or waiver of any conditions precedent contained in any Loan Documents. In addition and not in limitation of the foregoing, it is understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, Agent may act in any manner it may deem appropriate, in its sole discretion, given Agent's own interest in the Collateral in its capacity as one of the Secured Parties, and that Agent shall have no other duty or liability whatsoever to any Secured Party as to any of the foregoing, including, without limitation, the preparation, form or filing of any Uniform Commercial Code financing statement, amendment or continuation or of any other type of document related to the creation, perfection, continuation or priority of any Lien as to property of Obligors.

#### **12.8 Successor Agent and Co-Agents.**

12.8.1 Resignation; Successor Agent. Agent may resign at any time by giving at least 10 days written notice thereof to Lenders and Borrower. If Agent is a Defaulting Lender under clause (d) of the definition thereof, Lenders may, if permitted by Applicable Law, remove Agent by written notice to Borrower and each other Agent. Lenders may appoint a successor that is (a) a Lender or Affiliate of a Lender; or (b) a financial institution reasonably acceptable to Lenders and (provided no Default or Event of Default exists) Borrower. If no successor is appointed by the effective date of Agent's resignation or removal, then on such date, Agent may appoint a successor acceptable to it in its discretion (which shall be a Lender unless no Lender accepts the role) or, in the absence of such appointment, Lenders shall automatically assume all rights and duties of the retiring Agent. The successor Agent shall thereupon succeed to and become vested with all the powers and duties of the retiring Agent without further act. The retiring or removed Agent shall be discharged from its duties hereunder on the effective date of its resignation or removal, but shall continue to have all rights and protections available to Agent under the Loan Documents with respect to actions, omissions, circumstances or claims relating to or arising while it was acting or transferring responsibilities as Agent or holding any Collateral on behalf of Secured Parties, including the indemnification set forth in **Sections 12.6** and **14.2**, and all rights and protections under this **Section 12**. Any successor to CNC by merger or acquisition of stock or this loan shall continue to be Agent hereunder without further act on the part of any Secured Party or Obligor.

12.8.2 Co-Collateral Agent. If appropriate under Applicable Law, Agent may appoint a Person to serve as a co-collateral agent or separate collateral agent under any Loan Document. Each right, remedy and protection intended to be available to Agent under the Loan Documents shall also be vested in such agent. Secured Parties shall execute and deliver any instrument or agreement that Agent may request to effect such appointment. If any such agent shall die, dissolve, become incapable of acting, resign or be removed, then all the rights and remedies of the agent, to the extent permitted by Applicable Law, shall vest in and be exercised by Agent until appointment of a new agent.

**12.9 Due Diligence and Non-Reliance.** Each Lender acknowledges and agrees that it has, independently and without reliance upon Agent or any other Lenders, and based upon such documents, information and analyses as it has deemed appropriate, made its own credit analysis of each Obligor and its own decision to enter into this Agreement and to fund Loans hereunder. Each Secured Party has made such inquiries as it feels necessary concerning the Loan Documents, Collateral and Obligors. Each Secured Party acknowledges and agrees that the other Secured Parties have made no representations or warranties concerning any Obligor, any Collateral or the legality, validity, sufficiency or enforceability of any Loan Documents or Obligations. Each Secured Party will, independently and without reliance upon any other Secured Party, and based upon such financial statements, documents and information as it deems appropriate at the time, continue to make and rely upon its own credit decisions in making Loans, and in taking or refraining from any action under any Loan Documents. Except for notices, reports and other information expressly required to be furnished to the Lenders by Agent by this Agreement, no Agent Indemnitee shall have any duty or responsibility to provide any Secured Party with any notices, reports or certificates furnished to Agent Indemnitee by any Obligor or any credit or other information concerning the affairs, financial condition, credit worthiness, business or Properties of any Obligor (or any of its Affiliates) which may come into possession of any Agent Indemnitee or its Affiliates.

**12.10 Remittance of Payments and Collections.**

12.10.1 Remittances Generally. Payments by any Secured Party to Agent shall be made by the time and date provided herein, in immediately available funds. If no time for payment is specified or if payment is due on demand and request for payment is made by Agent by 1:00 p.m. on a Business Day, then payment shall be made by the Secured Party by 3:00 p.m. on such day, and if request is made after 1:00 p.m., then payment shall be made by 11:00 a.m. on the next Business Day. Payment by Agent to any Secured Party shall be made by wire transfer, in the type of funds received by Agent. Any such payment shall be subject to Agent's right of offset for any amounts due from such payee under the Loan Documents.

12.10.2 Failure to Pay. If any Secured Party fails to deliver when due any amount payable by it to Agent hereunder, such amount shall bear interest, from the due date until paid in full, at the greater of the Federal Funds Rate or the rate determined by Agent as customary for interbank compensation for two Business Days and thereafter at the Default Rate. In no event shall Borrower be entitled to credit for any interest paid by a Secured Party to Agent, nor shall a Defaulting Lender be entitled to interest on amounts held by Agent pursuant to **Section 4.2**.

12.10.3 **Recovery of Payments.** If Agent pays an amount to a Secured Party in the expectation that a related payment will be received by Agent from an Obligor and such related payment is not received, then Agent may recover such amount from the Secured Party. If Agent determines that an amount received by it must be returned or paid to an Obligor or other Person pursuant to Applicable Law or otherwise, then Agent shall not be required to distribute such amount to any Secured Party. If Agent is required to return any amounts applied by it to Obligations held by a Secured Party, such Secured Party shall pay to Agent, **on demand**, its share of the amounts required to be returned.

**12.11 Individual Capacities.** As a Lender, CNC shall have the same rights and remedies under the Loan Documents as any other Lender, and the terms “Lenders,” or any similar term shall include CNC in its capacity as a Lender. Agent, Lenders and their Affiliates may accept deposits from, lend money to, provide Bank Products to, act as financial or other advisor to, and generally engage in any kind of business with, Obligors and their Affiliates, as if they were not Agent or Lenders hereunder, without any duty to account therefor to any Secured Party. In their individual capacities, Agent, Lenders and their Affiliates may receive information regarding Obligors, their Affiliates and their Account Debtors (including information subject to confidentiality obligations), and shall have no obligation to provide such information to any Secured Party.

**12.12 Titles.** Each Lender, other than CNC, that is designated in connection with this Agreement as an “Arranger,” “Bookrunner” or “Agent” of any kind shall have no right or duty under any Loan Documents other than those applicable to all Lenders, and shall in no event have any fiduciary duty to any Secured Party.

**12.13 Bank Product Providers.** Each Secured Bank Product Provider, by delivery of a notice to Agent of a Bank Product, agrees to be bound by the Loan Documents, including **Sections 5.6, 14.3.3 and 12**. Each Secured Bank Product Provider shall indemnify and hold harmless Agent Indemnitees, to the extent not reimbursed by Obligors, against all claims that may be incurred by or asserted against Agent Indemnitee in connection with such provider’s Secured Bank Product Obligations.

**12.14 [Reserved].**

**12.15 No Third Party Beneficiaries.** This **Section 12** is an agreement solely among Secured Parties and Agent, and shall survive Full Payment of the Obligations. This **Section 12** does not confer any rights or benefits upon Borrower or any other Person. As between Borrower and Agent, any action that Agent may take under any Loan Documents or with respect to any Obligations shall be conclusively presumed to have been authorized and directed by Secured Parties.

**12.16 Intercreditor Agreement.** Each Lender hereby authorizes and directs Agent to enter into the First Lien Intercreditor Agreement, agrees to be bound by the terms thereof and consents to any and all actions taken by Agent in accordance with the terms thereof.

## **SECTION 13. BENEFIT OF AGREEMENT; ASSIGNMENTS**

**13.1 Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of Obligors, Agent, Lenders, Secured Parties, and their respective successors and assigns, except that (a) no Obligor shall have the right to assign its rights or delegate its obligations under any Loan Documents; and (b) any assignment by a Lender must be made in compliance with **Section 13.3**. Agent may treat the Person which made any Loan as the owner thereof for all purposes until such Person makes an assignment in accordance with **Section 13.3**. Any authorization or consent of a Lender shall be conclusive and binding on any subsequent transferee or assignee of such Lender.

## 13.2 Participations.

13.2.1 Permitted Participants; Effect. Subject to **Section 13.3.3**, any Lender may sell to a financial institution (“Participant”) a participating interest in the rights and obligations of such Lender under any Loan Documents. Despite any sale by a Lender of participating interests to a Participant, such Lender’s obligations under the Loan Documents shall remain unchanged, it shall remain solely responsible to the other parties hereto for performance of such obligations, it shall remain the holder of its Loans and Commitments for all purposes, all amounts payable by Borrower shall be determined as if it had not sold such participating interests, and Borrower and Agent shall continue to deal solely and directly with such Lender in connection with the Loan Documents. Each Lender shall be solely responsible for notifying its Participants of any matters under the Loan Documents, and Agent and the other Lenders shall not have any obligation or liability to any such Participant. Each Participant shall be entitled to the benefits of **Section 3.7** and **Section 5.9** (subject to the requirements and limitations therein, including the requirement that such Participant delivers the forms required under **Section 5.10** (it being understood that the such documentation shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **Section 13.3**; provided, however, that such Participant shall not be entitled to receive any greater payment under **Section 3.7** and **Section 5.9**, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation.

13.2.2 Voting Rights. Each Lender shall retain the sole right to approve, without the consent of any Participant, any amendment, waiver or other modification of a Loan Document other than that which forgives principal, interest or fees, reduces the stated interest rate or fees payable with respect to any Loan or Commitment in which such Participant has an interest, postpones the date set forth in clause (a) of the definition of Commitment Termination Date or any date fixed for any regularly scheduled payment of principal, interest or fees on such Loan or Commitment, or releases Borrower, any Guarantor or substantially all Collateral.

13.2.3 Participant Register. Each Lender that sells a participation shall, acting as a non-fiduciary agent of Borrower (solely for tax purposes), maintain a register (“Participant Register”) in which it enters the Participant’s name, address and interest in Commitments and Loans (and stated interest). Entries in the Participant Register shall be conclusive, absent manifest error, and such Lender shall treat each Person recorded in the Participant Register as the owner of the participation for all purposes, notwithstanding any notice or knowledge to the contrary. No Lender shall have an obligation to disclose any information in such Participant Register except to the extent necessary to establish that a Participant’s interest is in registered form under the Code. For avoidance of doubt, Agent (in its capacity as Agent) shall not have any responsibility for maintaining a Participant Register.

13.2.4 **Benefit of Setoff.** Each Participant shall have a right of set-off in respect of its participating interest to the same extent as if such interest were owing directly to a Lender, and each Lender shall also retain the right of set-off with respect to any participating interests sold by it. By exercising any right of set-off, a Participant agrees to share with Lenders all amounts received through its set-off, in accordance with **Section 12.5** as if such Participant were a Lender.

13.2.5 **Assignees.** Each assignee under **Section 13.3.1** shall be entitled to the benefits of **Section 3.7** and **Section 5.9** (subject to the requirements and limitations of such Sections).

### **13.3 Assignments.**

13.3.1 **Permitted Assignments.** A Lender may assign to an Eligible Assignee any of its rights and obligations under the Loan Documents, as long as (a) each assignment is of a constant, and not a varying, percentage of the transferor Lender's rights and obligations under the Loan Documents (including, for the avoidance of doubt, such Lender's Commitment) and, in the case of a partial assignment, is in a minimum principal amount of \$5,000,000 (unless otherwise agreed by Agent in its discretion) and integral multiples of \$1,000,000 in excess of that amount; (b) except in the case of an assignment in whole of a Lender's rights and obligations, the aggregate amount of the Commitments retained by the transferor Lender is at least \$5,000,000 (unless otherwise agreed by Agent in its discretion); and (c) the parties to each such assignment shall execute and deliver an Assignment to Agent for acceptance and recording. Nothing herein shall limit the right of a Lender to pledge or assign any rights under the Loan Documents to secure obligations of such Lender, including a pledge or assignment to a Federal Reserve Bank; provided, however, that no such pledge or assignment shall release the Lender from its obligations hereunder nor substitute the pledge or assignee for such Lender as a party hereto.

13.3.2 **Effect; Effective Date.** Upon delivery to Agent of the applicable Assignment in accordance with **Section 13.3.1** and a processing fee of \$3,500 (unless otherwise agreed by Agent in its discretion), the assignment shall become effective as specified in the notice, if it complies with this Section 13.3. From such effective date, the Eligible Assignee shall for all purposes be a Lender under the Loan Documents, and shall have all rights and obligations of a Lender thereunder. Upon consummation of an assignment, the transferor Lender, Agent and Borrower shall make appropriate arrangements for issuance of replacement and/or new notes, if applicable. The transferee Lender shall comply with Section 5.10 and deliver, upon request, an administrative questionnaire satisfactory to Agent.

13.3.3 **Certain Assignees.** No assignment or participation may be made to an Obligor, Affiliate of an Obligor, Defaulting Lender or natural person. Agent shall have no obligation to determine whether any assignment is permitted under the Loan Documents or whether any assignment has been properly effectuated pursuant to this Agreement. Any assignment by a Defaulting Lender must be accompanied by satisfaction of its outstanding obligations under the Loan Documents in a manner satisfactory to Agent, including payment by the Defaulting Lender or Eligible Assignee of an amount sufficient upon distribution (through direct payment, purchases of participations or other methods acceptable to Agent in its discretion) to satisfy all funding and payment liabilities of the Defaulting Lender. If any assignment by a Defaulting Lender (by operation of law or otherwise) does not comply with the foregoing, the assignee shall be deemed a Defaulting Lender for all purposes until compliance occurs.

13.3.4 **Register.** Agent, acting as a non-fiduciary agent of Borrower (solely for tax purposes), shall maintain (a) a copy (or electronic equivalent) of each Assignment and Acceptance delivered to it, and (b) a register for recordation of the names, addresses and Commitments of, and the Loans and interest owing to, each Lender. Entries in the register shall be conclusive, absent manifest error, and Borrower, Agent and Lenders shall treat each Person recorded in such register as a Lender for all purposes under the Loan Documents, notwithstanding any notice or knowledge to the contrary; provided that failure to make any such recordation, or any error in such recordation, shall not affect any Lender's commitments or Borrower's or other Obligor's Obligations in respect of any Loan. The register shall be available for inspection by Borrower, Agent or any Lender, from time to time upon reasonable notice. The Obligors hereby agree that Agent and the other Agent Indemnitees constitute Indemnitees pursuant to Section 14.2 in connection with this register and all of their respective actions and activities and failures to act in connection therewith.

13.3.5 **Assignees.** Each assignee under **Section 13.3.1**, shall be entitled to the benefits of **Section 3.7** and **Section 5.9** (subject to the requirements and limitations of such Sections).

**13.4 Replacement of Certain Lenders.** If a Lender (a) (i) within the last 120 days failed to give its consent to any amendment, waiver or action for which consent of all Lenders was required and the applicable majority of Lenders consented or (ii) withheld any such consent in bad faith, (b) is a Defaulting Lender, or (c) within the last 120 days gave a notice under **Section 3.5** or requested payment or compensation under **Section 3.7** or **5.9** (and has not designated a different Lending Office pursuant to **Section 3.8**), then:

(i) Agent or Borrower Agent may, upon 10 days' notice to such Lender, require it to assign its rights and obligations under the Loan Documents to Eligible Assignee(s), pursuant to appropriate Assignment(s), within 20 days after the notice. Agent is irrevocably appointed as attorney-in-fact to execute any such Assignment if the Lender fails to execute it. Such Lender shall be entitled to receive, in cash, concurrently with such assignment, all amounts owed to it under the Loan Documents through the date of assignment; or

(ii) in the case of any Lender described in clause (a)(ii), Borrower may elect to terminate such Lender's Commitment and reduce the Commitments in accordance with **Section 2.2**; provided that Borrower shall not be required to pay any Prepayment Fee in connection with a reduction pursuant to this **Section 13.4**.

## **SECTION 14. MISCELLANEOUS**

### **14.1 Amendments; Limitation; Payment for Consents.**

14.1.1 **Amendments.** Subject to the limitations set forth in **Section 14.1.2**, no modification of any Loan Document, including any extension or amendment of a Loan Document or any waiver of a Default or Event of Default, shall be effective without the prior written agreement of Agent (with the consent of Required Lenders) and each Obligor party to such Loan Document; provided, however, that:

(a) without the prior written consent of Agent, no modification shall alter any provision in a Loan Document that relates to any rights, duties or discretion of Agent;

(b) without the prior written consent of each affected Lender, including a Defaulting Lender, no modification shall (i) increase or extend the Commitment of such Lender (it being understood that no modification to any condition precedent, representation, warranty, covenant, Default, Event of Default, mandatory prepayment or mandatory reduction of Commitments shall constitute an increase or extension of the Commitment of such Lender); (ii) reduce the amount of, or waive or delay payment of, any principal, interest, fees, indemnity or expense reimbursement payable to such Lender (except as provided in **Section 4.2** or to waive any Default or Event of Default or the obligation of Borrower to pay interest at the Default Rate, but including any amendment to the definition of Default Rate); (iii) extend the Tranche A Maturity Date or the Tranche B Maturity Date applicable to such Lender's Obligations; or (iv) modify or waive any condition set forth in **Section 6.2**;

(c) without the prior written consent of all Lenders (except any Defaulting Lender), no modification shall (i) alter **Section 5.6** or **Section 14.1** of this Agreement or **Section 3.1** of the Guaranty and Security Agreement (except to add Collateral); (ii) amend the definition of Borrowing Base, Cash Dominion Trigger Period, Tranche A-1 Accounts Formula Amount, Tranche A-2 Accounts Formula Amount, Tranche B-1 Restricted Cash Formula Amount, Tranche B-2 Restricted Cash Formula Amount or Trigger Period (or any defined term used in such definitions) if the effect of such amendment is to directly or indirectly increase borrowing availability (in the aggregate or in regards to any particular Lender(s)); (iii) release all or substantially all Collateral or all or substantially all of the value of the guarantees under the Guaranty and Security Agreement (in each case, except in connection with any transaction expressly permitted hereby); (iv) except in connection with a merger, disposition or similar transaction expressly permitted hereby, release any Obligor from liability for any Obligations or permit the assignment or transfer by any Obligor of any of its rights or obligations under any Loan Document, (v) amend the definition of Required Lenders or Pro Rata or (vi) amend **Section 3.6** of this Agreement;

(d) without the prior written consent of all Lenders (except any Defaulting Lenders) no modification shall consensually subordinate the Liens of Agent on the Collateral or consensually subordinate the Obligations to other Debt (except in accordance with this Agreement as in effect on the date hereof or in accordance with financing to one or more Obligors pursuant to Section 364 of the Bankruptcy Code or any similar Insolvency Proceeding or in accordance with the Intercreditor Agreement as in effect on the date hereof);

(e) without the prior written consent of all Lenders, no modification shall alter the first sentence of Section 13.3.1 hereof; and

(f) without the prior written consent of a Secured Bank Product Provider, no modification shall affect its relative payment priority under Section 5.6.1.

14.1.2 Limitations. The agreement of Obligors shall not be required for any modification of a Loan Document that deals solely with the rights and duties of Lenders and/or Agent as among themselves (including, without limitation, the Agreement Among Lenders). Only the consent of the parties to any agreement relating to fees or a Bank Product shall be required for modification of such agreement, and no Bank Product provider (in such capacity) shall have any right to consent to modification of any Loan Document other than its Bank Product agreement.



Any waiver or consent granted by Agent or Lenders hereunder shall be effective only if in writing and only for the matter specified. Without limiting the foregoing, the Agreement Among Lenders, the Agent Fee Letter and any other fee letter shall, in each case, only be modified in accordance with their respective terms.

**14.1.3 Payment for Consents.** No Obligor will, directly or indirectly, pay any remuneration or other thing of value, whether by way of additional interest, fee or otherwise, to any Lender (in its capacity as a Lender hereunder) as consideration for agreement by such Lender with any modification of any Loan Documents, unless such remuneration or value is concurrently paid, on the same terms, on a Pro Rata basis to all Lenders providing their consent.

**14.2 Indemnity.** EACH OBLIGOR SHALL INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES AGAINST ANY CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE, INCLUDING CLAIMS ASSERTED BY ANY OBLIGOR OR OTHER PERSON OR ARISING FROM THE NEGLIGENCE OF AN INDEMNITEE. In no event shall any party to a Loan Document have any obligation thereunder to indemnify or hold harmless an Indemnitee with respect to a claim that is determined in a final, non-appealable judgment by a court of competent jurisdiction to result from the gross negligence or willful misconduct of such Indemnitee. Without limiting the generality of any provision of this **Section 14.2**, to the fullest extent permitted by law, each Obligor hereby waives all rights for contribution or any other rights of recovery with respect to liabilities, losses, damages, costs and expenses arising under or relating to Environmental Laws or any other Applicable Law that it might have by statute or otherwise against any Indemnitee, except to the extent that such items are determined by a final and non-appealable decision of a court of competent jurisdiction to have resulted primarily from the gross negligence or willful misconduct of such Indemnitee. No Obligor shall, without the prior written consent of each applicable Indemnitee, effect any settlement of any pending or threatened proceedings in respect of which indemnity could have been sought hereunder by such Indemnitee unless such settlement (a) includes an unconditional release of such Indemnitee in form and substance satisfactory to such Indemnitee from all liability or claims that are the subject matter of such proceedings and (b) does not include any statement as to or any admission of fault, culpability, wrong doing or a failure to act by or on behalf of any Indemnitee.

**14.3 Notices and Communications.**

**14.3.1 Notice Address.** Subject to **Section 14.3.2**, all notices and other communications by or to a party hereto shall be in writing and shall be given to any Obligor, at Borrower Agent's address shown on the signature pages hereof, and to any other Person at its address shown on the signature pages hereof (or, in the case of a Person who becomes a Lender after the Closing Date, at the address shown on its Assignment), or at such other address as a party may hereafter specify by notice in accordance with this **Section 14.3**. Each communication shall be effective only (a) if given by facsimile transmission, when transmitted to the applicable facsimile number, if confirmation of receipt is received; (b) if given by mail, three Business Days after deposit in the U.S. mail, with first-class postage pre-paid, addressed to the applicable address; or (c) if given by personal delivery, when duly delivered to the notice address with receipt acknowledged. Notwithstanding the foregoing, no notice to Agent pursuant to **Section 2.1.4, 2.2.4, 2.3, 4.1.1** or **5.3.3** shall be effective until actually received by the individual to whose attention at Agent such notice is required to be sent. Any written communication that is not sent in conformity with the foregoing provisions shall nevertheless be effective on the date actually received by the noticed party. Any notice received by Borrower Agent shall be deemed received by all Obligors.

14.3.2 Communications. Electronic and telephonic communications (including e-mail, messaging, voice mail and websites) may be used only in a manner acceptable to Agent. Secured Parties make no assurance as to the privacy or security of electronic or telephonic communications. Except where expressly provided in this Agreement or any other Loan Document, e-mail and voice mail shall not be effective notices under the Loan Documents unless the sender shall have received an acknowledgement of such e-mail or voice mail by return e-mail, telephone call or voice mail.

14.3.3 Platform. Borrower Materials shall be delivered pursuant to procedures approved by Agent, including electronic delivery (if possible) upon request by Agent to an electronic system maintained by Agent (“Platform”). Borrower shall notify Agent of each posting of Borrower Materials on the Platform and the materials shall be deemed received by Agent only upon its receipt of such notice. Borrower Materials and other information relating to this credit facility may be made available to Secured Parties on the Platform. The Platform is provided “as is” and “as available.” Agent does not warrant the accuracy or completeness of any information on the Platform nor the adequacy or functioning of the Platform, and expressly disclaims liability for any errors or omissions in the Borrower Materials or any issues involving the Platform. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY AGENT WITH RESPECT TO BORROWER MATERIALS OR THE PLATFORM. No Agent Indemnitee shall have any liability to Borrower, Secured Parties or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) relating to use by any Person of the Platform, including any unintended recipient, nor for delivery of Borrower Materials and other information via the Platform, internet, e-mail, or any other electronic platform or messaging system.

14.3.4 Public Information. Obligors and Secured Parties acknowledge that “public” information may not be segregated from material non-public information on the Platform. Secured Parties acknowledge that Borrower Materials may include Obligors’ material non-public information, and should not be made available to personnel who do not wish to receive such information or may be engaged in investment or other market-related activities with respect to an Obligor’s securities.

14.3.5 Non-Conforming Communications. Agent and Lenders may rely upon any communications purportedly given by or on behalf of any Obligor even if they were not made in a manner specified herein, were incomplete or were not confirmed, or if the terms thereof, as understood by the recipient, varied from a later confirmation. Each Obligor shall indemnify and hold harmless each Indemnitee from any liabilities, losses, costs and expenses arising from any electronic or telephonic communication purportedly given by or on behalf of an Obligor.

**14.4 Performance of Obligors' Obligations.** Agent may, in its discretion at any time and from time to time, at Borrower's expense, pay any amount or do any act required of an Obligor under any Loan Documents or otherwise lawfully requested by Agent to (a) enforce any Loan Documents or collect any Obligations; (b) protect, insure, maintain or realize upon any Collateral; or (c) defend or maintain the validity or priority of Agent's Liens in any Collateral, including any payment of a judgment, insurance premium, warehouse charge, finishing or processing charge, or landlord claim, or any discharge of a Lien. All payments, costs and expenses (including Extraordinary Expenses) of Agent under this Section shall be reimbursed to Agent by Borrower, **on demand**, with interest from the date incurred until paid in full, at the Default Rate. Any payment made or action taken by Agent under this Section shall be without prejudice to any right to assert an Event of Default or to exercise any other rights or remedies under the Loan Documents.

**14.5 Credit Inquiries.** Agent and Lenders may (but shall have no obligation) to respond to usual and customary credit inquiries from third parties concerning any Obligor or Subsidiary.

**14.6 Severability.** Wherever possible, each provision of the Loan Documents shall be interpreted in such manner as to be valid under Applicable Law. If any provision is found to be invalid under Applicable Law, it shall be ineffective only to the extent of such invalidity and the remaining provisions of the Loan Documents shall remain in full force and effect.

**14.7 Cumulative Effect; Conflict of Terms.** The provisions of the Loan Documents are cumulative. The parties acknowledge that the Loan Documents may use several limitations or measurements to regulate similar matters, and they agree that these are cumulative and that each must be performed as provided. Except as otherwise provided in another Loan Document (by specific reference to the applicable provision of this Agreement), if any provision contained herein is in direct conflict with any provision in another Loan Document, the provision herein shall govern and control.

**14.8 Counterparts; Execution.** Any Loan Document may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement shall become effective when Agent has received counterparts bearing the signatures of all parties hereto. Agent may (but shall have no obligation to) accept any signature, contract formation or record-keeping through electronic means, which shall have the same legal validity and enforceability as manual or paper-based methods, to the fullest extent permitted by Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any similar state law based on the Uniform Electronic Transactions Act. Upon request by Agent, any electronic signature or delivery shall be promptly followed by a manually executed or paper document.

**14.9 Entire Agreement.** Time is of the essence with respect to all Loan Documents and Obligations. The Loan Documents constitute the entire agreement, and supersede all prior understandings and agreements, among the parties relating to the subject matter thereof.

**14.10 Relationship with Lenders.** The obligations of each Lender hereunder are several, and no Lender shall be responsible for the obligations or Commitments of any other Lender. Amounts payable hereunder to each Lender shall be a separate and independent debt. It shall not be necessary for Agent or any other Lender to be joined as an additional party in any proceeding for such purposes. Nothing in this Agreement and no action of Agent, Lenders or any other Secured Party pursuant to the Loan Documents or otherwise shall be deemed to constitute Agent and any Secured Party to be a partnership, joint venture or similar arrangement, nor to constitute control of any Obligor.

**14.11 No Advisory or Fiduciary Responsibility.** In connection with all aspects of each transaction contemplated by any Loan Document, Obligors acknowledge and agree that (a)(i) this credit facility and any arranging or other services by Agent, any Lender, any of their Affiliates or any arranger are arm's-length commercial transactions between Obligors and their Affiliates, on one hand, and Agent, any Lender, any of their Affiliates or any arranger, on the other hand; (ii) Obligors have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate; and (iii) Obligors are capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated by the Loan Documents; (b) each of Agent, Lenders, their Affiliates and any arranger is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for Obligors, their Affiliates or any other Person, and has no obligation with respect to the transactions contemplated by the Loan Documents except as expressly set forth therein; and (c) Agent, Lenders, their Affiliates and any arranger may be engaged in a broad range of transactions that involve interests that differ from those of Obligors and their Affiliates, and have no obligation to disclose any of such interests to Obligors or their Affiliates. To the fullest extent permitted by Applicable Law, each Obligor hereby waives and releases any claims that it may have against Agent, Lenders, their Affiliates and any arranger with respect to any breach of agency or fiduciary duty in connection with any transaction contemplated by a Loan Document.

**14.12 Confidentiality.** Each of Agent and Lenders shall maintain the confidentiality of all Information (as defined below), except that Information may be disclosed (a) to its Affiliates and Eligible Assignees, and to its and their partners, directors, officers, employees, agents, advisors and representatives (provided they are informed of the confidential nature of the Information and instructed to keep it confidential); (b) to the extent requested by any governmental, regulatory or self-regulatory authority purporting to have jurisdiction over it or its Affiliates and Eligible Assignees; (c) to the extent required by Applicable Law or by any subpoena or other legal process; (d) to any other party hereto; (e) in connection with the exercise of remedies hereunder or under any other Loan Document or any action or proceeding relating to any Loan Documents or Obligations; (f) subject to an agreement containing provisions substantially the same as this Section, to any Transferee or any actual or prospective party (or its advisors) to any Bank Product or to any swap, derivative or other transaction under which payments are to be made by reference to an Obligor or Obligor's obligations; (g) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) is available to Agent, any Lender or any of their Affiliates on a nonconfidential basis from a source other than Obligors; (h) on a confidential basis to a provider of a Platform; or (i) with the consent of Borrower Agent. Notwithstanding the foregoing, Agent and Lenders may publish or disseminate general information concerning this credit facility for league table, tombstone and advertising purposes, and may use Borrower's logos, trademarks or product photographs in advertising materials. As used herein, "**Information**" means information received from an Obligor or Subsidiary relating to it or its business that is identified as confidential when delivered. A Person required to maintain the confidentiality of Information pursuant to this Section shall be deemed to have complied if it exercises a degree of care similar to that accorded its own confidential information. Each of Agent and Lenders acknowledges that (i) Information may include material non-public information; (ii) it has developed compliance procedures regarding the use of such information; and (iii) it will handle the material non-public information in accordance with Applicable Law.

**14.13 Certifications Regarding Indentures, First Lien Term Loan Agreement and Second Lien Term Loan Agreement.** Obligors certify to Agent and Lenders that neither the execution or performance of the Loan Documents nor (i) the incurrence of any Obligations by Obligors or (ii) the grant by the Obligors of the Agent's Liens in the Collateral pursuant to the Guaranty and Security Agreement violates:

- (a) The 2019 Convertible Notes Indenture;
- (b) the 2020 Notes Indenture, including Sections 4.09 or 4.12 thereof;
- (c) the 2021 Notes Indenture, including Sections 4.09 or 4.12 thereof;
- (d) the First Lien Term Loan Agreement, including Section 9.2(b) thereof; or
- (e) the Second Lien Term Loan Agreement, including Section 9.2(b) thereof.

Obligors further certify that (1) the Commitments and Obligations constitute, a (i) a "Credit Facility" under, and as defined in, respectively, the 2020 Notes Indenture and the 2021 Notes Indenture, in each case that does not exceed the respective limits set forth therein, and (ii) a "Revolver Facility" under, and as defined in, respectively, the First Lien Term Loan Agreement and the Second Lien Term Loan Agreement, in each case that does not exceed the respective limits set forth in Section 9.02(b)(x) thereof, and (2) the Liens created under the Guaranty and Security Agreement constitute "Permitted Liens" under, and as defined in, each of the 2020 Notes Indenture, the 2021 Notes Indenture, the First Lien Term Loan Agreement and the Second Lien Term Loan Agreement.

Agent may condition credit accommodations under the Loan Documents from time to time upon Agent's receipt of evidence that the Commitments and Obligations continue to constitute a "Credit Facility" and the Agent's Liens continue to constitute "Permitted Liens" at such time.

**14.14 GOVERNING LAW.** UNLESS EXPRESSLY PROVIDED IN ANY LOAN DOCUMENT, THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND ALL CLAIMS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES EXCEPT FEDERAL LAWS RELATING TO NATIONAL BANKS.

**14.15 Consent To Forum.**

14.15.1 Forum. EACH OBLIGOR HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE COURT SITTING IN NEW YORK COUNTY, NEW YORK, OR THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, IN ANY DISPUTE, ACTION, LITIGATION OR OTHER PROCEEDING RELATING IN ANY WAY TO ANY LOAN DOCUMENTS, AND AGREES THAT ANY DISPUTE, ACTION, LITIGATION OR OTHER PROCEEDING SHALL BE BROUGHT BY IT SOLELY IN ANY SUCH COURT. EACH

**OBLIGOR IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL CLAIMS, OBJECTIONS AND DEFENSES THAT IT MAY HAVE REGARDING ANY SUCH COURT'S PERSONAL OR SUBJECT MATTER JURISDICTION, VENUE OR INCONVENIENT FORUM. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 14.3.1.** A final judgment in any proceeding of any such court shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or any other manner provided by Applicable Law.

14.15.2 Other Jurisdictions. Nothing herein shall limit the right of Agent or any Lender to bring proceedings against any Obligor in any other court, nor limit the right of any party to serve process in any other manner permitted by Applicable Law. Nothing in this Agreement shall be deemed to preclude enforcement by Agent of any judgment or order obtained in any forum or jurisdiction.

14.15.3 IN THE EVENT THAT ANY ACTION OR PROCEEDING IS COMMENCED OR MAINTAINED IN ANY COURT IN THE STATE OF CALIFORNIA WITH RESPECT TO ANY CONTROVERSY, DISPUTE OR CLAIM (EACH, A "CONTROVERSY") BETWEEN ANY OF THE PARTIES TO THIS AGREEMENT IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, AND THE WAIVER OF JURY TRIAL SET FORTH IN SECTION 14.16 IS NOT ENFORCEABLE, AND EACH PARTY TO SUCH ACTION DOES NOT SUBSEQUENTLY WAIVE, IN AN EFFECTIVE MANNER UNDER CALIFORNIA LAW, ITS RIGHT TO A TRIAL BY JURY, THE PARTIES HERETO HEREBY ELECT TO PROCEED AS FOLLOWS:

(i) WITH THE EXCEPTION OF THE ITEMS SPECIFIED IN CLAUSE (ii) BELOW, ALL CONTROVERSIES WILL BE RESOLVED BY A REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF SECTIONS 638, ET SEQ. OF THE CALIFORNIA CODE OF CIVIL PROCEDURE ("CCP"), OR THEIR SUCCESSOR SECTIONS, WHICH SHALL CONSTITUTE THE EXCLUSIVE REMEDY FOR THE RESOLUTION OF ANY CONTROVERSY, INCLUDING WHETHER THE CONTROVERSY IS SUBJECT TO THE REFERENCE PROCEEDING. EXCEPT AS OTHERWISE PROVIDED ABOVE, VENUE FOR THE REFERENCE PROCEEDING WILL BE IN ANY COURT IN WHICH VENUE IS APPROPRIATE UNDER APPLICABLE LAW (THE "COURT").

(ii) THE MATTERS THAT SHALL NOT BE SUBJECT TO A REFERENCE ARE THE FOLLOWING: (A) NON-JUDICIAL FORECLOSURE OF ANY SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY; (B) EXERCISE OF SELF HELP REMEDIES (INCLUDING SET-OFF); (C) APPOINTMENT OF A RECEIVER; AND (D) TEMPORARY, PROVISIONAL OR ANCILLARY REMEDIES (INCLUDING WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS). THIS AGREEMENT DOES NOT LIMIT THE RIGHT OF

ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (A) AND (B) OR TO SEEK OR OPPOSE FROM A COURT OF COMPETENT JURISDICTION ANY OF THE ITEMS DESCRIBED IN CLAUSES (C) AND (D). THE EXERCISE OF, OR OPPOSITION TO, ANY OF THOSE ITEMS DOES NOT WAIVE THE RIGHT OF ANY PARTY TO A REFERENCE PURSUANT TO THIS AGREEMENT.

(iii) THE REFEREE SHALL BE A RETIRED JUDGE OR JUSTICE SELECTED BY MUTUAL WRITTEN AGREEMENT OF THE PARTIES. IF THE PARTIES DO NOT AGREE WITHIN TEN (10) DAYS OF A WRITTEN REQUEST TO DO SO BY ANY PARTY, THEN, UPON REQUEST OF ANY PARTY, THE REFEREE SHALL BE SELECTED BY THE PRESIDING JUDGE OF THE COURT (OR HIS OR HER REPRESENTATIVE). A REQUEST FOR APPOINTMENT OF A REFEREE MAY BE HEARD ON AN EX PARTE OR EXPEDITED BASIS, AND THE PARTIES AGREE THAT IRREPARABLE HARM WOULD RESULT IF EX PARTE RELIEF IS NOT GRANTED.

(iv) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE REFEREE SHALL DETERMINE THE MANNER IN WHICH THE REFERENCE PROCEEDING IS CONDUCTED INCLUDING THE TIME AND PLACE OF HEARINGS, THE ORDER OF PRESENTATION OF EVIDENCE, AND ALL OTHER QUESTIONS THAT ARISE WITH RESPECT TO THE COURSE OF THE REFERENCE PROCEEDING. ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT THAT WHEN ANY PARTY SO REQUESTS, A COURT REPORTER WILL BE USED AT ANY HEARING CONDUCTED BEFORE THE REFEREE, AND THE REFEREE WILL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH A REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR THE COURT REPORTER. SUBJECT TO THE REFEREE'S POWER TO AWARD COSTS TO THE PREVAILING PARTY, BORROWER WILL PAY THE COST OF THE REFEREE AND ALL COURT REPORTERS.

THE REFEREE SHALL BE REQUIRED TO DETERMINE ALL ISSUES IN ACCORDANCE WITH EXISTING APPLICABLE CASE LAW AND STATUTORY LAW. THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE COURT WILL BE APPLICABLE TO THE REFERENCE PROCEEDING. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF, ENTER EQUITABLE ORDERS THAT WILL BE BINDING ON THE PARTIES AND RULE ON ANY MOTION THAT WOULD BE AUTHORIZED IN A COURT PROCEEDING. THE REFEREE SHALL ISSUE A DECISION AT THE CLOSE OF THE REFERENCE PROCEEDING WHICH DISPOSES OF ALL CLAIMS OF THE PARTIES THAT ARE THE SUBJECT OF THE REFERENCE. PURSUANT TO CCP SECTION 644, SUCH DECISION SHALL BE ENTERED BY THE COURT AS A JUDGMENT OR AN ORDER IN THE SAME MANNER AS IF THE ACTION HAD BEEN TRIED BY THE COURT AND ANY SUCH DECISION WILL BE FINAL, BINDING AND CONCLUSIVE. THE PARTIES RESERVE THE RIGHT TO APPEAL FROM THE FINAL JUDGMENT OR ORDER OR FROM ANY APPEALABLE DECISION OR ORDER ENTERED BY THE REFEREE. THE PARTIES RESERVE THE RIGHT TO FINDINGS OF FACT, CONCLUSIONS OF LAWS, A WRITTEN STATEMENT OF DECISION, AND THE RIGHT TO MOVE FOR A NEW TRIAL OR A DIFFERENT JUDGMENT, WHICH NEW TRIAL, IF GRANTED, IS ALSO TO BE A REFERENCE PROCEEDING UNDER THIS PROVISION.

**14.16 Waivers by Obligors.** To the fullest extent permitted by Applicable Law, each Obligor waives (a) the right to trial by jury (which Agent and each Lender hereby also waive) in any proceeding or dispute of any kind relating in any way to any Loan Documents, Obligations or Collateral; (b) presentment, demand, protest, notice of presentment, notice of intent to accelerate, notice of acceleration, default, non-payment, maturity, release, compromise, settlement, extension or renewal of any commercial paper, accounts, documents, instruments, chattel paper and guaranties at any time held by Agent on which an Obligor may in any way be liable, and hereby ratifies anything Agent may do in this regard; (c) notice prior to taking possession or control of any Collateral; (d) any bond or security that might be required by a court prior to allowing Agent to exercise any rights or remedies; (e) the benefit of all valuation, appraisal and exemption laws; (f) any claim against Agent or any Lender, on any theory of liability, for special, indirect, consequential, exemplary or punitive damages (as opposed to direct or actual damages) in any way relating to any Enforcement Action, Obligations, Loan Documents or transactions relating thereto; and (g) notice of acceptance hereof. Each Obligor acknowledges that the foregoing waivers are a material inducement to Agent and Lenders entering into this Agreement and that they are relying upon the foregoing in their dealings with Obligors. Each Obligor has reviewed the foregoing waivers with its legal counsel and has knowingly and voluntarily waived its jury trial and other rights following consultation with legal counsel. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

**14.17 Patriot Act Notice.** Agent and Lenders hereby notify Obligors that pursuant to the Patriot Act, Agent and Lenders are required to obtain, verify and record information that identifies each Obligor, including its legal name, address, tax ID number and other information that will allow Agent and Lenders to identify it in accordance with the Patriot Act. Agent and Lenders will also require information regarding any personal guarantor and may require information regarding Obligors' management and owners, such as legal name, address, social security number and date of birth. Obligors shall, promptly upon request, provide all documentation and other information as Agent or any Lender may request from time to time in order to comply with any obligations under any "know your customer," anti-money laundering or other requirements of Applicable Law.

**14.18 NO ORAL AGREEMENT. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS BETWEEN THE PARTIES. THERE ARE NO UNWRITTEN AGREEMENTS BETWEEN THE PARTIES.**

**14.19 Acknowledgment and Consent to Bail-In of EEA Financial Institutions.** Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:



(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder that may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority;.

***[Remainder of page intentionally left blank; signatures begin on following page]***

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date set forth above.

**BORROWER:**

HORNBECK OFFSHORE SERVICES, INC.

/s/ James O. Harp, Jr.

By: James O. Harp, Jr.

Title: Executive Vice President and  
Chief Financial Officer

Address:

103 Northpark Boulevard, Suite 300

Covington, LA 70433

Attn: James O. Harp Jr.

Telecopy: [james.harp@hornbeckoffshore.com](mailto:james.harp@hornbeckoffshore.com)

[Signature Page to Senior Credit Agreement]

**GUARANTORS:**

HORNBECK OFFSHORE SERVICES, LLC

/s/ James O. Harp, Jr.

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

Address:  
103 Northpark Boulevard, Suite 300  
Covington, LA 70433  
Attn: James O. Harp Jr.  
Telecopy: [james.harp@hornbeckoffshore.com](mailto:james.harp@hornbeckoffshore.com)

HORNBECK OFFSHORE OPERATORS, LLC

/s/ James O. Harp, Jr.

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

Address:  
103 Northpark Boulevard, Suite 300  
Covington, LA 70433  
Attn: James O. Harp Jr.  
Telecopy: [james.harp@hornbeckoffshore.com](mailto:james.harp@hornbeckoffshore.com)

HOS PORT, LLC

/s/ James O. Harp, Jr.

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

Address:  
103 Northpark Boulevard, Suite 300  
Covington, LA 70433  
Attn: James O. Harp Jr.  
Telecopy: [james.harp@hornbeckoffshore.com](mailto:james.harp@hornbeckoffshore.com)

[Signature Page to Senior Credit Agreement]

HORNBECK OFFSHORE SERVICES DE  
MEXICO S. DE R.L. DE C.V.

/s/ Samuel A. Giberga

By: Samuel A. Giberga

Title: Vice President

Address:

103 Northpark Boulevard, Suite 300

Covington, LA 70433

Attn: Samuel A. Giberga

Telecopy:

[samuel.giberga@hornbeckoffshore.com](mailto:samuel.giberga@hornbeckoffshore.com)

[Signature Page to Senior Credit Agreement]

/s/ Robert Thomas Gang

By: Robert Thomas Gang

Title: Officer

Address: Avenida Paisagista Jose Silva de Azevadi  
Neto n200, Sala 201 Bloco 04 Barra da Tijuca, Rio de  
Janeiro, RJ CEP 2275-056

Attn: Robert Thomas Gang

[Signature Page to Senior Credit Agreement]

**AGENT AND LENDERS:**  
**CIT NORTHBRIDGE CREDIT LLC,**  
as Agent

/s/ Donna Evans

---

By: Donna Evans  
Title: Authorized Signatory  
Address: 11 West 42nd Street, 13th Floor  
New York, NY 10036

Attn: Donna Evans  
Telecopy: donna.evans@cit.com

**CIT NORTHBRIDGE FUNDING I LLC,**  
as Lender

/s/ Donna Evans

---

By: Donna Evans  
Title: Authorized Signatory  
Address: 11 West 42nd Street, 13th Floor  
New York, NY 10036

Attn: Donna Evans  
Telecopy: donna.evans@cit.com

[Signature Page to Senior Credit Agreement]

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**GUARANTY AND SECURITY AGREEMENT**

Dated as of June 28, 2019

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**HORNBECK OFFSHORE SERVICES, INC.,**

as Borrower

---

**EACH OF THE OTHER OBLIGORS,**

---

and

**CIT NORTHBRIDGE CREDIT LLC,**

as Agent

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**THIS GUARANTY AND SECURITY AGREEMENT** (this “**Agreement**”) is dated as of June 28, 2019 and is made by Hornbeck Offshore Services, Inc., a Delaware corporation (the “**Borrower**”), and each of the signatories identified on the signature pages hereto as Guarantors (together with Borrower, the “**Obligors**” and each an “**Obligor**”), in favor of CIT Northbridge LLC, as collateral agent and administrative agent (in such capacity and together with its successors in such capacity, the “**Agent**”) for certain financial institutions (the “**Lenders**”) from time to time party to the Senior Credit Agreement dated as of even date herewith (as amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), among the Borrower, the Lenders, and the Agent.

RECITALS:

- A. The Borrower has requested that the Lenders provide revolving credit facilities to Borrower to finance the Obligors’ mutual and collective business enterprise.
- B. The Lenders are willing to provide the credit facilities on the terms and conditions set forth in the Credit Agreement.
- C. Each Obligor (other than Borrower) has agreed to guaranty the Obligations and each Obligor shall derive substantial and direct and indirect benefits from the making of the extensions of credit under the Credit Agreement.
- D. It is a condition precedent to the obligation of the Lenders to make their respective extensions of credit to the Borrower under the Credit Agreement that the Obligors shall have executed and delivered this Agreement.
- E. Each Obligor will obtain benefits from the incurrence of the credit facilities by the Borrower, and accordingly desires to execute this Agreement in order to satisfy the conditions described in the preceding paragraph and to induce the Lenders to make the credit facilities to the Borrower.

NOW, THEREFORE, in consideration of the premises herein and to induce the Agent and the Lenders to enter into the Credit Agreement and to induce the Lenders to make their respective extensions of credit to the Borrower thereunder, each Obligor hereby agrees with the Agent, for the ratable benefit of the Lenders, as follows:

**SECTION 1. DEFINITIONS**

**1.1 Definitions.** Unless otherwise defined herein, terms defined in the Credit Agreement and used herein have the meanings given to them in the Credit Agreement. The following terms have the following meanings:

Agent: has the meaning assigned such term in the preamble.

Agreement: has the meaning assigned such term in the preamble.

Borrower: has the meaning assigned such term in the preamble.

Closing Date Collateral Accounts: means, as of the Closing Date, the Collateral Accounts of the Obligor that are set forth on Schedule 4 attached hereto.

Collateral: has the meaning assigned such term in Section 3.1.

Collateral Accounts: means, collectively, each Closing Date Collateral Account, each Collection Account and each Collection/Disbursement Account.

Collection Account: means each of the collection accounts established by the Borrower into which Account Debtors shall make payment on Receivables, pursuant to Section 8.2.5 of the Credit Agreement, in each case that is subject to an Account Control Agreement and as identified as a "Collection Account" on Schedule 9.1.27 attached to the Credit Agreement.

Collection/Disbursement Account: means each of the accounts established by Borrower or any other Obligor, in each case that is subject to an Account Control Agreement (as defined in the Credit Agreement) and identified as a "Collection/Disbursement" account on Schedule 9.1.27 attached to the Credit Agreement.

Commodity Exchange Act: the Commodity Exchange Act (7 U.S.C. § 1 et seq.).

Credit Agreement: has the meaning assigned such term in the preamble.

Credit Card Issuer: means any Person who issues or whose members issue credit cards, including, without limitation, MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, Carte Blanche and other non-bank credit or debit cards, including, without limitation, credit or debit cards issued by or through American Express Travel Related Services Company, Inc. and Novus Services, Inc. and other issuers approved by Agent.

Credit Card Processor: means any servicing or processing agent or any factor or financial intermediary who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any Obligor's sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer.

Credit Card Receivables: means each "payment intangible" (as defined in the UCC) together with all income, payments and proceeds thereof, owed by a Credit Card Issuer or Credit Card Processor to an Obligor resulting from charges by a customer of an Obligor on credit or debit cards issued by such Credit Card Issuer in connection with the sale of Inventory by an Obligor, or services performed by an Obligor, in each case in the ordinary course of its business.

Excluded Swap Obligation: with respect to an Obligor, each Swap Obligation as to which, and only to the extent that, such Obligor's guaranty of or grant of a Lien as security for such Swap Obligation is or becomes illegal under the Commodity Exchange Act because the Obligor does not constitute an "eligible contract participant" as defined in the Commodity Exchange Act (determined after giving effect to any keepwell, support or other agreement for the benefit of such Obligor and all guaranties of Swap Obligations by other Obligor(s) when such guaranty or grant of Lien becomes effective with respect to the Swap Obligation. If a Hedging Agreement governs more than one Swap Obligation, only the Swap Obligation(s) or portions thereof described in the foregoing sentence shall be Excluded Swap Obligation(s) for the applicable Obligor.

**Foreign Specified Accounts:** means (i) the account named “HON Collection/Disbursement”, account no. 167002 established by Hornbeck Offshore Navegacao, Ltda. at Banco Bradesco, and (ii) any other foreign account opened after the date hereof that is intended to be a Collateral Account.

**Guaranteed Obligations:** has the meaning assigned to such term in Section 2.1.

**Guarantors:** means the collective reference to each Obligor other than the Borrower.

**Lenders:** has the meaning assigned to such term in the preamble.

**Obligor Claims:** has the meaning assigned to such term in Section 8.1.

**Obligors:** has the meaning assigned to such term in the preamble.

**Perfection Certificate:** means the Perfection Certificate dated the Closing Date executed and delivered by the Borrower to the Agent.

**Qualified ECP:** an Obligor with total assets exceeding \$10,000,000, or that constitutes an “eligible contract participant” under the Commodity Exchange Act and can cause another Person to qualify as an “eligible contract participant” under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

**Swap Obligations:** with respect to an Obligor, its obligations under an ABL Hedging Agreement (as defined in the Intercreditor Agreement) that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

**Tax Receivables:** means all federal, state, local, municipal and other tax refunds or rebates of any kind, whether from a Governmental Authority in the United States or outside of the United States.

**1.2 Other Definitional Provisions.** Where the context requires, terms relating to the Collateral or any part thereof, when used in relation to an Obligor refer to the Obligor’s Collateral or the relevant part thereof.

**1.3 Uniform Commercial Code.** As used herein, the following terms are defined in accordance with the UCC: “Account,” “Account Debtor,” “Chattel Paper,” “Commercial Tort Claim,” “Deposit Account,” “Document,” “Electronic Chattel Paper,” “Financial Assets,” “General Intangibles,” “Instrument,” “Investment Property,” “Letter-of-Credit Right,” “Payment Intangible”, “Securities Account”, “Securities”, “Securities Accounts,” “Securities Entitlement” and “Supporting Obligation”, and “Tangible Chattel Paper.”

**1.4 Rules of Interpretation.** Section 1.4 of the Credit Agreement is hereby incorporated herein by reference and shall apply to this Agreement, *mutatis mutandis*. All references herein to schedules shall be deemed to refer to such schedules as supplemented from time to time in accordance with this Agreement.

## **SECTION 2. GUARANTEE**

### **2.1 Guarantee.**

(a) Each of the Guarantors jointly and severally hereby irrevocably and unconditionally guarantees to the Secured Parties and each of their respective permitted successors, indorsees, transferees and assigns, the due and punctual payment in full of all Obligations (other than Excluded Swap Obligations) when the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code) (collectively, the **“Guaranteed Obligations”**).

(b) Anything herein or in any other Loan Document to the contrary notwithstanding, the Obligations of each Guarantor hereunder and under the other Loan Documents shall be limited to the maximum amount as will result in the Obligations of such Guarantor under this Agreement not constituting a fraudulent transfer or fraudulent conveyance for purposes of any Debtor Relief Law to the extent applicable to this Agreement and the Obligations of each Guarantor hereunder (after giving effect to the right of contribution established in Section 2.2).

(c) Each Guarantor agrees that the Guaranteed Obligations may at any time and from time to time exceed the amount of the liability of such Guarantor hereunder without impairing the guarantee contained in this Section 2 or affecting the rights and remedies of any Secured Party hereunder.

(d) Each Guarantor agrees that if the maturity of the Guaranteed Obligations is accelerated by bankruptcy or otherwise, such maturity shall also be deemed accelerated for the purpose of this guarantee without demand or notice to such Guarantor. The guarantee contained in this Section 2 shall remain in full force and effect until the Full Payment of all the Guaranteed Obligations and all Commitments are terminated notwithstanding that from time to time during the term of the Credit Agreement, no Guaranteed Obligations may be outstanding.

(e) No payment made by any Obligor, any other guarantor or any other Person or received or collected by any Secured Party from any Obligor, any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Guaranteed Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment (other than any payment made by such Guarantor in respect of the Guaranteed Obligations or any payment received or collected from such Guarantor in respect of the Guaranteed Obligations), remain liable for the Obligations up to the maximum liability of such Guarantor hereunder until the Full Payment of the Obligations and all of the Commitments have expired or are terminated.

**2.2 Right of Contribution.** Each Guarantor hereby agrees that to the extent that a Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Guarantor's right of contribution shall be subject to the terms and conditions of Section 2.3. The provisions of this Section 2.2 shall in no respect limit the obligations and liabilities of any Guarantor to the Secured Parties, and each Guarantor shall remain liable to the Secured Parties for the full amount guaranteed by such Guarantor hereunder.

**2.3 No Subrogation.** Notwithstanding any payment made by any Guarantor hereunder or any set-off or application of funds of any Guarantor by any Secured Party, no Guarantor shall be entitled to be subrogated to any of the rights of any Secured Party against Borrower or any other Guarantor or any collateral security or guarantee or right of offset held by any Secured Party for the payment of the Guaranteed Obligations, nor shall any Guarantor seek or be entitled to seek any indemnity, exoneration, participation, contribution or reimbursement from Borrower or any other Guarantor in respect of payments made by such Guarantor hereunder, until the Full Payment of all amounts owing to the Secured Parties on account of the Guaranteed Obligations and all of the Commitments have expired or are terminated. If any amount shall be paid to any Guarantor on account of such subrogation rights at any time when all of the Guaranteed Obligations shall not have been irrevocably paid in full in cash or any of the Commitments are in effect, such amount shall be held by such Guarantor in trust for the Secured Parties, and shall, forthwith upon receipt by such Guarantor, be turned over to the Agent in the exact form received by such Guarantor (duly indorsed by such Guarantor to the Agent, if required), to be applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the Credit Agreement.

**2.4 Amendments, Etc. with respect to the Guaranteed Obligations.** Each Guarantor shall remain obligated hereunder, and such Guarantor's obligations hereunder shall not be released, discharged or otherwise affected, notwithstanding that, without any reservation of rights against any Guarantor and without notice to, demand upon or further assent by any Guarantor (which notice, demand and assent requirements are hereby expressly waived by such Guarantor), (a) any demand for payment of any of the Guaranteed Obligations made by any Secured Party may be rescinded by such Secured Party or otherwise and any of the Obligations continued; (b) the Guaranteed Obligations, the liability of any other Person upon or for any part thereof or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by, or any indulgence or forbearance in respect thereof granted by, any Secured Party; (c) any Loan Document may be amended, modified, supplemented or terminated, in whole or in part, as the Secured Parties may deem advisable from time to time, subject to Section 14.1 of the Credit Agreement; (d) any collateral security, guarantee or right of offset at any time held by any Secured Party for the payment of the Guaranteed Obligations may be sold, exchanged, waived, surrendered or released; (e) any additional guarantors, makers or endorsers of the Guaranteed Obligations may from time to time be obligated on the Obligations or any additional security or collateral for the payment and performance of the Guaranteed Obligations may from time to time secure the Guaranteed Obligations; (f) any change in applicable law, rule or regulation or any event affecting any term of the Guaranteed Obligations; and (g) any other event shall occur which constitutes a defense or release of sureties generally. No Secured Party shall have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the Guaranteed Obligations or for the guarantee contained in this Section 2 or any Property subject thereto.

**2.5 Waivers.** Each Guarantor hereby waives any and all notice of the creation, renewal, extension or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by any Secured Party upon the guarantee contained in this Section 2 or acceptance of the guarantee contained in this Section 2; the Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guarantee contained in this Section 2 and no notice of creation of the Guaranteed Obligations or any extension of credit already or hereafter contracted by or extended to the Borrower need be given to any Guarantor; and all dealings between the Borrower and any of the Guarantors, on the one hand, and the Secured Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in this Section 2. Each Guarantor waives diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon Borrower or any of the Guarantors with respect to the Guaranteed Obligations. Each Guarantor hereby waives, for the benefit of Agent and each Lender: (a) any right to require Agent or any Lender, as a condition of payment or performance by such Guarantor, to (i) proceed against the Borrower, any other guarantor (including any other Guarantor) of the Guaranteed Obligations or any other Person, (ii) proceed against or exhaust any security held from the Borrower, any such other Guarantor or any other Person, (iii) proceed against or have resort to any balance of any Deposit Account, securities account or commodities account or credit on the books of Agent or any Lender in favor of the Borrower or any other Person, or (iv) pursue any other remedy in the power of Agent or any Lender whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of the Borrower or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of the Borrower or any other Guarantor from any cause other than payment in full of the Guaranteed Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon Agent's or any Lender's errors or omissions in the administration of the Guaranteed Obligations; (e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that Agent or any Lender protect, secure, perfect or insure any security interest or lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance hereof, notices of default hereunder or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to Borrowers and notices of any of the matters referred to the Credit Agreement and any right to consent to any thereof; and (g) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

Without limiting the generality of the foregoing, each Guarantor incorporated under the laws of Mexico hereby irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, all rights and benefits of *orden, excusión, division, quita, novación, espera* and/or *modificación* and any other rights specified in Articles 2813, 2814, 2815, 2816, 2817, 2818, 2819,

2820, 2821, 2822, 2823, 2826, 2827, 2829, 2837, 2838, 2839, 2840, 2842, 2844, 2845, 2846, 2847, 2848 and 2849, and any other related or applicable Articles of the *Código Civil Federal of Mexico* and the *Código Civil* of each State of Mexico. Each of the Guarantors incorporated under the laws of Mexico hereby expressly and irrevocably represents that it has full knowledge about the content of such Articles described above, and therefore, such Articles are not required to be transcribed herein.

## **2.6 Guaranty Absolute and Unconditional.**

(a) Each Guarantor understands and agrees that the guarantee contained in this Section 2 is, and shall be construed as, a continuing, complete, absolute and unconditional guarantee of payment, and each Guarantor hereby waives any defense of a surety or guarantor or any other obligor on any obligations arising in connection with or in respect of any of the following and hereby agrees that its obligations hereunder shall not be discharged or otherwise affected as a result of, any of the following:

(i) the invalidity or unenforceability of any Loan Document, any of the Guaranteed Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by any Secured Party;

(ii) any defense, set-off or counterclaim (other than a defense of payment or performance) which may at any time be available to or be asserted by Borrower or any other Person against any Secured Party;

(iii) the insolvency, bankruptcy arrangement, reorganization, *concurso mercantil*, *quiebra*, adjustment, composition, liquidation, disability, dissolution or lack of power of Borrower or any other Guarantor or any other Person at any time liable for the payment of all or part of the Obligations, including any discharge of, or bar or stay against collecting, any Obligation (or any part of them or interest therein) in or as a result of such proceeding;

(iv) any sale, lease or transfer of any or all of the assets of Borrower or any other Guarantor, or any changes in the shareholders of a Borrower or a Guarantor;

(v) any change in the corporate existence (including its constitution, laws, rules, regulations or power), structure or ownership of any Obligor;

(vi) the fact that any Collateral or Lien contemplated or intended to be given, created or granted as security for the repayment of the Obligations shall not be properly perfected or created, or shall prove to be unenforceable or subordinate to any other Lien, it being recognized and agreed by each of the Guarantors that it is not entering into this Agreement in reliance on, or in contemplation of the benefits of, the validity, enforceability, collectability or value of any of the Collateral for the Obligations;

(vii) the absence of any attempt to collect the Obligations or any part of them from any Obligor;



(viii) (A) any Secured Party's election, in any proceeding instituted under chapter 11 of the Bankruptcy Code, of the application of Section 1111(b)(2) of the Bankruptcy Code; (B) any borrowing or grant of a Lien by Borrower, as debtor-in-possession, or extension of credit, under Section 364 of the Bankruptcy Code; (C) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of any Secured Party's claim (or claims) for repayment of the Obligations; (D) any use of cash collateral under Section 363 of the Bankruptcy Code; (E) any agreement or stipulation as to the provision of adequate protection in any bankruptcy proceeding; (F) the avoidance of any Lien in favor of the Secured Parties or any of them for any reason; or (G) failure by any Secured Party to file or enforce a claim against Borrower or its estate in any bankruptcy or insolvency case or proceeding;

(ix) any change in the time, manner or place of payment of, or in any other term of all or any of the Obligations; or

(x) any other circumstance or act whatsoever, including any action or omission of the type described in Section 2.4 (with or without notice to or knowledge of Borrower or such Guarantor), which constitutes, or might be construed to constitute, an equitable or legal discharge of such Borrower for the Obligations, or of such Guarantor under the guarantee contained in this Section 2, in bankruptcy or in any other instance.

(b) When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Guarantor, any Secured Party may, but shall be under no obligation to, join or make a similar demand on or otherwise pursue or exhaust such rights and remedies as it may have against Borrower, any other Guarantor or any other Person or against any collateral security or guarantee for the Guaranteed Obligations or any right of offset with respect thereto, and any failure by any Secured Party to make any such demand, to pursue such other rights or remedies or to collect any payments from Borrower, any other Guarantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of the Borrower, any other Guarantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve any Guarantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of any Secured Party against any Guarantor. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

(c) This Agreement is a continuing guaranty and shall remain in effect until the Full Payment of all of the Guaranteed Obligations and the Commitments shall have terminated. Each Guarantor hereby irrevocably waives any right to revoke this Agreement as to future transactions giving rise to any Obligations.

**2.7 Reinstatement.** The guarantee contained in this Section 2 shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Guaranteed Obligations is rescinded or must otherwise be restored or returned by any Secured Party upon the insolvency, bankruptcy, *concurso mercantil*, *quiebra*, dissolution, liquidation or reorganization of Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, Borrower or any Guarantor or any substantial part of its Property, or otherwise, all as though such payments had not been made.

**2.8 Payments.** Each Guarantor hereby guarantees that payments under this Section 2 will be paid to the Administrative Agent, for the ratable benefit of the Secured Parties, without setoff, deduction or counterclaim in dollars, in immediately available funds, at the offices of the Agent specified in the Credit Agreement. If acceleration of the time for payment of any Guarantor Obligation is stayed by reason of the insolvency or receivership of any Guarantor or otherwise, all Guarantor Obligations otherwise subject to acceleration under the terms of any Loan Document shall nonetheless be payable by the Guarantors hereunder.

**2.9 Keepwell.** Each Guarantor that is a Qualified ECP when its guaranty of or grant of Lien as security for a Swap Obligation becomes effective hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide funds or other support to each Guarantor with respect to such Swap Obligation as may be needed by such Guarantor from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP's obligations and undertakings under this Section 2.9 voidable under any applicable fraudulent transfer or conveyance act). The obligations and undertakings of each Qualified ECP under this Section shall remain in full force and effect until Full Payment of all Obligations. Each Guarantor intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support or other agreement" for the benefit of, each Obligor for all purposes of the Commodity Exchange Act.

### **SECTION 3. GRANT OF SECURITY INTEREST AND PLEDGE OF EQUITY INTERESTS**

**3.1 Collateral.** To secure the prompt and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of the Obligations, each Obligor hereby pledges, assigns and transfers to the Agent, and hereby grants to the Agent, for the ratable benefit of the Secured Parties, a continuing security interest in and Lien upon all of the following Property now owned or at any time hereafter acquired by it or in which such Obligor now has or at any time in the future may acquire any right, title or interest (collectively, the "**Collateral**"):

(a) all Accounts and Credit Card Receivables;

(b) all Chattel Paper (whether Tangible Chattel Paper or Electronic Chattel Paper) and Payment Intangibles, in each case solely to the extent relating to or arising from Accounts or Credit Card Receivables;

(c) all Collateral Accounts (and all cash, checks and other negotiable instruments, funds, Automated Clearing House transfers, wired funds, Investment Property, credit balances and any other evidences of payment held therein or credited thereto) (in each case, other than cash, checks and other negotiable instruments, funds, Automated Clearing House transfers, wired funds, Investment Property, credit balances and any other evidences of payment held therein or credited thereto to the extent constituting identifiable proceeds of the Term Priority Collateral (as defined in the Intercreditor Agreement) other than Inventory);

(d) solely to the extent related to Accounts and Credit Card Receivables, all Securities Accounts, Security Entitlements and Securities credited thereto (in each case except to the extent constituting identifiable proceeds of the Term Priority Collateral (as defined in the Intercreditor Agreement) other than Inventory);

(e) to the extent evidencing, governing, securing or otherwise reasonably related to any of the foregoing, all Documents, General Intangibles, Payment Intangibles, Instruments (including promissory notes), Commercial Tort Claims, Letters of Credit, Letter of Credit Rights, and Supporting Obligations; provided, however, that the foregoing shall not include any Intellectual Property;

(f) all books, records and documents related to the foregoing (including databases, customer lists and other records, whether tangible or electronic, which contain any information relating to any of the foregoing);

(g) proceeds of business interruption insurance; and (h) to the extent not otherwise included, all Proceeds and products of any or all of the foregoing in whatever form received (including proceeds of credit insurance, refunds, rebates and any other insurance and claims against third parties (in each case, regardless of whether Agent is the loss payee thereof)).

### **3.2 Lien on Collateral Accounts; Cash in Collateral Accounts.**

(a) Collateral Accounts. To further secure the prompt payment and performance of its Obligations, each Obligor hereby grants to Agent, for the ratable benefit of the Secured Parties, a continuing security interest in and Lien upon all amounts credited to any Collateral Account of such Obligor. Each Obligor hereby authorizes and directs each bank or other depository with respect to a Collateral Account to deliver to Agent, upon request, all balances in any Collateral Account maintained for such Obligor, without inquiry into the authority or right of Agent to make such request. Obligor shall deliver (i) on the Closing Date, such Account Control Agreements as required by Section 6.1(c) of the Credit Agreement and (ii) on the dates described on Schedule 10.1.12, such Account Control Agreements as required thereby. For any Collateral Account established from and after the Closing Date, Obligor shall deliver Account Control Agreements within ten (10) Business Days of establishing such newly established Collateral Accounts. All proceeds from Accounts shall be deposited into a Collateral Account in accordance with the Credit Agreement.

(b) Cash in Collateral Accounts. Cash held in the Collateral Accounts may be invested, at Agent's discretion (with the consent of Obligor, provided no Event of Default exists), but Agent shall have no duty to do so, regardless of any agreement or course of dealing with any Obligor, and shall have no responsibility for any investment or loss. As security for its Obligations, each Obligor hereby grants to Agent a security interest in and Lien upon all cash and Cash Equivalents held in the Collateral Accounts. Following an Event of Default, Agent may apply cash and Cash Equivalents held in Collateral Accounts to payment of such Obligations as they become due, in such order as Agent may elect. All cash and Cash Equivalents held in Collateral Accounts shall be under the control of Agent, on behalf of the Secured Parties, as described in the Credit Agreement.

### **3.3 Lien on Securities Accounts; Investment Property in Securities Accounts.**

(a) Securities Accounts. To further secure the prompt payment and performance of its Obligations, each Obligor hereby grants to Agent, for the ratable benefit of the Secured Parties, a continuing security interest in and Lien upon all amounts credited to any Securities Account of such Obligor, to the extent related to any of the other Collateral. Each Obligor hereby authorizes and directs each bank or other depository to deliver to Agent, upon request, all balances in any Collateral Account maintained for such Obligor, without inquiry into the authority or right of Agent to make such request. Only with respect to those Securities Accounts that related to other Collateral, Obligors shall establish Account Control Agreements (i) with respect to the Securities Accounts owned by the Obligors as of the Closing Date on the Closing Date and (ii) with respect to any Securities Account that was opened or otherwise acquired by an Obligor after the Closing Date, within ten (10) Business Days after the opening of such Securities Account.

(b) Cash in Collateral Accounts. Cash held in the Collateral Accounts may be invested, at Agent's discretion (with the consent of Obligors, provided no Event of Default exists), but Agent shall have no duty to do so, regardless of any agreement or course of dealing with any Obligor, and shall have no responsibility for any investment or loss. As security for its Obligations, each Obligor hereby grants to Agent a security interest in and Lien upon all cash and Cash Equivalents held in the Collateral Accounts. Agent may apply cash and Cash Equivalents held in Collateral Accounts to payment of such Obligations as they become due, in such order as Agent may elect. All cash and Cash Equivalents held in Collateral Accounts and related Collateral Accounts shall be under the control of Agent, on behalf of the Secured Parties, as described in the Credit Agreement.

**3.4 Limitations**. The Lien on the Collateral granted hereunder is given as security only and shall not subject Agent or any Secured Party to, or in any way modify, any obligation or liability of Obligors relating to any Collateral. In no event shall the grant of any Lien under any Loan Documents secure an Excluded Swap Obligation of the granting Guarantor.

## **SECTION 4. REPRESENTATIONS AND WARRANTIES**

To induce the Secured Parties to enter into the Loan Documents and to induce the Lenders to make loans to the Borrower thereunder, each Obligor hereby represents and warrants to the Agent and each Secured Party that:

**4.1 Representations in Credit Agreement**. In the case of each Guarantor, the representations and warranties set forth in Section 9 of the Credit Agreement as they relate to such Guarantor or to the Loan Documents to which such Guarantor is a party are true and correct in all material respects, provided that (a) each reference in each such representation and warranty to Borrower's knowledge shall, for the purposes of this Section 4.1, be deemed to be a reference to such Guarantor's knowledge, (b) any representation and warranty qualified by "materiality", "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any such qualification therein), and (c) to the extent any such representation and warranty is expressly limited to an earlier date, such representation and warranty shall be true and correct, as qualified, as of such specified earlier date.

**4.2 Title; No Other Liens.** Except for the security interest granted to the Agent for the ratable benefit of the Secured Parties pursuant to this Agreement and as set forth in the following sentence, each Obligor has good title to its Collateral. Except for Permitted Liens, the Collateral is free and clear of any and all Liens and the applicable Obligor has the power to transfer each item of the Collateral in which a Lien is granted by it hereunder, free and clear of any Lien. No financing statement or other public notice with respect to all or any part of the Collateral is on file or of record in any public office, except such as have been filed in favor of the Agent, for the ratable benefit of the Secured Parties, pursuant to this Agreement or the Security Instruments, and/or to evidence Permitted Liens.

**4.3 Perfected First Priority Liens.** The security interests granted pursuant to this Agreement (a) upon the completion of the filings specified on Schedule 2 or the taking of possession or control by the Agent of the Collateral with respect to which a security interest may be perfected only by possession or control and the completion of all such other filings and required actions specified on Schedule 2 will constitute valid perfected security interests in all of the Collateral in favor of the Agent, for the ratable benefit of the Secured Parties, as collateral security for the Obligations, enforceable in accordance with the terms hereof against all creditors of the Obligors and any Persons purporting to purchase any Collateral from the Obligors and (b) are prior to all other Liens on the Collateral, and the Collateral is otherwise subject only to Permitted Liens that are expressly permitted under the Credit Agreement.

**4.4 Obligor Information.** As of the date hereof, the correct legal name of each Obligor, all names and trade names that each Obligor has used in the last five years, each Obligor's jurisdiction of organization and each jurisdiction of organization of each Obligor over the last five years, organizational number, taxpayer identification number, and the location(s) of each Obligor's chief executive office or sole place of business over the last five years are specified on Schedule 3.

**4.5 Benefit to the Guarantor.** Borrower is a member of an affiliated group of companies that includes each Guarantor and Borrower, and the other Guarantors are engaged in related businesses. Each Guarantor is an Affiliate of Borrower and its guaranty and surety obligations pursuant to this Agreement reasonably may be expected to benefit, directly or indirectly, it; and it has determined that this Agreement is necessary and convenient to the conduct, promotion and attainment of its business and the business of each other Guarantor and Borrower.

**4.6 Perfection Certificate and Other Information Regarding Collateral.** The Perfection Certificate has been duly prepared, completed and executed and the information set forth therein is correct and complete in all material respects as of the Closing Date.

## SECTION 5. COVENANTS

Each Obligor covenants and agrees with the Agent and the Secured Parties that, from and after the Closing Date until the Full Payment of the Obligations and all of the Commitments shall have terminated:

**5.1 Covenants in Credit Agreement.** In the case of each Guarantor, such Guarantor shall take, or shall refrain from taking, as the case may be, each action that is necessary to be taken or not taken, as the case may be, so that no Default is caused by the failure to take such action or to refrain from taking such action by such Guarantor or any of its Subsidiaries.

**5.2 Maintenance of Perfected Security Interest; Further Documentation.**

(a) The Obligors shall maintain the security interest created by this Agreement as a perfected security interest having at least the priority described in Section 4.3 and shall defend such security interest against the claims and demands of all Persons whomsoever except Permitted Liens.

(b) At any time and from time to time, upon the reasonable request of the Agent, the Obligors will furnish to the Agent and the Lenders from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Agent may reasonably request, all in reasonable detail.

(c) At any time and from time to time, upon the written request of the Agent, and at the sole expense of the Borrower, the Obligors will promptly and duly execute and deliver, and have recorded, such further instruments and documents and take such further actions as the Agent may reasonably deem necessary for the purpose of obtaining or preserving the full benefits of this Agreement (including, without limitation, the perfection and Lien priority set forth herein) and of the rights and powers herein granted, including, without limitation, the filing of any financing or continuation statements under the UCC (or other similar laws) in effect in any jurisdiction with respect to the security interests created hereby. Each Obligor hereby ratifies any action taken by Agent before the Closing Date to effect or perfect its Lien on any Collateral.

**5.3 Changes in Locations, Name, Etc.** Each Obligor recognizes that financing statements pertaining to the Collateral have been or may be filed where such Obligor maintains any Collateral or is organized. No Obligor will cause or permit any change in its (a) corporate name or in any trade name used to identify it in the conduct of its business or in the ownership of its Properties, (b) the location of its chief executive office or principal place of business, (c) its identity or form of organization or in the jurisdiction in which it is formed, (d) its jurisdiction of organization or its organizational identification number in such jurisdiction of organization or (e) its federal taxpayer identification number, unless, in each case, it shall have (i) notified the Agent in writing of such change at least five (5) Business Days after the effective date of such change (or such other time period agreed to in writing by the Agent), and (ii) taken, or caused to be taken, all action necessary and appropriate for the purpose of maintaining the perfection and priority of the Agent's security interests under this Agreement. In any notice furnished pursuant to this Section 5.3, the Obligor will expressly state in a conspicuous manner that the notice is required by this Agreement and contains facts that may require additional filings of financing statements or other notices for the purposes of continuing perfection of the Agent's security interest in the Collateral.

## SECTION 6. REMEDIAL PROVISIONS

### 6.1 Code and Other Remedies.

(a) If an Event of Default exists, the Agent, on behalf of the Secured Parties, (i) may exercise, in addition to all other rights and remedies granted to them in this Agreement, the Credit Agreement and the other Loan Documents and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of a secured party under the UCC or any other applicable law or otherwise available at law or equity and (ii) without limiting the generality of the foregoing, the Agent, without demand of performance or other demand, presentment, protest, notice of intent to accelerate, notice of acceleration advertisement or notice of any kind (except any notice required by law referred to below, which cannot be waived by law and any notice that is expressly required under this Agreement or any other Loan Document) to or upon any Obligor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived to the extent permitted by applicable law), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, grant option or options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of any Secured Party or elsewhere upon such terms and conditions as the Required Lenders may deem advisable and at such prices as the Required Lenders may deem best, for cash or on credit or for future delivery without assumption of any credit risk. Any Secured Party shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in any Obligor, which right or equity is hereby waived and released. If an Event of Default shall occur and be continuing, each Obligor further agrees, at the Agent's request, to assemble the Collateral and make it available to the Agent at places which the Agent shall reasonably select, whether at such Obligor's premises or elsewhere. Any such sale or transfer by the Agent either to itself or to any other Person shall be absolutely free from any claim of right by Obligor, including any equity or right of redemption, stay or appraisal which Obligor has or may have under any rule of law, regulation or statute now existing or hereafter adopted (and such Obligor hereby waives any rights it may have in respect thereof). Upon any such sale or transfer, the Agent shall have the right to deliver, assign and transfer to the purchaser or transferee thereof the Collateral so sold or transferred. The Agent shall apply the net proceeds of any action taken by it pursuant to this Section 6.1, after deducting all reasonable fees, costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Agent and the Secured Parties hereunder, including, without limitation, reasonable attorneys' fees and disbursements, to the payment in whole or in part of the Obligations, in accordance with the Credit Agreement, and only after such application and after the payment by the Agent of any other amount required by any provision of law, including, without limitation, Section 9-615 of the UCC, need the Agent account for the surplus, if any, to any Obligor. To the extent permitted by applicable law, each Obligor waives all claims, damages and demands it may acquire against the Agent or any Secured Party arising out of the exercise by them of any rights hereunder, except where arising as a result of the Agent's or any Secured Party's gross negligence or willful misconduct, as determined by a final non-appealable decision of a court of competent jurisdiction. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least 10 days before such sale or other disposition.

(b) In the event that the Agent elects not to sell the Collateral, the Agent retains its rights to dispose of or utilize the Collateral or any part or parts thereof in any manner authorized or permitted by law or in equity, and to apply the proceeds of the same towards payment of the Obligations. Each and every method of disposition of the Collateral described in this Agreement shall constitute disposition in a commercially reasonable manner.

(c) The Agent may appoint any Person as agent to perform any act or acts necessary or incident to any sale or transfer of the Collateral.

Except when an Event of Default has occurred and is continuing, neither the Agent nor any Secured Party shall contact or communicate with, or attempt to contact or communicate with any customer of any Obligor in connection with the Collateral except with the participation of a Responsible Officer of such Obligor.

**6.2 Waiver; Deficiency.** To the fullest extent permitted by applicable law, each Obligor waives and agrees not to assert any rights or privileges which it may acquire under the UCC, except to the extent arising solely from the gross negligence or willful misconduct of the Agent, as determined by a final non-appealable decision of a court of competent jurisdiction; provided, however, that the Obligors do not waive any rights or privileges to notice or the opportunity to cure otherwise provided under the Loan Documents. Each Obligor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay its Obligations and the fees and disbursements of any attorneys employed by the Agent or any Secured Party to collect such deficiency. The officers, directors and managers, as applicable, of the Obligors shall in no event be personally liable for any such deficiency.

**6.3 Non-Judicial Enforcement.** To the extent permitted by applicable law, the Agent may enforce its rights hereunder without prior judicial process or judicial hearing, and to the extent permitted by law, each Obligor expressly waives any and all legal rights which might otherwise require the Agent to enforce its rights by judicial process.

## SECTION 7. THE AGENT

**7.1 Duty of Agent.** The Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the UCC or otherwise, shall be to deal with it in the same manner as the Agent deals with similar Property for its own account and shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which comparable secured parties accord comparable collateral. Neither the Agent, any Secured Party nor any of their Affiliates shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Obligor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Agent and the Secured Parties hereunder are solely to protect the Agent's and the Secured Parties' interests in the Collateral and shall not impose any duty upon the Agent or any Secured Party to exercise any such powers. The Agent and the Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their Affiliates shall be responsible to any Obligor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct. To the fullest extent permitted by applicable law, the Agent shall be under no duty whatsoever to make or give any presentment,



notice of dishonor, protest, demand for performance, notice of non-performance, notice of intent to accelerate, notice of acceleration, or other notice or demand in connection with any Collateral or the Obligations (except any notice or demand that is expressly required under this Agreement or any other Loan Document), or to take any steps necessary to preserve any rights against any Obligor or other Person or ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Collateral, whether or not it has or is deemed to have knowledge of such matters. Each Obligor, to the extent permitted by applicable law, waives any right of marshaling in respect of any and all Collateral, and waives any right to require the Agent or any Secured Party to proceed against any Obligor or other Person, exhaust any Collateral or enforce any other remedy which the Agent or any Secured Party now has or may hereafter have against any Obligor or other Person.

**7.2 Filing of Financing Statements.** Pursuant to the UCC and any other applicable law, each Obligor authorizes the Agent to file or record financing statements and other filing or recording documents or instruments with respect to the Collateral in such form and in such offices as Agent reasonably determine appropriate to perfect the security interests of the Agent under this Agreement. A photographic or other reproduction of this Agreement shall be sufficient as a financing statement or other filing or recording document or instrument for filing or recording in any jurisdiction. Notwithstanding the foregoing, each Obligor acknowledges its obligation to file or record financing statements hereunder.

**7.3 Authority of Agent.** Each Obligor acknowledges that the rights and responsibilities of the Agent under this Agreement with respect to any action taken by the Agent or the exercise or non-exercise by the Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between the Agent and the Secured Parties, be governed by the Credit Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Agent and the Obligors, the Agent shall be conclusively presumed to be acting as agent for the Secured Parties with full and valid authority so to act or refrain from acting, and no Obligor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

## **SECTION 8. SUBORDINATION OF INDEBTEDNESS**

**8.1 Subordination of All Obligor Claims.** As used herein, the term "Obligor Claims" shall mean all debts and obligations of Borrower or any other Obligor to Borrower or any Restricted Subsidiary of the Borrower, whether such debts and obligations now exist or are hereafter incurred or arise, or whether the obligation of the debtor thereon be direct, contingent, primary, secondary, several, joint and several, or otherwise, and irrespective of whether such debts or obligations be evidenced by note, contract, open account, or otherwise, and irrespective of the Person or Persons in whose favor such debts or obligations may, at their inception, have been, or may hereafter be created, or the manner in which they have been or may hereafter be acquired by. After and during the continuation of an Event of Default, no Obligor or any other Restricted Subsidiary of the Borrower shall receive or collect, directly or indirectly, from any obligor in respect thereof any amount upon the Obligor Claims.

**8.2 Claims in Bankruptcy.** In the event of receivership, bankruptcy, reorganization, arrangement, debtor's relief, or other insolvency proceedings involving any Obligor, the Agent on behalf of the Agent and the Secured Parties shall have the right to prove their claim in any proceeding, so as to establish their rights hereunder and receive directly from the receiver, trustee or other court custodian, dividends and payments which would otherwise be payable upon Obligor Claims. Each Obligor hereby assigns such dividends and payments to the Agent for the benefit of the Agent and the Secured Parties for application against the Obligations as provided under the Credit Agreement. Should Agent or any Secured Party receive, for application upon the Obligations, any such dividend or payment which is otherwise payable to any Obligor, and which, as between such Obligors, shall constitute a credit upon the Obligor Claims, then upon Full Payment of the Obligations and the termination of all of the Commitments, the intended recipient shall become subrogated to the rights of the Agent and the Secured Parties to the extent that such payments to the Agent and the Lenders on the Obligor Claims have contributed toward the liquidation of the Obligations, and such subrogation shall be with respect to that proportion of the Obligations which would have been unpaid if the Agent and the Secured Parties had not received dividends or payments upon the Obligor Claims. The obligations of Guarantors hereunder shall not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any case or proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of the Borrower or any other Guarantor or by any defense which the Borrower or any other Guarantor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. Each Guarantor acknowledges and agrees that any interest on any portion of the Obligations which accrues after the commencement of any case or proceeding referred to above (or, if interest on any portion of the Obligations ceases to accrue by operation of law by reason of the commencement of such case or proceeding, such interest as would have accrued on such portion of the Obligations if such case or proceeding had not been commenced) shall be included in the Obligations because it is the intention of Guarantors and Agent and Lenders that the Obligations which are guaranteed by Guarantors pursuant hereto should be determined without regard to any rule of law or order which may relieve any Borrower of any portion of such Obligations. Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay Agent and Lenders, or allow the claim of Agent and Lenders in respect of, any such interest accruing after the date on which such case or proceeding is commenced.

**8.3 Payments Held in Trust.** In the event that notwithstanding Section 8.1 and Section 8.2, any Obligor should receive any funds, payments, claims or distributions which is prohibited by such Sections, then it agrees: (a) to hold in trust for the Agent and the Secured Parties an amount equal to the amount of all funds, payments, claims or distributions so received, and (b) that it shall have absolutely no dominion over the amount of such funds, payments, claims or distributions except to pay them promptly to the Agent, for the benefit of the Secured Parties; and each Obligor covenants promptly to pay the same to the Agent.

**8.4 Liens Subordinate.** Each Obligor agrees that, until the Full Payment of the Obligations and the termination of all of the Commitments, any Liens securing payment of the Obligor Claims shall be and remain inferior and subordinate to any Liens securing payment of the Obligations, regardless of whether such encumbrances in favor of such Obligor, the Agent or any Secured Party presently exist or are hereafter created or attach. Without the prior written consent of the Agent, no Obligor, during the period in which any of the Obligations are outstanding or the Commitments are in effect, shall (a) exercise or enforce any creditor's right it may have against any debtor in respect of the Obligor Claims, or (b) foreclose, repossess, sequester or otherwise take steps or institute any action or proceeding (judicial or otherwise, including without limitation the commencement of or joinder in any liquidation, bankruptcy, rearrangement, debtor's relief or insolvency proceeding) to enforce any Lien held by it.

**8.5 Notation of Records.** Upon the request of Agent, all promissory notes and all accounts receivable ledgers or other evidence of the Obligor Claims accepted by or held by any Obligor shall contain a specific written notice thereon that the indebtedness evidenced thereby is subordinated under the terms of this Agreement.

## **SECTION 9. MISCELLANEOUS**

**9.1 Waiver.** No failure on the part of the Agent or any Secured Party to exercise and no delay in exercising, and no course of dealing with respect to, any right, power, privilege or remedy or any abandonment or discontinuance of steps to enforce such right, power, privilege or remedy under this Agreement or any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, privilege or remedy under this Agreement or any other Loan Document preclude or be construed as a waiver of any other or further exercise thereof or the exercise of any other right, power, privilege or remedy. The remedies provided herein are cumulative and not exclusive of any remedies provided by law or equity.

**9.2 Notices.** All notices and other communications provided for herein shall be given in the manner and subject to the terms of the Credit Agreement; provided that any such notice, request or demand to or upon any Guarantor shall be addressed to such Guarantor at its notice address set forth on Schedule 1.

### **9.3 Payment of Expenses, Indemnities, Etc.**

(a) Each Obligor, jointly and severally, agrees to pay or reimburse each Secured Party for all out-of-pocket expenses incurred by such Person, including the fees, charges and disbursements of any counsel for the Agent or any Secured Party, in connection with the enforcement or protection of its rights in connection with this Agreement or any other Loan Document, including, without limitation, all costs and expenses incurred in collecting against an Obligor under the guarantee contained in Section 2 or otherwise enforcing or preserving any rights under this Agreement and the other Loan Documents to which such Obligor is a party.

(b) Each Obligor, jointly and severally, agrees to pay, and to save the Secured Parties harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all Other Taxes which may be payable or determined to be payable with respect to any of the Collateral or in connection with any of the transactions contemplated by this Agreement.

(c) Each Obligor, jointly and severally, agrees to pay, and to save the Secured Parties harmless from, any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the execution, delivery, enforcement, performance and administration of this Agreement to the extent Borrower would be required to do so pursuant to Section 14.2 of the Credit Agreement.

**9.4 Amendments in Writing.** None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 14.1 of the Credit Agreement.

**9.5 Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of Obligor, Agent, Lenders, Secured Parties, and their respective successors and assigns, except that (a) no Obligor shall have the right to assign its rights or delegate its obligations under any Loan Documents; and (b) any assignment by a Lender must be made in compliance with Section 13.3 of the Credit Agreement.

**9.6 Survival; Revival; Reinstatement.**

(a) All covenants, agreements, representations and warranties made by any Obligor herein and in the certificates or other instruments delivered pursuant to this Agreement or any other Loan Document to which it is a party shall be considered to have been relied upon by the Agent and the Lenders and shall survive the execution and delivery of this Agreement and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under the Credit Agreement is outstanding and unpaid and so long as the Commitments have not expired or terminated. The provisions of Section 9.3 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the resignation or removal of the Agent, the repayment of the Loans, the termination of the Commitments or the termination of this Agreement, any other Loan Document or any provision hereof or thereof.

(b) To the extent that any payments on the Guarantor Obligations or proceeds of any Collateral are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver or other Person under any bankruptcy law, common law or equitable cause, then to such extent, the Guarantor Obligations so satisfied shall be revived and continue as if such payment or proceeds had not been received and the Agent's and the Secured Parties' Liens, security interests, rights, powers and remedies under this Agreement and each other Loan Document shall continue in full force and effect. In such event, each Loan Document shall be automatically reinstated and each Obligor shall take such action as may be reasonably requested by the Agent and the Secured Parties to effect such reinstatement.

**9.7 Counterparts; Execution; Entire Agreement.**

(a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement shall become effective when Agent has received counterparts bearing the signatures of all parties hereto. Agent may (but shall have no obligation to) accept any signature, contract formation or record-keeping through electronic means, which shall have the same legal validity and enforceability as manual or paper-based methods, to the fullest extent permitted by Applicable Law, including the Federal Electronic

Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any similar state law based on the Uniform Electronic Transactions Act. Upon request by Agent, any electronic signature or delivery shall be promptly followed by a manually executed or paper document.

(b) THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS BETWEEN THE PARTIES. THERE ARE NO UNWRITTEN AGREEMENTS AMONG THE PARTIES.

(c) THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS CONSTITUTE THE ENTIRE AGREEMENT, AND SUPERSEDE ALL PRIOR UNDERSTANDINGS AND AGREEMENTS, AMONG THE PARTIES RELATING TO THE SUBJECT MATTER THEREOF.

(d) Time is of the essence with respect to this Agreement and all Obligations.

**9.8 Severability.** Any provision of this Agreement or any other Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof or thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

**9.9 Set-Off.** At any time during an Event of Default, Agent, the Secured Parties, and any of their Affiliates are authorized, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by Agent, such Secured Party or such Affiliate to or for the credit or the account of an Obligor against its Obligations, whether or not Agent, such Secured Party or such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or are owed to a branch or office of Agent, such Secured Party or such Affiliate different from the branch or office holding such deposit or obligated on such indebtedness. The rights of Agent, each Secured Party and each such Affiliate under this Section are in addition to other rights and remedies (including other rights of setoff) that such Person may have.

**9.10 Governing Law; Submission to Jurisdiction.**

(a) UNLESS EXPRESSLY PROVIDED OTHERWISE IN ANY LOAN DOCUMENT, THIS AGREEMENT AND ALL CLAIMS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES (EXCEPT TO THE EXTENT GOVERNED BY THE UCC) AND, WHERE APPLICABLE, FEDERAL LAWS RELATING TO NATIONAL BANKS.

(b) EACH OBLIGOR HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE COURT SITTING IN NEW YORK COUNTY, NEW YORK, OR THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, IN ANY DISPUTE, ACTION, LITIGATION OR OTHER PROCEEDING RELATING IN ANY WAY TO ANY LOAN DOCUMENTS, AND AGREES THAT ANY DISPUTE, ACTION, LITIGATION OR OTHER PROCEEDING SHALL BE BROUGHT BY IT SOLELY IN ANY SUCH COURT. EACH OBLIGOR IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL CLAIMS, OBJECTIONS AND DEFENSES THAT IT MAY HAVE REGARDING ANY SUCH COURT'S PERSONAL OR SUBJECT MATTER JURISDICTION, VENUE OR INCONVENIENT FORUM. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 14.3.1 OF THE CREDIT AGREEMENT. A final judgment in any proceeding of any such court shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or any other manner provided by Applicable Law.

Notwithstanding anything to the contrary in this Section 9.10, with respect to any dispute involving any Obligor incorporated under the laws of Mexico, each of the parties hereto:

(i) expressly, irrevocably and unconditionally agrees to submit for itself and its property, to the exclusive jurisdiction of the courts 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; and

(ii) waives any other jurisdiction to which it may be entitled by reason of its present or future domicile or otherwise.

**9.11 Waivers by Obligors.** To the fullest extent permitted by Applicable Law, each Obligor waives (a) the right to trial by jury (which Agent hereby also waives on behalf of the Secured Parties) in any proceeding or dispute of any kind relating in any way to any Loan Documents, Obligations or Collateral; (b) presentment, demand, protest, notice of presentment, notice of intent to accelerate, notice of acceleration, default, non-payment, maturity, release, compromise, settlement, extension or renewal of any commercial paper, accounts, documents, instruments, chattel paper and guaranties at any time held by Agent on which an Obligor may in any way be liable, and hereby ratifies anything Agent may do in this regard; (c) notice prior to taking possession or control of any Collateral; (d) any bond or security that might be required by a court prior to allowing Agent to exercise any rights or remedies; (e) the benefit of all valuation, appraisal, exemption stay, extension and redemption laws and all respects of marshalling in the event of any sale or disposition of the Collateral; (f) any claim against Agent, any Secured Party or any Lender, on any theory of liability, for special, indirect, consequential, exemplary or punitive damages (as opposed to direct or actual damages) in any way relating to any Enforcement Action, Obligations, Loan Documents or transactions relating thereto; and (g) notice of acceptance hereof. Each Obligor acknowledges that the foregoing waivers are a material inducement to Agent and the Secured Parties entering into the Loan Documents and that they are relying upon the foregoing in their dealings with Obligors. Each Obligor has reviewed the foregoing waivers with its legal counsel and has knowingly and voluntarily waived its jury trial and other rights following consultation with legal counsel. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

**9.12 Acknowledgments.** In connection with all aspects of each transaction contemplated by any Loan Document, Obligors acknowledge and agree that (a)(i) this Agreement and any arranging or other services by Agent, any Lender or any of their Affiliates are arm's-length commercial transactions between Obligors and their Affiliates, on one hand, and Agent, any Lender or any of their Affiliates, on the other hand; (ii) Obligors have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate; and (iii) Obligors are capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated by the Loan Documents; (b) each of Agent, Lenders and their Affiliates is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for Obligors, their Affiliates or any other Person, and has no obligation with respect to the transactions contemplated by the Loan Documents except as expressly set forth therein; and (c) Agent, Lenders and their Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of Obligors and their Affiliates, and have no obligation to disclose any of such interests to Obligors or their Affiliates. To the fullest extent permitted by Applicable Law, each Obligor hereby waives and releases any claims that it may have against Agent, Lenders and their Affiliates with respect to any breach of agency or fiduciary duty in connection with any transaction contemplated by a Loan Document.

**9.13 Releases.**

(a) Release Upon Payment in Full. The grant of a security interest hereunder and all of the rights, powers and remedies in connection herewith shall remain in full force and effect until the Agent has (i) retransferred and delivered all Collateral in its possession to the Obligors, and (ii) executed a written release or termination statement and reassigned to the Obligors without recourse or warranty any remaining Collateral and all rights conveyed hereby. At such time as the Payment in Full of the Obligations and the termination of the Commitments, the Agent, at the written request and expense of the Borrower, will promptly release, reassign and transfer the Collateral to the Obligors and declare this Agreement to be of no further force or effect, subject to the reinstatement provisions set forth herein.

(b) Partial Releases. If any of the Collateral shall be sold, transferred or otherwise disposed of by any Obligor in a transaction permitted by the Credit Agreement to a Person that is not, and is not required to be, an Obligor, then the Agent, at the request and sole expense of such Obligor, shall promptly (but in any event within ten (10) Business Days of receipt by the Agent of a written notice from the Borrower with respect to such disposition) execute and deliver to such Obligor all releases or other documents reasonably necessary or desirable for the release of the Liens created hereby on such Collateral. At the request and sole expense of the Borrower, a Guarantor shall be released from its obligations hereunder in the event that all the Equity Interests of such Guarantor shall be sold, transferred or otherwise disposed of in a transaction permitted by the Credit Agreement to a Person that is not, and is not required to be, an Obligor; provided that the Borrower shall have delivered to the Agent, at least ten (10) Business Days prior to the date of the proposed release, a written request of a Responsible Officer of the Borrower for release identifying the relevant Guarantor and the terms of the sale or other disposition in reasonable detail, including the price thereof and any expenses in connection therewith, together with a certification by the Borrower stating that such transaction is in compliance with the Credit Agreement and the other Loan Documents.

(c) **Retention in Satisfaction.** Except as may be expressly applicable pursuant to Section 9-620 of the UCC, no action taken or omission to act by the Agent or the Secured Parties hereunder, including, without limitation, any exercise of voting or consensual rights or any other action taken or inaction, shall be deemed to constitute a retention of the Collateral in satisfaction of the Obligations or otherwise to be in full satisfaction of the Obligations, and the Obligations shall remain in full force and effect, until the Agent and the Secured Parties shall have applied payments (including, without limitation, collections from Collateral) toward the Obligations in the full amount then outstanding.

**9.14 Acceptance.** Each Obligor hereby expressly waives notice of acceptance of this Agreement, acceptance on the part of the Agent and the Secured Parties being conclusively presumed by their request for this Agreement and delivery of the same to the Agent.

**9.15 Incorporation by Reference.** The parties to this Agreement acknowledge that all of the rights, protections, immunities and powers, including, without limitation, the right to indemnification applicable to CIT Northbridge Credit LLC as Agent under the Credit Agreement are hereby incorporated by reference and shall be applicable to CIT Northbridge Credit LLC as Agent under this Agreement as if fully set forth herein.

**9.16 Intercreditor Agreements.** Notwithstanding anything herein to the contrary, the Agent acknowledges that the Liens and security interest granted to the Agent pursuant to this Agreement and the exercise of any right or remedy by the Agent hereunder, is subject to the provisions of the Intercreditor Agreement and any Junior Lien Intercreditor Agreement, in each case to the extent in effect. In the event of a conflict or any inconsistency between the terms of any Intercreditor Agreement or any Junior Lien Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement or the Junior Lien Intercreditor, as applicable, shall prevail to the extent then in effect.

**[Remainder of page intentionally left blank]**



IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed and delivered to be effective as of the date first above written.

**BORROWER:**

**HORNBECK OFFSHORE SERVICES, INC.**

By: /s/ James O. Harp, Jr.

Name: James O. Harp, Jr.

Title: Executive Vice President and Chief  
Financial Officer

[Signature Page – Guaranty and Security Agreement]

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed and delivered to be effective as of the date first above written.

**GUARANTORS:**

**HORNBECK OFFSHORE SERVICES, LLC**

**HORNBECK OFFSHORE OPERATORS, LLC**

**HOS PORT, LLC**

By: /s/ James O. Harp, Jr.

Name: James O. Harp, Jr.

Title: Executive Vice President and Chief  
Financial Officer

[Signature Page – Guaranty and Security Agreement]

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed and delivered to be effective as of the date first above written.

**GUARANTORS:**

**HORNBECK OFFSHORE SERVICES DE  
MEXICO, S. DE R.L. DE C.V.**

By: /s/ Samuel A. Giberga

Name: Samuel A. Giberga

Title: Vice President

[Signature Page – Guaranty and Security Agreement]

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed and delivered to be effective as of the date first above written.

**GUARANTORS:**

**HORNBECK OFFSHORE  
NAVEGACAO, LTDA**

By: /s/ Robert Thomas Gang  
Name: Robert Thomas Gang  
Title: Officer

[Signature Page – Guaranty and Security Agreement]

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed and delivered to be effective as of the date first above written.

**AGENT:**

**CIT NORTHBRIDGE CREDIT LLC**

By: /s/ Donna Evans

Name: Donna Evans

Title: Authorized Signatory

[Signature Page – Guaranty and Security Agreement]

**ABL/TERM INTERCREDITOR AGREEMENT**

**Dated as of June 28, 2019**

**among**

**CIT NORTHBRIDGE CREDIT LLC,  
as ABL Collateral Agent**

**and**

**WILMINGTON TRUST, NATIONAL ASSOCIATION,  
as Initial Senior Term Collateral Agent**

**and**

**WILMINGTON TRUST, NATIONAL ASSOCIATION,  
as Initial Junior Term Collateral Agent**

**and acknowledged and agreed to by**

**HORNBECK OFFSHORE SERVICES, INC.,  
as the Parent Borrower**

**and the other Grantors referred to herein**

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## ABL/TERM INTERCREDITOR AGREEMENT

This **ABL/TERM INTERCREDITOR AGREEMENT** (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, this “**Agreement**”), is dated as of **June 28, 2019**, and entered into by and among CIT NORTHBRIDGE CREDIT LLC (“**CIT**”), as collateral agent for the holders of the ABL Obligations (as defined below) (in such capacity and together with its successors and assigns from time to time, the “**ABL Collateral Agent**”), WILMINGTON TRUST, NATIONAL ASSOCIATION (“**Wilmington**”), as collateral agent for the holders of the initial Senior Term Obligations (as defined below) (in such capacity and together with its successors and assigns from time to time, the “**Initial Senior Term Collateral Agent**”), Wilmington, as collateral agent for the holders of the initial Junior Lien Term Obligations (as defined below) (in such capacity and together with its successors and assigns from time to time, the “**Initial Junior Term Collateral Agent**”) and acknowledged and agreed to by HORNBECK OFFSHORE SERVICES, INC., a Delaware corporation (the “**Parent Borrower**”) and the other Grantors (as defined below). Capitalized terms used in this Agreement have the meanings set forth in Section 1 below.

### RECITALS

The Parent Borrower, the other Persons from time to time party thereto as Guarantors, the lenders and agents party thereto, and the ABL Collateral Agent, have entered into the Credit Agreement dated as of the date hereof (as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with this Agreement, the “**ABL Credit Agreement**”);

The Parent Borrower, the lenders and agents party thereto, and the Initial Senior Term Collateral Agent have entered into that First Lien Term Loan Agreement dated as of June 15, 2017 providing for a term loan (as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with this Agreement, the “**Initial Senior Term Credit Agreement**”);

The Parent Borrower, the lenders and agents party thereto, and the Initial Junior Term Collateral Agent have entered into that Second Lien Term Loan Agreement dated as of February 7, 2019 providing for term loans (as amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with this Agreement, the “**Initial Junior Term Credit Agreement**”);

The ABL Obligations are to be secured by Liens on the ABL Priority Collateral that are senior to the Liens of the Senior Term Claimholders and Junior Term Claimholders on the ABL Priority Collateral;

The Senior Term Obligations and Junior Term Obligations are to be secured by Liens on the ABL Priority Collateral that are junior in priority to the Liens of the ABL Claimholders on the ABL Priority Collateral;

The ABL Loan Documents, the Junior Term Loan Documents and the Senior Term Loan Documents provide, among other things, that the parties thereto shall set forth in this Agreement their respective rights and remedies with respect to the ABL Priority Collateral; and

In consideration of the foregoing, the mutual covenants and obligations herein set forth and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, each Term Collateral Agent, on behalf of itself and the Term Claimholders represented by it, and each Junior Term Collateral Agent, on behalf of itself and the Junior Term Claimholders represented by it, and the ABL Collateral Agent on behalf of the ABL Claimholders, intending to be legally bound, hereby agrees as follows:

## AGREEMENT

### SECTION 1

#### DEFINITIONS

1.1 Defined Terms. Each of **Accounts, Account Debtor, Chattel Paper, Deposit Accounts, Commercial Tort Claims, Documents, Electronic Chattel Paper, Tangible Chattel Paper, Equipment, Financial Assets, Fixtures, General Intangibles, Instruments, Inventory, Investment Property, Letter of Credit, Letter of Credit Rights, Payment Intangibles, Proceeds, Securities, Security Entitlement, and Securities Accounts** shall have the meanings set forth in Articles 8 or 9 of the UCC. In addition, as used in this Agreement, the following terms shall have the meanings set forth below.

“**ABL Bank Product Obligations**” means, all obligations and liabilities (whether direct or indirect, absolute or contingent, due or to become due or now existing or hereafter incurred) of the Parent Borrower or any other Grantor, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses or otherwise, which may arise under, out of, or in connection with any treasury, investment, depository, clearing house, wire transfer, cash management or automated clearing house transfers of funds services or any related services, to any Person who is a secured party in respect of such obligations under the ABL Loan Documents.

“**ABL Cap Amount**” means (x) unless the Parent Borrower or any other Grantor shall be subject to any Insolvency or Liquidation Proceeding, (i) \$100,000,000, plus (ii) any interest, fees, costs, premiums and expenses (but only in respect of or to the extent attributable to the amount in sub-section (x)(i) above) and reasonable and documented costs and expenses permitted to be paid under the ABL Credit Agreement and the ABL Loan Documents as in effect on the date hereof and (y) if the Parent Borrower or any other Grantor shall be subject to any Insolvency or Liquidation Proceeding, (i) 110% of the outstanding principal amount of the ABL Obligations outstanding immediately prior to such Insolvency or Liquidation Proceeding (except for any portion of such ABL Obligations in excess of the amount specified in clause (x) above), plus (ii) any interest, fees, costs, premiums and expenses (which shall include post-filing interest, costs and expenses (but only in respect of or to the extent attributable to the amount in sub-section (y)(i) above)) and reasonable and documented costs and expenses in connection therewith.

“**ABL Claimholders**” means, at any relevant time, the holders of ABL Obligations at that time, including the ABL Lenders, any ABL Hedge Provider, any provider of ABL Bank Products Obligations and the agents under the ABL Loan Documents.

“**ABL Collateral Agent**” has the meaning specified in the preamble hereof.

**“ABL Collateral Documents”** means the Security Documents (as defined in the ABL Credit Agreement) and any other agreement, document or instrument pursuant to which a Lien is granted securing any ABL Obligations or under which rights or remedies with respect to such Liens are governed (other than this Agreement).

**“ABL Credit Agreement”** has the meaning set forth in the Recitals to this Agreement.

**“ABL Credit Party”** means “Credit Party” or “Loan Party” as defined in the ABL Credit Agreement.

**“ABL Default”** means an “Event of Default” as defined in the ABL Credit Agreement or any similar event or condition set forth in any other ABL Loan Document which causes, or permits holders of the applicable ABL Obligations outstanding thereunder to cause, the ABL Obligations outstanding thereunder to become immediately due and payable regardless of whether the holders of such ABL Obligations cause such ABL Obligations to become immediately due and payable.

**“ABL Hedge Agreement”** means a Swap Contract entered into with a ABL Hedge Provider in order to satisfy the requirements of the ABL Credit Agreement, the Senior Term Credit Agreement, the Junior Term Credit Agreement or otherwise as permitted under the Senior Term Loan Documents and Junior Term Loan Documents, in each case to the extent secured, or purported to be secured, under the ABL Collateral Documents.

**“ABL Hedge Provider”** shall mean any Person who has entered into an ABL Hedging Agreement with an ABL Credit Party.

**“ABL Hedging Obligation”** means any obligation of any ABL Credit Party under any ABL Hedge Agreement.

**“ABL Lenders”** means the “Lenders” under and as defined in the ABL Credit Agreement. **“ABL Loan Documents”** means the ABL Credit Agreement and the Credit Documents or Loan Documents (as defined in the ABL Credit Agreement) and each of the other agreements, documents and instruments providing for or evidencing any other ABL Obligation, and any other document or instrument executed or delivered at any time in connection with any ABL Obligations, including any intercreditor or joinder agreement among holders of ABL Obligations, to the extent such are effective at the relevant time, as each may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

**“ABL Obligations”** means, subject to clause (b) hereof, the following:

(a) all principal of and interest and premium (if any) on all loans made (or deemed made) pursuant to the ABL Credit Agreement; (ii) all ABL Hedging Obligations; (iii) all ABL Bank Product Obligations and (iv) all guarantee obligations, fees, expenses and all other Obligations under the ABL Credit Agreement and the other ABL Loan Documents, including any Post-Petition Interest with respect to the Obligations in clauses (i) – (iv), in each case, whether or not allowed or allowable in an Insolvency or Liquidation Proceeding;

(b) notwithstanding the foregoing, if the sum of: (1) the ABL Obligations outstanding under the ABL Credit Agreement and the other ABL Loan Documents; plus (2) the aggregate face amount of any letters of credit issued but not reimbursed under the ABL Credit Agreement, is in excess of, in the aggregate, the ABL Cap Amount, then only that portion of the ABL Obligations and such aggregate face amount of letters of credit equal to the ABL Cap Amount shall be included in ABL Obligations and interest and reimbursement obligations with respect to such portion of the ABL Obligations and letters of credit shall only constitute ABL Obligations to the extent related to ABL Obligations and face amounts of letters of credit included in the ABL Obligations not in excess of the ABL Cap Amount.

**“ABL Priority Collateral”** means the following property whether now owned or at any time hereafter acquired by any ABL Loan Party or in which any such ABL Loan Party now has or at any time in the future may acquire any right, title or interest: (i) all Accounts and Credit Card Receivables, (ii) all Chattel Paper (whether Tangible Chattel Paper or Electronic Chattel Paper) and Payment Intangibles, in each case solely to the extent relating to or arising from Accounts or Credit Card Receivables; (iii) all Specified Deposit Accounts (and all cash, checks and other negotiable instruments, funds, Automated Clearing House transfers, wired funds, Investment Property, credit balances and any other evidences of payment held therein or credited thereto) (in each case, other than cash, checks and other negotiable instruments, funds, Automated Clearing House transfers, wired funds, Investment Property, credit balances and any other evidences of payment held therein or credited thereto to the extent constituting identifiable proceeds of the Term Priority Collateral other than Inventory); (iv) solely to the extent related to Accounts and Credit Card Receivables, all Securities Accounts, Security Entitlements and Securities credited thereto (in each case except to the extent constituting identifiable proceeds of the Term Priority Collateral other than Inventory); (v) to the extent evidencing, governing, securing or otherwise reasonably related to any of the foregoing, all Documents, General Intangibles, Payment Intangibles, Instruments (including promissory notes), Commercial Tort Claims, Letters of Credit, Letter of Credit Rights, and Supporting Obligations; provided, however, that the foregoing shall not include any Intellectual Property; (vi) all books, records and documents related to the foregoing (including databases, customer lists and other records, whether tangible or electronic, which contain any information relating to any of the foregoing); (vii) proceeds of business interruption insurance and (viii) to the extent not otherwise included, all Proceeds and products of any or all of the foregoing in whatever form received (including proceeds of credit insurance, refunds, rebates and any other insurance and claims against third parties (in each case, regardless of whether the ABL Collateral Agent is the loss payee thereof)).

**“ABL Standstill Period”** has the meaning set forth in Section 3.1.

**“Additional Junior Term Credit Agreement”** means any credit agreement, debt facility, indenture and/or commercial paper facility, in each case, with banks or other institutional or commercial lenders providing for revolving credit loans, term loans, receivables financing (excluding through the sale of receivables to such lenders or to special purpose entities formed to borrow from (or sell such receivables to) such lenders against such receivables), letters of credit, bankers’ acceptances, or other borrowings, that either (x) is secured by a Lien on the ABL Priority Collateral on a pari passu basis with the Lien on the ABL Priority Collateral securing the Initial Junior Term Credit Agreement (if outstanding) and each other outstanding Junior Term Credit

Agreement or (y) if there are no other outstanding Junior Term Credit Agreements, is secured by a Lien on ABL Priority Collateral and has been designated as a Junior Term Credit Agreement in accordance with Section 8.18 hereof; provided, however, that (i) the Indebtedness under such Additional Junior Term Credit Agreement is permitted to be incurred, secured and guaranteed on such basis by each ABL Loan Document, each Senior Term Loan Document and each Junior Term Loan Document, provided further that, with respect to any Lien on the ABL Priority Collateral securing such Indebtedness, such Lien shall be junior and subordinate to the Lien in favor of the ABL Collateral Agent on the ABL Priority Collateral securing the ABL Obligations, (ii) each Junior Term Collateral Agent under such Additional Junior Term Credit Agreement shall have become party to this Agreement pursuant to, and by satisfying the conditions set forth in, Section 8.18 hereof and (iii) each of the other requirements of Section 8.18 shall have been complied with. The requirements of clause (i) of the immediately preceding sentence shall be tested only as of (x) the date of execution of a joinder agreement in substantially the form of Exhibit C hereto in respect of the applicable Additional Junior Term Credit Agreement if pursuant to a commitment entered into at the time of such joinder agreement and (y) with respect to any later commitment or amendment to those terms to permit such Indebtedness, as of the date of such commitment and/or amendment.

**“Additional Senior Term Credit Agreement”** means any credit agreement, debt facility, indenture and/or commercial paper facility, in each case, with banks or other institutional or commercial lenders providing for revolving credit loans, term loans, receivables financing (excluding through the sale of receivables to such lenders or to special purpose entities formed to borrow from (or sell such receivables to) such lenders against such receivables), letters of credit, bankers’ acceptances, or other borrowings, that either (x) is secured by a Lien on the ABL Priority Collateral on a pari passu basis with the Lien on the ABL Priority Collateral securing the Initial Senior Term Credit Agreement (if outstanding) and each other outstanding Senior Term Credit Agreement or (y) if there are no other outstanding Senior Term Credit Agreements, is secured by a Lien on ABL Priority Collateral and has been designated as a Senior Term Credit Agreement in accordance with Section 8.18 hereof; provided, however, that (i) the Indebtedness under such Additional Senior Term Credit Agreement is permitted to be incurred, secured and guaranteed on such basis by each ABL Loan Document, each Senior Term Loan Document and each Junior Term Loan Document, provided further that, with respect to any Lien on ABL Priority Collateral securing such Indebtedness, such Lien shall be junior and subordinate to the Lien in favor of the ABL Collateral Agent on the ABL Priority Collateral securing the ABL Obligations, (ii) the ABL Collateral Agent under such Additional Senior Term Credit Agreement shall have become party to this Agreement pursuant to, and by satisfying the conditions set forth in, Section 8.18 hereof and (iii) each of the other requirements of Section 8.18 shall have been complied with. The requirements of clause (i) of the immediately preceding sentence shall be tested only as of (x) the date of execution of a joinder agreement in substantially the form of Exhibit C hereto in respect of the applicable Additional Senior Term Credit Agreement if pursuant to a commitment entered into at the time of such joinder agreement and (y) with respect to any later commitment or amendment to those terms to permit such Indebtedness, as of the date of such commitment and/or amendment.

**“Affiliate”** means, with respect to a specified Person, (a) any other Person that, directly or indirectly, Controls, is Controlled by or is under common Control with the Person specified or is a director or officer of the Person specified or (b) any other Person that directly or indirectly owns 10% or more of any class of equity interests of the Person specified.

“**Agent**” means each of the ABL Collateral Agent, the Senior Term Collateral Agents and/or the Junior Term Collateral Agents, as the context may require.

“**Agreement**” has the meaning set forth in the Preamble to this Agreement.

“**Bankruptcy Case**” means a case under the Bankruptcy Code or any other Bankruptcy Law.

“**Bankruptcy Code**” means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor statute.

“**Bankruptcy Law**” means the Bankruptcy Code and any similar federal, state or foreign law for the relief of debtors.

“**Business Day**” means a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to close.

“**Claimholders**” means the ABL Claimholders, the Senior Term Claimholders and/or the Junior Term Claimholders, as the context may require.

“**Collateral Documents**” means the ABL Collateral Documents, the Senior Term Collateral Documents and the Junior Term Collateral Documents.

“**Collection Account**” means each of the collection accounts established by the Parent Borrower into which Account Debtors shall make payment on Receivables, pursuant to Section 8.2.5 of the ABL Credit Agreement, in each case that is subject to an Account Control Agreement (as defined in the ABL Credit Agreement) and as identified as a “Collection Account” on Schedule 9.1.27 attached to the ABL Credit Agreement.

“**Collection/Disbursement Account**” means each of the accounts established by Parent Borrower or any other Grantor, in each case that is subject to an Account Control Agreement (as defined in the ABL Credit Agreement) and identified as a “Collection/Disbursement” account on Schedule 9.1.27 attached to the ABL Credit Agreement.

“**Control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “**Controlling**” and “**Controlled**” have meanings correlative thereto.

“**Copyright Licenses**” means any written agreement naming any Grantor as licensor or licensee, granting any right under any Copyright or copyrights owned by a third party, including the grant of rights to reproduce, distribute, display, perform, create derivative works of and otherwise exploit material works protected by any Copyright.

“**Copyrights**” means each of the following that is owned by any Grantor: (i) all copyrights arising under the laws of the United States, any other country or group of countries or any political subdivision thereof, whether registered or unregistered and whether published or unpublished, all registrations and recordings thereof, and all applications in connection therewith, including all registrations, recordings and applications in the United States Copyright Office; and (ii) the right to obtain all renewals thereof.

**“Credit Card Issuer”** shall mean any person who issues or whose members issue credit cards, including, without limitation, MasterCard or VISA bank credit or debit cards or other bank credit or debit cards issued through MasterCard International, Inc., Visa, U.S.A., Inc. or Visa International and American Express, Discover, Diners Club, Carte Blanche and other non-bank credit or debit cards, including, without limitation, credit or debit cards issued by or through American Express Travel Related Services Company, Inc., and Novus Services, Inc. and other issuers approved by the ABL Collateral Agent.

**“Credit Card Processor”** shall mean any servicing or processing agent or any factor or financial intermediary who facilitates, services, processes or manages the credit authorization, billing transfer and/or payment procedures with respect to any Grantor’s sales transactions involving credit card or debit card purchases by customers using credit cards or debit cards issued by any Credit Card Issuer.

**“Credit Card Receivables”** means each “payment intangible” (as defined in the UCC) together with all income, payments and proceeds thereof, owed by a Credit Card Issuer or Credit Card Processor to a Grantor resulting from charges by a customer of a Grantor on credit or debit cards issued by such Credit Card Issuer in connection with the sale of Inventory by a Grantor, or services performed by a Grantor, in each case in the ordinary course of its business.

**“Designated Junior Term Collateral Agent”** means (i) if at any time there is only one Junior Term Collateral Agent party hereto, then such Junior Term Collateral Agent and (ii) at any time when clause (i) does not apply, subject to Section 2.6 hereof, the Junior Term Collateral Agent designated as such pursuant to the Junior Term Intercreditor Agreement.

**“Designated Senior Term Collateral Agent”** means (i) if at any time there is only one Senior Term Collateral Agent party hereto, then such Senior Term Collateral Agent and (ii) at any time when clause (i) does not apply, subject to Section 2.6 hereof, the Senior Term Collateral Agent designated as such pursuant to the Senior Term Intercreditor Agreement.

**“DIP Financing”** has the meaning set forth in Section 6.1.

**“Discharge of ABL Obligations”** means, except to the extent otherwise expressly provided in Section 5.6, each of the following has occurred:

(a) indefeasible payment in full in cash in immediately available funds of the principal of and interest (including Post-Petition Interest, whether or not such interest would be allowed in such Insolvency or Liquidation Proceeding), on all Indebtedness outstanding under the ABL Loan Documents and constituting ABL Obligations;

(b) indefeasible payment in full in cash in immediately available funds of all ABL Hedging Obligations and ABL Bank Product Obligations or the cash collateralization of all such ABL Hedging Obligations and ABL Bank Product Obligations on terms satisfactory to each applicable counterparty (or other arrangements satisfactory to each such counterparty shall have been made) and the expiration or termination of all outstanding transactions under ABL Hedge Agreements;

(c) indefeasible payment in full in cash in immediately available funds of all other ABL Obligations that are due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid (other than any unknown contingent or indemnification obligations for which no claim or demand for payment, whether oral or written, has been made at such time); and

(d) termination or expiration of all commitments, if any, to extend credit that would constitute ABL Obligations.

**“Discharge of Junior Term Obligations”** means, except to the extent otherwise expressly provided in Section 5.6, each of the following has occurred:

(a) indefeasible payment in full in cash in immediately available funds of the principal of and interest (including Post-Petition Interest, whether or not such interest would be allowed in such Insolvency or Liquidation Proceeding), on all Indebtedness outstanding under the Junior Term Loan Documents and constituting Junior Term Obligations;

(b) indefeasible payment in full in cash in immediately available funds of all other Junior Term Obligations that are due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid (other than any indemnification obligations for which no claim or demand for payment, whether oral or written, has been made at such time); and

(c) termination or expiration of all commitments, if any, to extend credit that would constitute Junior Term Obligations.

**“Discharge of Senior Term Obligations”** means, except to the extent otherwise expressly provided in Section 5.6, each of the following has occurred:

(a) indefeasible payment in full in cash in immediately available funds of the principal of and interest (including Post-Petition Interest, whether or not such interest would be allowed in such Insolvency or Liquidation Proceeding), on all Indebtedness outstanding under the Senior Term Loan Documents and constituting Senior Term Obligations;

(b) indefeasible payment in full in cash in immediately available funds of all other Senior Term Obligations that are due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid (other than any indemnification obligations for which no claim or demand for payment, whether oral or written, has been made at such time); and

(c) termination or expiration of all commitments, if any, to extend credit that would constitute Senior Term Obligations.



“Disposition” has the meaning set forth in Section 5.1(b). “Dispose” has a meaning correlative thereto.

“Enforcement Action” means any action to:

(a) foreclose, execute, levy, or collect on, take possession or control of (other than for purposes of perfecting a Lien thereon), sell or otherwise realize upon (judicially or non-judicially), or lease, license, or otherwise dispose of (whether publicly or privately), ABL Priority Collateral or otherwise exercise or enforce remedial rights with respect to ABL Priority Collateral under the ABL Loan Documents or the Senior Term Loan Documents (including by way of setoff, recoupment, notification of a public or private sale or other disposition pursuant to the UCC or other applicable law, notification to Account Debtors, notification to depositary banks under deposit account control agreements, or exercise of rights under landlord consents, if applicable);

(b) solicit bids from third Persons, approve bid procedures for any proposed disposition of ABL Priority Collateral, to conduct the liquidation or disposition of ABL Priority Collateral or engage or retain sales brokers, marketing agents, investment bankers, accountants, auctioneers, or other third Persons for the purposes of marketing, promoting, and selling ABL Priority Collateral either in or outside an Insolvency or Liquidation Proceeding;

(c) receive a transfer of ABL Priority Collateral in satisfaction of Indebtedness or any other Obligation secured thereby;

(d) otherwise enforce a security interest or exercise another right or remedy, as a secured creditor or otherwise, pertaining to the ABL Priority Collateral at law, in equity, or pursuant to the ABL Loan Documents or Senior Term Loan Documents (including the commencement of applicable legal proceedings or other actions with respect to all or any portion of the ABL Priority Collateral to facilitate the actions described in the preceding clauses, and exercising voting rights in respect of equity interests comprising ABL Priority Collateral); or

(e) Dispose ABL Priority Collateral by any Grantor after the occurrence and during the continuation of an event of default under the ABL Loan Documents or the Senior Term Loan Documents;

provided, however, that notwithstanding the foregoing, none of the following shall constitute an Enforcement Action: (i) the establishment or modification of (x) borrowing base and/or availability reserves or other reserves against collateral, (y) eligibility criteria for Accounts, or (z) other conditions for advances; (ii) the changing of advance rates or advance sub-limits; (iii) the imposition of a default rate or late fee; (iv) the collection and application (including pursuant to “cash dominion” provisions) of Accounts or other monies deposited from time to time in Deposit Accounts or Securities Accounts, in each case, against the ABL Obligations pursuant to the provisions of the ABL Loan Documents (including the notification of Account Debtors, depositary institutions or any other Person to deliver proceeds of ABL Priority Collateral to the ABL Collateral Agent); (v) the cessation of lending or termination of commitments pursuant to the

provisions of the ABL Loan Documents, including upon the occurrence of an ABL Default or the existence of an over-advance; (vi) the filing of a proof of claim in any Insolvency or Liquidation Proceeding; (vii) [reserved]; (viii) the acceleration of the Senior Term Obligations or the ABL Obligations; (ix) the commencement or filing or joining with other Persons in the commencement or filing of a petition in an Insolvency or Liquidation Proceeding in the exercise of any remedies as an unsecured creditor and (x) any action taken by any Non-ABL Claimholder in respect of Term Priority Collateral.

**“Enforcement Notice”** means a written notice delivered by (i) the ABL Collateral Agent, at a time when an ABL Default has occurred and is continuing, to the Designated Senior Term Collateral Agent and Designated Junior Term Collateral Agent announcing that the ABL Collateral Agent intends to commence an Enforcement Action against the ABL Priority Collateral and specifying the relevant ABL Default under the ABL Loan Documents; (ii) any Senior Term Collateral Agent, at a time when a Senior Term Default has occurred and is continuing, to the ABL Collateral Agent announcing that such Senior Term Collateral Agent intends to commence an Enforcement Action against the ABL Priority Collateral and specifying the Senior Term Default under the Senior Term Loan Documents; and (iii) any Junior Term Collateral Agent, at a time when a Junior Term Default has occurred and is continuing, to the ABL Collateral Agent and Designated Senior Term Collateral Agent announcing that such Junior Term Collateral Agent intends to commence an Enforcement Action against the ABL Priority Collateral and specifying the relevant Junior Term Default under the Junior Term Loan Documents.

**“Equity Interests”** means, with respect to any Person, all of the shares, interests, rights, participations or other equivalents (however designated) of capital stock of (or other ownership or profit interests or units in) such Person and all of the warrants, options or other rights for the purchase, acquisition or exchange from such Person of any of the foregoing (including through convertible securities).

**“Excess ABL Obligations”** means any Obligations that would constitute ABL Obligations if not for the **ABL Cap Amount**.

**“Governmental Authority”** means any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity or officer exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government.

**“Grantors”** means the Parent Borrower, HOS, each of the Guarantors and each other Person that has or may from time to time hereafter execute and deliver any ABL Collateral Document, Senior Term Collateral Document and/or Junior Term Collateral Document as a “grantor” or “pledgor” (or the equivalent thereof) to secure any ABL Obligations, Senior Term Obligations and/or Junior Term Obligations, as the context may require.

**“Guarantors”** means each Subsidiary of the Parent Borrower that has or may from time to time hereafter execute and deliver any ABL Loan Document and/or Senior Term Loan Document as a “guarantor” (or the equivalent thereof).

**“HOS”** means Hornbeck Offshore Services, LLC, a Delaware limited liability company.

**“Indebtedness”** means and includes all indebtedness for borrowed money, for the avoidance of doubt, “Indebtedness” shall not include reimbursement or other obligations in respect of letters of credit or ABL Hedging Obligations.

**“Initial Junior Term Collateral Agent”** has the meaning set forth in the Preamble to this Agreement.

**“Initial Junior Term Credit Agreement”** has the meaning set forth in the Recitals to this Agreement.

**“Initial Senior Term Collateral Agent”** has the meaning set forth in the Preamble to this Agreement.

**“Initial Senior Term Credit Agreement”** has the meaning set forth in the Recitals to this Agreement.

**“Insolvency or Liquidation Proceeding”** means:

(a) any voluntary or involuntary case or proceeding under the Bankruptcy Code with respect to any Grantor;

(b) any other voluntary or involuntary insolvency, reorganization or Bankruptcy Case or proceeding, or any receivership, liquidation, reorganization or other similar case or proceeding or the voluntary or involuntary appointment of any trustee, custodian, conservator or similar official with respect to any Grantor or with respect to a material portion of their respective property or assets;

(c) any liquidation, dissolution, reorganization or winding up of any Grantor whether voluntary or involuntary and whether or not involving insolvency or bankruptcy; or

(d) any assignment for the benefit of creditors or any other marshaling of assets and liabilities of any Grantor.

**“Intellectual Property”** means the collective reference to all rights, priorities and privileges relating to intellectual property, whether arising under United States, multinational or foreign laws or otherwise, including the copyrights, the copyright licenses, the patents, the patent licenses, the trademarks, the trademark licenses, the trade secrets, the computer software and any registered internet domain names, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

**“Junior Term Claimholders”** means, at any relevant time, the holders of Junior Term Obligations at that time, including the Junior Term Lenders and the agents under the Junior Term Loan Documents.

**“Junior Term Collateral Agent”** means each of (i) the Initial Junior Term Collateral Agent, (ii) any new Junior Term Collateral Agent identified by the Parent Borrower pursuant to Section 5.6(c) and (iii) any agent or trustee under any other Junior Term Credit Agreement, in each case, together with any successors thereto, and Junior Term Collateral Agents shall mean, collectively, each Junior Term Collateral Agent.

**“Junior Term Collateral Documents”** means the Security Documents or Collateral Documents (as defined in the respective Junior Term Credit Agreements) and any other agreement, document or instrument pursuant to which a Lien is granted securing any Junior Term Obligations or under which rights or remedies with respect to such Liens are governed (other than this Agreement).

**“Junior Term Credit Agreement”** means collectively, (a) the Initial Junior Term Credit Agreement and (b) any Additional Junior Term Credit Agreement. Any reference to the Junior Term Credit Agreement hereunder shall be deemed a reference to each Junior Term Credit Agreement then in existence.

**“Junior Term Default”** means an “Event of Default” as defined in the Junior Term Credit Agreement or any similar event or condition set forth in any other Junior Term Loan Document which causes, or permits holders of the applicable Junior Term Obligations outstanding thereunder to cause, the Junior Term Obligations outstanding thereunder to become immediately due and payable.

**“Junior Term Intercreditor Agreement”** means any agreement or agreements (other than this Agreement) among Junior Term Collateral Agents that defines the relative rights and priorities as among Junior Term Collateral Agents and Junior Term Claimholders with respect to Term Priority Collateral and ABL Priority Collateral.

**“Junior Term Lenders”** means the “Lenders” under and as defined in the Junior Term Credit Agreement.

**“Junior Term Loan Documents”** means each Junior Term Credit Agreement and the Loan Documents or Credit Documents (as defined in the respective Junior Term Credit Agreements) and each of the other agreements, documents and instruments providing for or evidencing any other Junior Term Obligation, and any other document or instrument executed or delivered at any time in connection with any Junior Term Obligations, including any intercreditor or joinder agreement among holders of Junior Term Obligations to the extent such are effective at the relevant time, as each may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

**“Junior Term Obligations”** means all Obligations outstanding under any Junior Term Credit Agreement and the other Junior Term Loan Documents. “Junior Term Obligations” shall include all interest accrued or accruing, including Post-Petition Interest, in accordance with the rate specified in the relevant Junior Term Loan Document whether or not the claim for such interest is allowed as a claim in such Insolvency or Liquidation Proceeding.

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

**“Non-ABL Claimholder”** means any Term Claimholder or any Junior Term Claimholder.

**“Obligations”** means all obligations of every nature of each Grantor from time to time owed to the ABL Claimholders, the Senior Term Claimholders, the Junior Term Claimholders or any of them or their respective Affiliates under the ABL Loan Documents, the Senior Term Loan Documents, the Junior Term Loan Documents, ABL Hedge Agreements, agreements evidencing ABL Bank Product Obligations, in each case, whether for principal, interest or payments for early termination of ABL Hedge Agreements, fees, expenses, indemnification or otherwise and all guarantees of any of the foregoing and including any interest and fees that accrue or are incurred after the commencement by or against any Person of any proceeding under any Bankruptcy Law naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

**“Parent Borrower”** has the meaning set forth in the Preamble to this Agreement.

**“Patent Licenses”** means all agreements, whether written or oral, providing for the grant by or to any Grantor of any right to manufacture, use or sell any invention covered in whole or in part by a Patent or patents owned by a third party.

**“Patents”** means each of the following that is owned by any Grantor: (i) all letters patent of the United States, any other country or group of countries or any political subdivision thereof, all reissues and extensions thereof and all goodwill associated therewith; (ii) all applications for letters patent of the United States or any other country and all divisions, continuations and continuations-in-part thereof; and (iii) all rights to obtain any reissues or extensions of the foregoing.

**“Person”** means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, limited partnership, Governmental Authority or other entity.

**“Pledged Collateral”** has the meaning set forth in [Section 5.5](#).

**“Post-Petition Interest”** means interest, fees, expenses and other charges that pursuant to the ABL Credit Agreement or the Senior Term Credit Agreement, continue to accrue after the commencement of any Insolvency or Liquidation Proceeding, whether or not such interest, fees, expenses and other charges are allowed or allowable under the Bankruptcy Law or in any such Insolvency or Liquidation Proceeding.

**“Receivables”** means Accrued Revenue, trade receivables, amounts to be rebilled to customers, and any and all other general non-trade receivables as mutually agreed from time to time between the Lenders and Parent Borrower, net of reserves; provided, that the foregoing shall not include any Tax Receivables.

**“Recovery”** has the meaning set forth in [Section 6.4](#).

**“Refinance”** means, in respect of any Indebtedness, to refinance, extend, renew, defease, amend, modify, supplement, restructure, replace, refund or repay, or to issue other Indebtedness in exchange or replacement for, such Indebtedness in whole or in part regardless of whether the principal amount of such Refinancing Indebtedness is the same, greater than or less than the principal amount of the Refinanced Indebtedness. **“Refinanced”** and **“Refinancing”** shall have correlative meanings.

**“Senior Term Claimholders”** means, at any relevant time, the holders of Senior Term Obligations at that time, including the Senior Term Lenders and the agents under the Senior Term Loan Documents.

**“Senior Term Collateral Agent”** means each of (i) the Initial Senior Term Collateral Agent, (ii) any new Senior Term Collateral Agent identified by the Parent Borrower pursuant to [Section 5.6\(b\)](#) and (iii) any agent or trustee under any other Senior Term Credit Agreement, in each case, together with any successors thereto, and Senior Term Collateral Agents shall mean, collectively, each Senior Term Collateral Agent.

**“Senior Term Collateral Documents”** means the Security Documents or Collateral Documents (as defined in the respective Senior Term Credit Agreements) and any other agreement, document or instrument pursuant to which a Lien is granted securing any Senior Term Obligations or under which rights or remedies with respect to such Liens are governed (other than this Agreement).

**“Senior Term Credit Agreement”** means collectively, (a) the Initial Senior Term Credit Agreement and (b) any Additional Senior Term Credit Agreement. Any reference to the Senior Term Credit Agreement hereunder shall be deemed a reference to each Senior Term Credit Agreement then in existence.

**“Senior Term Default”** means an “Event of Default” as defined in the Senior Term Credit Agreement or any similar event or condition set forth in any other Senior Term Loan Document which causes, or permits holders of the applicable Senior Term Obligations outstanding thereunder to cause, the Senior Term Obligations outstanding thereunder to become immediately due and payable.

**“Senior Term Intercreditor Agreement”** means any agreement or agreements (other than this Agreement) among Senior Term Collateral Agents that defines the relative rights and priorities as among Senior Term Collateral Agents and Senior Term Claimholders with respect to the Term Priority Collateral.

**“Senior Term Lenders”** means the “Lenders” under and as defined in the Senior Term Credit Agreement.

**“Senior Term Loan Documents”** means each Senior Term Credit Agreement and the Loan Documents or Credit Documents (as defined in the respective Senior Term Credit Agreements) and each of the other agreements, documents and instruments providing for or evidencing any other Senior Term Obligation, and any other document or instrument executed or delivered at any time in connection with any Senior Term Obligations, including any intercreditor or joinder agreement among holders of Senior Term Obligations to the extent such are effective at the relevant time, as each may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

**“Senior Term Obligations”** means all Obligations outstanding under any Senior Term Credit Agreement and the other Senior Term Loan Documents. “Senior Term Obligations” shall include all interest accrued or accruing, including Post-Petition Interest, in accordance with the rate specified in the relevant Senior Term Loan Document whether or not the claim for such interest is allowed as a claim in such Insolvency or Liquidation Proceeding.

**“Specified Deposit Accounts”** means, collectively, the Tranche A Unrestricted Account (as defined in the ABL Credit Agreement as in effect on the date hereof), the Tranche B-1 Blocked Account (as defined in the ABL Credit Agreement as in effect on the date hereof), the Tranche B- 2 Blocked Account (as defined in the ABL Credit Agreement as in effect on the date hereof), each Collection Account and each Collection/Disbursement Account.

**“Subsidiary”** means, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person.

**“Swap Contract”** means (a) any and all interest rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options for forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a **“Master Agreement”**), including such obligations or liabilities under any Master Agreement.

**“Tax Receivables”** means all federal, state, local, municipal and other tax refunds or rebates of any kind, whether from a Governmental Authority in the United States or outside of the United States.

**“Term Declined Liens”** has the meaning set forth in [Section 2.3](#).

**“Term Priority Collateral”** means all “Collateral” (or equivalent term) under and as defined in any Term Collateral Document or Junior Term Collateral Document other than ABL Priority Collateral.

**“Term Priority Intercreditor Agreement”** means any agreement or agreements (other than this Agreement) among the Senior Term Collateral Agents and the Junior Term Collateral Agents that defines the relative rights and priorities as among the Senior Term Collateral Agents and the Senior Term Claimholders and the Junior Term Collateral Agents and the Junior Term Claimholders with respect to the ABL Priority Collateral and the Term Priority Collateral.

**“Trade Secrets”** means all confidential and proprietary information, including know-how, trade secrets, manufacturing and production processes and techniques, inventions, research and development information, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans, and customer and supplier lists and information.

**“Trademark License”** means any agreement, whether written or oral, providing for the grant by or to any Grantor of any right to use any Trademark or trademarks owned by a third party.

**“Trademarks”** means each of the following that is owned by any Grantor: (i) all trademarks, trade names, trade dress, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers, and all goodwill associated therewith, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, whether in the U.S. Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or group of countries or any political subdivision thereof, or otherwise, and all common-law rights related thereto; and (ii) the right to obtain all renewals thereof.

**“UCC”** means the Uniform Commercial Code (or any similar or equivalent legislation) as in effect in any applicable jurisdiction.

**“Use Period”** means the period commencing on the date that the ABL Collateral Agent or an agent acting on its behalf, commences the liquidation and sale of the ABL Priority Collateral (having theretofore furnished the Designated Senior Term Collateral Agent with an Enforcement Notice) and ending the 120th day thereafter. If any stay or other order that prohibits the ABL Collateral Agent from commencing and continuing to exercise its remedies or from liquidating and selling the ABL Priority Collateral has been entered by a court of competent jurisdiction, such 120-day period shall be tolled during the pendency of any such stay or other order and the Use Period shall be so extended.

1.2 **Terms Generally.** The definitions of terms in this Agreement shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise:



(a) any definition of or reference herein to any agreement, instrument or other document shall be construed as referring to such agreement, instrument or other document as amended, restated, amended and restated, supplemented or otherwise modified from time to time (subject to any restrictions on such amendments, supplements or other modifications set forth herein) and any reference herein to any statute or regulations shall include any amendment, renewal, extension or replacement thereof;

(b) any reference herein to any Person shall be construed to include such Person's permitted successors and assigns from time to time;

(c) the words "herein," "hereof" and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof;

(d) all references herein to Sections shall be construed to refer to Sections of this Agreement;

(e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights;

(f) any reference herein to the ABL Collateral Agent on behalf of the ABL Claimholders shall be understood to mean only on behalf of itself and the ABL Claimholders for which the ABL Collateral Agent is acting as agent under the related ABL Loan Documents or any ABL Collateral Documents;

(g) any reference herein to a Senior Term Collateral Agent on behalf of the Senior Term Claimholders shall be understood to mean only on behalf of itself and the Senior Term Claimholders for which such Senior Term Collateral Agent is acting as agent under the related Senior Term Loan Documents or any Senior Term Collateral Documents; and

(h) any reference herein to a Junior Term Collateral Agent on behalf of the Junior Term Claimholders shall be understood to mean only on behalf of itself and the Junior Term Claimholders for which such Junior Term Collateral Agent is acting as agent under the related Junior Term Loan Documents or any Junior Term Collateral Documents.

## SECTION 2

### LIEN PRIORITIES

2.1 Relative Priorities. Notwithstanding the date, time, method, manner or order of grant, attachment or perfection of any Liens securing the ABL Obligations, the Senior Term Obligations and/or the Junior Term Obligations on the ABL Priority Collateral and notwithstanding any provision of the UCC, or any other applicable law or the ABL Loan Documents, the Senior Term Loan Documents or the Junior Term Loan Documents or any defect or deficiencies in, or failure to perfect or lapse in perfection of, or avoidance as a fraudulent conveyance or otherwise of, the Liens securing the ABL Obligations, the Senior Term Obligations or the Junior Term Obligations, the subordination of such Liens to any Liens securing other

obligations or any other circumstance whatsoever, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Parent Borrower or any other Grantor, the ABL Collateral Agent, on behalf of itself and the ABL Claimholders represented by it, each Senior Term Collateral Agent, on behalf of itself and the Senior Term Claimholders represented by it, and each Junior Term Collateral Agent, on behalf of itself and the Junior Term Claimholders represented by it, each hereby agree that:

(a) subject to clause (b) below, any Lien on the ABL Priority Collateral securing any ABL Obligations now or hereafter held by or on behalf of the ABL Collateral Agent or any ABL Claimholders or any agent or trustee therefor, regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be senior in all respects and prior to any Lien on the ABL Priority Collateral securing any Senior Term Obligations and any Junior Term Obligations; and

(b) any Lien on the ABL Priority Collateral securing any Excess ABL Obligations now or hereafter held by or on behalf of the ABL Collateral Agent or any ABL Claimholders or any agent or trustee therefor, regardless of how acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be junior and subordinate in all respects to any Lien on the ABL Priority Collateral securing any Senior Term Obligations and any Junior Term Obligations.

2.2 Prohibition on Contesting Liens & Claims; No Marshaling. The ABL Collateral Agent, for itself and on behalf of each other ABL Claimholder represented by it, each Senior Term Collateral Agent, for itself and on behalf of each other Senior Term Claimholder and each Junior Term Collateral Agent, for itself and on behalf of each other Junior Term Claimholder represented by it agrees that it will not (and hereby waives any right to) directly or indirectly contest or support any other Person in contesting, in any proceeding (including any Insolvency or Liquidation Proceeding), the priority, validity, perfection, extent or enforceability of a Lien held, or purported to be held, by or on behalf of any of the ABL Claimholders in the ABL Priority Collateral, by or on behalf of any of the Senior Term Claimholders in the ABL Priority Collateral or by or on behalf of any of the Junior Term Claimholders in the ABL Priority Collateral, as the case may be, or the amount, nature or extent of the ABL Obligations (other than any Excess ABL Obligations), Senior Term Obligations or Junior Term Obligations or the provisions of this Agreement; provided that nothing in this Agreement shall be construed to prevent or impair the rights of (i) the ABL Collateral Agent or any ABL Claimholder, (ii) any Senior Term Collateral Agent or any Senior Term Claimholder, or (iii) any Junior Term Collateral Agent or any Junior Term Claimholder to enforce this Agreement, including the provisions of this Agreement relating to the priority of the Liens securing the ABL Obligations as provided in Sections 2.1(a) and 3.1. Until the Discharge of ABL Obligations, none of the Senior Term Collateral Agents, Junior Term Collateral Agent, any Senior Term Claimholder nor any Junior Term Claimholder will assert any marshaling, appraisal, valuation or other similar right with respect to the ABL Priority Collateral that may otherwise be available to a junior secured creditor.

2.3 **No New Liens.** So long as the Discharge of ABL Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Parent Borrower or any other Grantor (except that any Liens securing DIP Financing shall be governed by Section 6.1 hereof not this Section 2.3), the parties hereto agree that the Parent Borrower shall not, and shall not permit any other Grantor to:

(a) grant or permit any additional Liens on any asset or property that would otherwise constitute ABL Priority Collateral to secure any Senior Term Obligation or Junior Term Obligation unless it has granted or concurrently grants a Lien on such asset or property to secure all of the ABL Obligations, the parties hereto agreeing that any such Lien shall be subject to Section 2.1 hereof; provided that this provision will not be violated with respect to any Lien securing any Senior Term Obligations or Junior Term Obligations if the ABL Collateral Agent is given a reasonable opportunity to accept a Lien on any asset or property and either the Parent Borrower or the ABL Collateral Agent not receiving the Lien expressly states in writing that the applicable ABL Loan Documents prohibit the ABL Collateral Agent from accepting a Lien on such asset or property, or the ABL Collateral Agent otherwise expressly declines to accept a Lien on such asset or property; or

(b) subject to the final paragraph of this Section 2.3, grant or permit any additional Liens on any asset or property to secure any ABL Obligation unless it has granted or concurrently grants a Lien on such asset or property to secure all of the Senior Term Obligations and Junior Term Obligations, the parties hereto agreeing that any such Lien shall be subject to Section 2.1 hereof; provided that this provision will not be violated with respect to any Lien securing any ABL Obligations if each Senior Term Collateral Agent or Junior Term Collateral Agent, as applicable, is given a reasonable opportunity to accept a Lien on any asset or property and either the Parent Borrower or each Senior Term Collateral Agent or Junior Term Collateral Agent not receiving the Lien states in writing that the applicable Senior Term Loan Documents or Junior Term Loan Documents prohibit such Senior Term Collateral Agent or Junior Term Collateral Agent from accepting a Lien on such asset or property, or such Senior Term Collateral Agent or Junior Term Collateral Agent otherwise expressly declines to accept a Lien on such asset or property (any such prohibited or declined Lien, a “**Term Declined Lien**”).

To the extent that the foregoing provisions are not complied with for any reason, without limiting any other rights and remedies available to (i) the ABL Collateral Agent and/or the ABL Claimholders, (ii) the Senior Term Collateral Agents and/or the Senior Term Claimholders or (iii) the Junior Term Collateral Agents and/or the Junior Term Claimholders, each agree that any amounts received by or distributed to any of them pursuant to or as a result of Liens granted in contravention of this Section 2.3 shall be subject to Section 4.2.

Notwithstanding anything in this Agreement to the contrary, the Specified Deposit Accounts may be pledged to secure ABL Obligations without granting a Lien thereon to secure any Senior Term Obligations or any Junior Term Obligations.

2.4 [Reserved].

2.5 **Perfection of Liens.** Except for the arrangements contemplated by Section 5.5, none of the ABL Collateral Agent or the ABL Claimholders shall be responsible for perfecting and maintaining the perfection of Liens with respect to the ABL Priority Collateral for the benefit of the Senior Term Collateral Agents, the Senior Term Claimholders, the Junior Term Collateral Agents or the Junior Term Claimholders, and none of the Senior Term Collateral Agents or the

Senior Term Claimholders shall be responsible for perfecting and maintaining the perfection of Liens with respect to the ABL Priority Collateral for the benefit of the ABL Collateral Agent, the ABL Claimholders, the Junior Term Collateral Agents or the Junior Term Claimholders, and none of the Junior Term Collateral Agents or the Junior Term Claimholders shall be responsible for perfecting and maintaining the perfection of Liens with respect to the ABL Priority Collateral for the benefit of the ABL Collateral Agent, the ABL Claimholders, the Senior Term Collateral Agents or the Senior Term Claimholders. The provisions of this Agreement are intended solely to govern the respective Lien priorities as between the ABL Claimholders on the one hand and the Senior Term Claimholders and Junior Term Claimholders on the other hand and such provisions shall not impose on the ABL Collateral Agent, the ABL Claimholders, the Senior Term Collateral Agents, the Senior Term Claimholders, the Junior Term Collateral Agents, the Junior Term Claimholders or any agent or trustee therefor any obligations in respect of the disposition of proceeds of any ABL Priority Collateral which would conflict with prior-perfected claims therein in favor of any other Person or any order or decree of any court or governmental authority or any applicable law.

2.6 Appointment of Designated Senior Term Collateral Agent and Designated Junior Term Collateral Agent, etc.

(a) Each Senior Term Collateral Agent hereby appoints and designates the Designated Senior Term Collateral Agent to act as Designated Senior Term Collateral Agent hereunder and the Designated Senior Term Collateral Agent hereby accepts such appointment. Each Junior Term Collateral Agent hereby appoints and designates the Designated Junior Term Collateral Agent to act as Designated Junior Term Collateral Agent hereunder and the Designated Junior Term Collateral Agent hereby accepts such appointment.

(b) Each of the ABL Collateral Agent and the Junior Term Collateral Agent may treat the Initial Senior Term Collateral Agent as the Designated Senior Term Collateral Agent hereunder until the Initial Senior Term Collateral Agent notifies each of the ABL Collateral Agent and the Designated Junior Term Collateral Agent in writing that another Senior Term Collateral Agent has become the Designated Senior Term Collateral Agent hereunder. The Initial Senior Term Collateral Agent hereby agrees to give prompt written notice of any such event. Each of the Senior Term Collateral Agent and the ABL Collateral Agent may treat the Initial Junior Term Collateral Agent as the Designated Junior Term Collateral Agent hereunder until the Initial Junior Term Collateral Agent notifies each of the Designated Senior Term Collateral Agent and the ABL Collateral Agent in writing that another Junior Term Collateral Agent has become the Designated Junior Term Collateral Agent hereunder. The Initial Junior Term Collateral Agent hereby agrees to give prompt written notice of any such event.

(c) Each of the Designated Senior Term Collateral Agent, Designated Junior Term Collateral Agent and the ABL Collateral Agent shall exercise all rights and powers under this Agreement as are delegated to them by the terms hereof, together with such other rights and powers as are reasonably incidental thereto.

## SECTION 3

### ENFORCEMENT

#### 3.1 Restrictions on Exercise of Remedies By Senior Term Collateral Agents, Senior Term Claimholders, Junior Term Collateral Agents, and Junior Term Claimholders.

(a) Until the Discharge of ABL Obligations has occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Parent Borrower or any other Grantor, each Senior Term Collateral Agent and the Senior Term Claimholders and each Junior Term Collateral Agent and the Junior Term Claimholders represented by it:

(i) will not commence or maintain, or seek to commence or maintain, any Enforcement Action or otherwise exercise any rights or remedies with respect to the ABL Priority Collateral; provided that, subject to any Term Priority Intercreditor Agreement, any Designated Term Collateral Agent or Designated Junior Term Collateral Agent may commence an Enforcement Action or otherwise exercise any or all such rights or remedies, in each case, with respect to ABL Priority Collateral, after the passage of a period of at least 180 days has elapsed since the later of: (x) the date on which such Designated Term Collateral Agent or Designated Junior Term Collateral Agent declared the existence of any Event of Default under any Term Loan Documents for which it is the Term Collateral Agent or any Junior Term Loan Documents for which it is the Junior Term Collateral Agent and demanded the repayment of all of the principal amount of the Term Obligations or Junior Term Obligations thereunder; and (y) the date on which the ABL Collateral Agent received notice from such Term Collateral Agent or Junior Term Collateral Agent of such declaration of a Term Default or Junior Term Default, as applicable, and demand for repayment, (the “**ABL Standstill Period**”); provided, further, that notwithstanding anything herein to the contrary, in no event shall any Term Collateral Agent or any Term Claimholder or any Junior Term Collateral Agent or any Junior Term Claimholder take any Enforcement Action with respect to the ABL Priority Collateral if, notwithstanding the expiration of the ABL Standstill Period, the ABL Collateral Agent or ABL Claimholders shall have commenced and be diligently pursuing an Enforcement Action or other exercise of their rights or remedies in each case with respect to all or any material portion of the ABL Priority Collateral or seeking to lift or dissolve any stay or other injunction preventing them from exercising such rights (prompt notice of such exercise to be given to the Designated Term Collateral Agent and Designated Junior Term Collateral Agent);

(ii) will not contest, protest or object to any foreclosure proceeding or action brought by the ABL Collateral Agent or any ABL Claimholder with respect to ABL Priority Collateral or any other exercise by the ABL Collateral Agent or any ABL Claimholder of any rights and remedies relating to the ABL Priority Collateral under the ABL Loan Documents or otherwise (including any Enforcement Action initiated by or supported by the ABL Collateral Agent or any ABL Claimholder), in each case so long as any proceeds received by the ABL Collateral Agent in excess of those necessary to achieve a Discharge of ABL Obligations are distributed in accordance with Section 4.1 hereof and applicable law, and

(iii) subject to their rights under clause (a)(i) above, will not object to the forbearance by the ABL Collateral Agent or the ABL Claimholders from bringing or pursuing any foreclosure proceeding or action or any other exercise of any rights or remedies, in each case, relating to the ABL Priority Collateral.

(b) Until the Discharge of ABL Obligations has occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Parent Borrower or any other Grantor, subject to Section 3.1(a)(i), the ABL Collateral Agent and the ABL Claimholders shall have the exclusive right: (i) to commence and maintain an Enforcement Action or otherwise enforce rights, exercise remedies (including set-off, recoupment and the right to credit bid their debt), in each case, with respect to ABL Priority Collateral; provided that, subject to the Term Priority Intercreditor Agreement, the Designated Senior Term Collateral Agent and the Designated Junior Term Collateral Agent shall have the credit bid rights set forth in Section 3.1(c)(vi); and (ii) subject to Section 5.1, to make determinations regarding the release, disposition, or restrictions with respect to the ABL Priority Collateral without any consultation with or the consent of any Senior Term Collateral Agent, any Senior Term Claimholder, any Junior Term Collateral Agent or any Junior Term Claimholder; provided, further, that any proceeds of ABL Priority Collateral received by the ABL Collateral Agent in excess of those necessary to achieve a Discharge of ABL Obligations are distributed in accordance with Section 4.1 hereof and applicable law. In commencing or maintaining any Enforcement Action or otherwise exercising rights and remedies with respect to the ABL Priority Collateral, the ABL Collateral Agent and the ABL Claimholders may enforce the provisions of the ABL Loan Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion in compliance with any applicable law and without consultation with any Senior Term Collateral Agent, any Senior Term Claimholder, any Junior Term Collateral Agent or any Junior Term Claimholder and regardless of whether any such exercise is adverse to the interest of any Senior Term Claimholder or any Junior Term Claimholder. Such exercise and enforcement shall include the rights of an agent appointed by them to sell or otherwise dispose of ABL Priority Collateral upon foreclosure, to incur expenses in connection with such sale or disposition, and to exercise all the rights and remedies of a secured creditor under the UCC and of a secured creditor under Bankruptcy Laws of any applicable jurisdiction.

(c) Notwithstanding the foregoing, subject to the Term Priority Intercreditor Agreement, any Senior Term Collateral Agent, any Senior Term Claimholder, any Junior Term Collateral Agent or any Junior Term Claimholder may:

(i) file a claim or statement of interest with respect to the Senior Term Obligations or the Junior Term Obligations, as applicable; provided that an Insolvency or Liquidation Proceeding has been commenced by or against the Parent Borrower or any other Grantor;

(ii) take any action (not adverse to the priority status of the Liens on the ABL Priority Collateral securing the ABL Obligations, or the rights of the ABL Collateral Agent or the ABL Claimholders to exercise remedies in respect thereof) in order to create, perfect (other than in respect of the Tranche B-1 Blocked Account (as defined in the ABL Credit Agreement as in effect on the date hereof), the Tranche B-2 Blocked Account (as defined in the ABL Credit Agreement as in effect on the date hereof) or the Tranche A Unrestricted Account), preserve or protect its Lien on the ABL Priority Collateral;

(iii) file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any person objecting to or otherwise seeking the disallowance of the claims of the Senior Term Claimholders or the Junior Term Claimholders, as applicable, including any claims secured by the ABL Priority Collateral, if any, in each case in accordance with the terms of this Agreement;

(iv) vote on any plan of reorganization, arrangement, compromise or liquidation, file any proof of claim, make other filings and make any arguments and motions that are, in each case, in accordance with the terms of this Agreement; provided that no filing of any claim or vote, or pleading related to such claim or vote, to accept or reject a disclosure statement, plan of reorganization, arrangement, compromise or liquidation, or any other document, agreement or proposal similar to the foregoing by any Senior Term Collateral Agent, any Senior Term Claimholder, any Junior Term Collateral Agent or any Junior Term Claimholder may be inconsistent with the provisions of this Agreement;

(v) exercise any of its rights or remedies with respect to the ABL Priority Collateral after the termination of the ABL Standstill Period to the extent permitted by Section 3.1(a)(i);

(vi) bid for or purchase ABL Priority Collateral at any public, private or judicial foreclosure upon such ABL Priority Collateral initiated by the ABL Collateral Agent or any ABL Claimholder, or any sale of ABL Priority Collateral during an Insolvency or Liquidation Proceeding; provided that such bid may not include a “credit bid” in respect of any Senior Term Obligations or Junior Term Obligations, as applicable, unless the cash proceeds of such bid are otherwise sufficient to cause the Discharge of ABL Obligations; and

(vii) object to any proposed acceptance of ABL Priority Collateral by an ABL Claimholder pursuant to Section 9-620 of the UCC.

Each Senior Term Collateral Agent, on behalf of itself and the Senior Term Claimholders represented by it and each Junior Term Collateral Agent, on behalf of itself and the Junior Term Claimholders represented by it, agrees that it will not take or receive any ABL Priority Collateral or any proceeds of ABL Priority Collateral in connection with the exercise of any right or remedy (including set-off and recoupment) with respect to any ABL Priority Collateral in its capacity as a secured creditor, unless and until the Discharge of ABL Obligations has occurred. Without limiting the generality of the foregoing, unless and until the Discharge of ABL Obligations has occurred, except as expressly provided in Sections 3.1(a), 6.3(b) and this Section 3.1(c), the sole right of the Senior Term Collateral Agents, the Senior Term Claimholders, the Junior Term Collateral Agents and the Junior Term Claimholders with respect to the ABL Priority Collateral is to hold a Lien on the ABL Priority Collateral pursuant to the applicable Senior Term Collateral Documents or Junior Term Collateral Documents for the period and to the extent granted therein and to receive a share of the proceeds thereof, if any, after the Discharge of ABL Obligations has occurred.

(d) Subject to Sections 3.1(a) and 3.1(c) and Section 6.3(b):

(i) each Senior Term Collateral Agent, on behalf of itself and the Senior Term Claimholders represented by it and each Junior Term Collateral Agent, on behalf of itself and the Junior Term Claimholders represented by it, agrees that such Senior Term Collateral Agent and the Senior Term Claimholders represented by it and each Junior Term Collateral Agent and the Junior Term Claimholders represented by it, will not take any action with respect to ABL Priority Collateral that would hinder any exercise of remedies under the ABL Loan Documents with respect to ABL Priority Collateral or is otherwise prohibited hereunder, including any sale, lease, exchange, transfer or other disposition of the ABL Priority Collateral, whether by foreclosure or otherwise;

(ii) each Senior Term Collateral Agent, on behalf of itself and the Senior Term Claimholders represented by it and each Junior Term Collateral Agent, on behalf of itself and the Junior Term Claimholders represented by it, hereby waives any and all rights it or the Senior Term Claimholders or Junior Term Claimholders may have as a junior lien creditor or otherwise to object to the manner in which the ABL Collateral Agent or the ABL Claimholders seek to enforce the Liens on the ABL Priority Collateral securing the ABL Obligations undertaken in accordance with this Agreement, regardless of whether any action or failure to act by or on behalf of the ABL Collateral Agent or ABL Claimholders is adverse to the interest of the Senior Term Claimholders or Junior Term Claimholders; and

(iii) each Senior Term Collateral Agent, on behalf of itself and the Senior Term Claimholders represented by it and each Junior Term Collateral Agent, on behalf of itself and the Junior Term Claimholders represented by it, hereby acknowledges and agrees that no covenant, agreement or restriction contained in the Senior Term Collateral Documents or any other Senior Term Loan Document or in the Junior Term Collateral Documents or any other Junior Term Loan Document (in each case, other than this Agreement) shall be deemed to restrict in any way the rights and remedies of the ABL Collateral Agent or the ABL Claimholders with respect to the ABL Priority Collateral as set forth in this Agreement and the ABL Loan Documents.

(e) The Senior Term Collateral Agents, the Senior Term Claimholders, the Junior Term Collateral Agents and the Junior Term Claimholders may exercise rights and remedies (i) as secured creditors with respect to the Term Priority Collateral against the Parent Borrower or any other Grantor that has guaranteed or granted Liens to secure the Term Obligations or Junior Term Obligations in accordance with the terms of the Term Loan Documents or Junior Term Loan Documents, as applicable, and applicable law as long as such exercise does not include any exercise of rights and remedies directly or indirectly against the ABL Priority Collateral and (ii) as unsecured creditors against the Parent Borrower or any other Grantor that has guaranteed or granted Liens to secure the Senior Term Obligations or Junior Term Obligations in accordance with the terms of the Senior Term Loan Documents or Junior Term Loan Documents, as applicable, and applicable law (other than initiating or joining in an involuntary case or proceeding under any Insolvency or Liquidation Proceeding with respect to any Grantor); provided that with respect to sub-clause (ii) only, in the event that any Senior Term Claimholder or Junior Term Claimholder becomes a judgment Lien creditor with respect to the ABL Priority Collateral as a result of its enforcement of its rights as an unsecured creditor with respect to the Senior Term Obligations or Junior Term Obligations, as applicable, such judgment Lien shall be subject to the terms of this Agreement for all purposes (including in relation to the ABL Obligations) as the other Liens the ABL Priority Collateral securing the Senior Term Obligations or Junior Term Obligations, as applicable, are subject to this Agreement.



(f) Except as specifically set forth in Sections 3.1(a) and 3.1 (d), nothing in this Agreement shall prohibit the receipt by any Senior Term Collateral Agent, any Senior Term Claimholders, any Junior Term Collateral Agent or Junior Term Claimholders of the required payments of interest, principal and other amounts owed in respect of any Senior Term Obligations or Junior Term Obligations, as applicable, so long as such receipt is not the direct or indirect result of the exercise by any Senior Term Collateral Agent or any other Senior Term Claimholders or any Junior Term Collateral Agent or any other Junior Term Claimholders of rights or remedies as a secured creditor (including set-off and recoupment) with respect to ABL Priority Collateral or enforcement in contravention of this Agreement of any Lien on ABL Priority Collateral held by any of them.

(g) Each Senior Term Collateral Agent, on behalf of itself and the Senior Term Claimholders represented by it and each Junior Term Collateral Agent, on behalf of itself and the Junior Term Claimholders represented by it, agrees not to commence an Enforcement Action until an Enforcement Notice has been given to the ABL Collateral Agent.

3.2 Set-Off. Each Senior Term Collateral Agent, on behalf of itself and the Senior Term Claimholders represented by it and each Junior Term Collateral Agent, on behalf of itself and the Junior Term Claimholders represented by it, acknowledges hereby (a) waives any right to set off against the ABL Priority Collateral until the ABL Discharge of the ABL Obligations and (b) without limiting the foregoing provision agrees that, to the extent such Senior Term Collateral Agent or any other Senior Term Claimholder or such Junior Term Collateral Agent or any other Junior Term Claimholder exercises its rights of set-off against any ABL Priority Collateral, the amount of such set-off shall be held and distributed pursuant to Section 4.1(a).

3.3 Term General Intangibles Rights/Access to Information. Each Senior Term Collateral Agent and each Junior Term Collateral Agent hereby grants (to the full extent of its rights and interests, if any) to the ABL Collateral Agent and its agents, representatives and designees (a) an irrevocable royalty-free, rent-free nonexclusive license and lease (which will be binding on any successor or assignee of any Term Priority Collateral) to use, all of the Term Priority Collateral constituting Intellectual Property, books and records or any computer or other data processing equipment included in the Term Priority Collateral or any other Term Priority Collateral (other than vessels) reasonably necessary to (i) collect all ABL Priority Collateral; or (ii) copy, use, or preserve any and all information relating to any of the ABL Priority Collateral; (b) an irrevocable royalty-free license (which will be binding on any successor or assignee of the Term Priority Collateral) to use any and all Term Priority Collateral constituting Intellectual Property, books and records or any computer or other data processing equipment included in the Term Priority Collateral or any other Term Priority Collateral (other than vessels) at any time in connection with any Enforcement Action by the ABL Collateral Agent or such agents, representatives and designees; provided that the foregoing right shall only apply during, and immediately expire upon the end of, the Use Period; provided, further, that such expiration shall be without prejudice to the sale or other disposition of the ABL Priority Collateral in accordance with applicable law.

## SECTION 4

### PAYMENTS

#### 4.1 Application of Proceeds.

(a) So long as the Discharge of ABL Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Parent Borrower or any other Grantor, any ABL Priority Collateral or any proceeds thereof received in connection with any Enforcement Action or other exercise of remedies by the ABL Collateral Agent or ABL Claimholders shall be applied by the ABL Collateral Agent to the ABL Obligations in such order as specified in the relevant ABL Loan Documents; provided that any non-cash ABL Priority Collateral or non-cash proceeds may be held by the ABL Collateral Agent as ABL Priority Collateral unless the failure to apply such amounts would be commercially unreasonable.

(b) Upon the Discharge of ABL Obligations, the ABL Collateral Agent shall deliver any remaining ABL Priority Collateral and proceeds thereof held by it in the same form as received, with any necessary endorsements (such endorsements shall be without recourse and without any representation or warranty) to the Designated Senior Term Collateral Agent (or if the Discharge of Senior Term Obligations has occurred, to the Designated Junior Term Collateral Agent), to such other Person as may be lawfully entitled thereto or as a court of competent jurisdiction may otherwise direct, to be applied by such Senior Term Collateral Agent (or Junior Term Collateral Agent) to the Senior Term Obligations (or Junior Term Obligations) in such order as specified in the applicable Senior Term Loan Documents or Junior Term Loan Documents and, if then in effect, the Senior Term Intercreditor Agreement, the Junior Term Intercreditor Agreement and Term Priority Intercreditor Agreement.

4.2 Payments Over. (a) So long as the Discharge of ABL Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Parent Borrower or any other Grantor, any ABL Priority Collateral or any proceeds thereof received by any Senior Term Collateral Agent or any other Senior Term Claimholders or any Junior Term Collateral Agent or any other Junior Term Claimholders in connection with any Enforcement Action or other exercise of any right or remedy relating to the ABL Priority Collateral (less any reasonable out of pockets costs and expenses incurred in connection with any such Enforcement Action) in all cases shall be segregated and held in trust and forthwith paid over to the ABL Collateral Agent for the benefit of the ABL Claimholders in the same form as received, with any necessary endorsements (which endorsements shall be without recourse and without any representations or warranties) or as a court of competent jurisdiction may otherwise direct. The ABL Collateral Agent is hereby authorized to make any such endorsements as agent for the Senior Term Collateral Agent or any other Senior Term Claimholders or the Junior Term Collateral Agent or any other Junior Term Claimholders. This authorization is coupled with an interest and is irrevocable until the Discharge of ABL Obligations.

(b) So long as the Discharge of ABL Obligations has not occurred, if in any Insolvency or Liquidation Proceeding any Senior Term Collateral Agent or any other Senior Term Claimholders or any Junior Term Collateral Agent or any other Junior Term Claimholders shall receive any distribution of money or other property in respect of the ABL Priority Collateral

(including any ABL Priority Collateral subject to Liens that have been avoided or otherwise invalidated) such money or other property shall be segregated and held in trust and forthwith paid over to the ABL Collateral Agent for the benefit of the ABL Claimholders in the same form as received, with any necessary endorsements. Any Lien received by any Senior Term Collateral Agent or any other Senior Term Claimholders or any Junior Term Collateral Agent or any other Junior Term Claimholders in respect of any of the Senior Term Obligations or Junior Term Obligations in any Insolvency or Liquidation Proceeding shall, to the extent such Lien is on ABL Priority Collateral, be subject to the terms of this Agreement.

## SECTION 5

### OTHER AGREEMENTS

#### 5.1 Releases.

(a) (i) If in connection with any Enforcement Action by the ABL Collateral Agent or any other exercise of the ABL Collateral Agent's remedies in respect of the ABL Priority Collateral, in each case prior to the Discharge of ABL Obligations, the ABL Collateral Agent, for itself or on behalf of any of the ABL Claimholders represented by it, releases any of its Liens on any part of the ABL Priority Collateral, then the Liens, if any, of each Senior Term Collateral Agent, for itself or for the benefit of the Senior Term Claimholders represented by it, and any Junior Term Collateral Agent, for itself or for the benefit of the Junior Term Claimholders represented by it, on such ABL Priority Collateral (but not the proceeds thereof) shall be automatically, unconditionally and simultaneously released. Each Senior Term Collateral Agent, for itself or for the benefit of the Senior Term Claimholders represented by it, and any Junior Term Collateral Agent, for itself or for the benefit of the Junior Term Claimholders represented by it, promptly shall execute and deliver to such enforcing ABL Collateral Agent or Grantor such termination statements, releases and other documents as the ABL Collateral Agent or Grantor may request to effectively confirm the foregoing releases.

(b) If, in connection with any sale, lease, exchange, transfer or other disposition of any ABL Priority Collateral by any Grantor (collectively, a "**Disposition**") permitted under the terms of the ABL Loan Documents and permitted under the terms of the Senior Term Loan Documents or Junior Term Loan Documents (other than in connection with an Enforcement Action or other exercise of the ABL Collateral Agent's remedies in respect of the ABL Priority Collateral which shall be governed by Section 5.1(a) above), each of the ABL Collateral Agent, for itself and on behalf of any of the ABL Claimholders represented by it, releases any of its Liens on any part of the ABL Priority Collateral, in each case other than (A) in connection with, or following, the Discharge of ABL Obligations and (B) after the occurrence and during the continuance of any Event of Default under the Senior Term Loan Documents or Junior Term Loan Documents, then the Liens, if any, of the Senior Term Collateral Agent, for itself or for the benefit of the Senior Term Claimholders represented by it, and the Junior Term Collateral Agent, for itself or for the benefit of the Junior Term Claimholders represented by it, on such ABL Priority Collateral, shall be automatically, unconditionally and simultaneously released. The Senior Term Collateral Agent, for itself or for the benefit of the Senior Term Claimholders represented by it, and the Junior Term Collateral Agent, for itself or for the benefit of the Junior Term Claimholders represented by it, promptly shall execute and deliver to the ABL Collateral Agent or such Guarantor such termination statements, releases and other documents as the ABL Collateral Agent or such Grantor may request to effectively confirm such release.

(c) Until the Discharge of ABL Obligations occurs, the Senior Term Collateral Agent, for itself or for the benefit of the Senior Term Claimholders represented by it, and the Junior Term Collateral Agent, for itself or for the benefit of the Junior Term Claimholders represented by it, hereby irrevocably constitutes and appoints the ABL Collateral Agent and any officer or agent of the ABL Collateral Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Senior Term Collateral Agent, the Junior Term Collateral Agent or such holder or in the ABL Collateral Agent's own name, from time to time in the ABL Collateral Agent's discretion, for the purpose of carrying out the terms of this Section 5.1, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary to accomplish the purposes of this Section 5.1, including any endorsements or other instruments of transfer or release. This power is coupled with an interest and is irrevocable until the Discharge of ABL Obligations.

(d) Until the Discharge of ABL Obligations occurs, to the extent that the ABL Collateral Agent and the ABL Claimholders represented by it (i) have released any Lien on ABL Priority Collateral or any Guarantor from its obligation under its guaranty and any such Liens or guaranty are later reinstated or (ii) obtain any new liens or additional guarantees from any Guarantor, then the Senior Term Collateral Agent, for itself or for the benefit of the Senior Term Claimholders represented by it, and the Junior Term Collateral Agent, for itself or for the benefit of the Junior Term Claimholders represented by it, shall be granted a Lien on any such ABL Priority Collateral (except to the extent such lien represents a Term Declined Lien with respect to the Indebtedness represented by the Senior Term Lien Collateral Agent or Junior Lien Collateral Agent, as applicable), subject to the lien subordination provisions of this Agreement, and an additional guaranty, as the case may be.

5.2 Insurance. (a) Unless and until the Discharge of ABL Obligations has occurred, the ABL Collateral Agent and the ABL Claimholders represented by it shall have the sole and exclusive right, subject to the rights of the Grantors under the ABL Loan Documents, to adjust settlement for any insurance policy covering the ABL Priority Collateral in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding (or any deed in lieu of condemnation) affecting the ABL Priority Collateral. Unless and until the Discharge of ABL Obligations has occurred, and subject to the rights of the Grantors under the ABL Loan Documents, all proceeds of any such policy and any such award (or any payments with respect to a deed in lieu of condemnation) if in respect to the ABL Priority Collateral shall be paid first to the ABL Collateral Agent for the benefit of the ABL Claimholders pursuant to the terms of the ABL Loan Documents, second, upon a Discharge of ABL Obligations, and subject to the Term Priority Intercreditor Agreement and the rights of the Grantors under the Senior Term Loan Documents, to the Designated Senior Term Collateral Agent for the benefit of the Senior Term Claimholders to the extent required under the Senior Term Loan Documents and, if then in effect, the Senior Term Intercreditor Agreement, third, upon a Discharge of Senior Term Obligations and subject to the rights of the Grantors under the Junior Term Loan Documents, to the Designated Junior Term Collateral Agent for the benefit of the Junior Term Claimholders to the extent required under the Junior Term Loan Documents and, if then in effect, the Junior Term Intercreditor Agreement, fourth, upon a Discharge of Junior Term Obligations and subject to the rights of the

Grantors under the ABL Loan Documents, to the ABL Collateral Agent for the benefit of holders of Excess ABL Obligations, and fifth, to the extent no Excess ABL Obligations are outstanding, to the owner of the subject property, such other Person as may be lawfully entitled thereto or as a court of competent jurisdiction may otherwise direct. Until the Discharge of ABL Obligations has occurred, if any Senior Term Collateral Agent, any Senior Term Claimholders, any Junior Term Collateral Agent or any Junior Term Claimholders shall, at any time, receive any proceeds of any such insurance policy or any such award or payment in contravention of this Agreement, it shall segregate and hold in trust and forthwith pay such proceeds over to the ABL Collateral Agent in accordance with the terms of Section 4.2.

(b) To effectuate the foregoing, and to the extent that the pertinent insurance company agrees to issue such endorsements, the ABL Collateral Agent, each Senior Term Collateral Agent and each Junior Term Collateral Agent shall each receive separate lender's loss payable endorsements naming themselves as loss payee, as their interests may appear, with respect to policies which insure the ABL Priority Collateral.

### 5.3 Amendments to ABL Loan Documents, Senior Term Loan Documents and Junior Term Loan Documents.

(a) The ABL Loan Documents, the Senior Term Loan Documents and Junior Term Loan Documents may be amended, restated, amended and restated, supplemented, modified or Refinanced from time to time in accordance with their terms, all without affecting the Lien subordination or other provisions of this Agreement without notice to, or the consent of the Senior Term Collateral Agents, the other Senior Term Claimholders, the Junior Term Loan Agents and the other Junior Term Claimholders and (i) in each case, so long as such amendment, restatement, amendment and restatement, supplement, Refinancing or other modification is on terms and conditions that would not violate this Agreement or any of the Term Loan Documents, the ABL Loan Documents or the Junior Term Loan Documents in effect at that time and (ii) with respect to the ABL Loan Documents, so long as such amendment, restatement, amendment and restatement, supplement or other modification is made pursuant to the ABL Credit Agreement. (x) The Senior Term Obligations may be Refinanced without notice to, or consent of, the ABL Collateral Agent, the other ABL Claimholders, the Junior Term Collateral Agents or the other Junior Term Claimholders, in each case, without affecting the Lien subordination and other provisions of this Agreement so long as such Refinancing is on terms and conditions that would not violate this Agreement or any of the ABL Loan Documents or the Junior Term Loan Documents in effect at that time and (y) the Junior Term Obligations may be Refinanced without notice to, or consent of, the ABL Collateral Agent, the other ABL Claimholders, the Senior Term Collateral Agents or the other Senior Term Claimholders, in each case, without affecting the Lien subordination and other provisions of this Agreement so long as such Refinancing is on terms and conditions that would not violate this Agreement or any of the Senior Term Loan Documents or the ABL Loan Documents in effect at that time; provided, however, that, in each case of the preceding clauses (x) and (y), the holders of any such Refinancing debt that is purported to be secured by a Lien on any ABL Priority Collateral shall bind themselves in a writing satisfactory to the ABL Collateral Agent, the Designated Senior Term Collateral Agent and the Designated Junior Term Collateral Agent to the terms of this Agreement; provided, further, however, that, if such Refinancing debt is secured by a Lien on any ABL Priority Collateral the holders of such Refinancing debt shall be deemed bound by the terms hereof regardless of whether or not such writing is provided.

(b) The ABL Collateral Agent, each Senior Term Collateral Agent and each Junior Term Collateral Agent shall each use good faith efforts to notify the other Agents of any written amendment or modification to the ABL Loan Documents, the Senior Term Loan Documents and the Junior Term Loan Documents, respectively, but the failure to provide such notice shall not create a cause of action against the party failing to give such notice or create any claim or right on behalf of any other Person.

5.4 Confirmation of Subordination in Senior Term Collateral Documents and Junior Term Collateral Documents. Prior to the Discharge of the ABL Obligations, the Parent Borrower agrees that each Senior Term Collateral Document and Junior Term Collateral Document entered into after the date hereof shall include the following language (or language to similar effect approved by the ABL Collateral Agent):

“Notwithstanding anything herein to the contrary, the lien and security interest granted to the [Senior Term][Junior Term] Collateral Agent pursuant to this Agreement and the exercise of any right or remedy by the [Senior Term][Junior Term] Collateral Agent hereunder are subject to the provisions of the Intercreditor Agreement, dated as of June 28, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the “**Intercreditor Agreement**”), among CIT Northbridge Credit LLC, as ABL Collateral Agent, Wilmington Trust, National Association, as Senior Term Collateral Agent and Wilmington Trust, National Association, as Junior Term Collateral Agent and certain other persons party or that may become party thereto from time to time. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern and control.”

5.5 Gratuitous Bailee/Agent for Perfection.

(a) The ABL Collateral Agent, each Senior Term Collateral Agent and each Junior Term Collateral Agent agrees to hold that part of the ABL Priority Collateral (including any Deposit Account that constitutes ABL Priority Collateral) that is in its possession or control (or in the possession or control of its agents or bailees) to the extent that possession or control thereof is taken to perfect a Lien thereon under the UCC (such ABL Priority Collateral being the “**Pledged Collateral**”) as agent and non-fiduciary, gratuitous bailee for the benefit of the ABL Collateral Agent and each other Agent that has a Lien on such ABL Priority Collateral (such bailment being intended, among other things, to satisfy the requirements of Sections 8-106(d)(3), 8-301(a)(2) and 9-313(c) of the UCC) and any assignee solely for the purpose of perfecting the security interest granted under the ABL Loan Documents, the Senior Term Loan Documents and the Junior Term Loan Documents, respectively, and subject to the terms and conditions of this Section 5.5. Each Agent hereby appoints each other Agent as their non-fiduciary gratuitous bailee for the purposes of perfecting their security interest in all Pledged Collateral in which such other Agent has a perfected security interest under the UCC. The ABL Collateral Agent, each Senior Term Collateral Agent and each Junior Term Collateral Agent hereby accepts such appointments pursuant to this Section 5.5(a) and acknowledges and agrees that it shall hold the Pledged Collateral for the benefit of the other applicable Claimholders with respect to any Pledged Collateral and that any proceeds received by such Agent under any Pledged Collateral shall be applied in accordance with Article IV.

(b) Each Agent shall have no obligation whatsoever to any Claimholders or other Agents to ensure that the Pledged Collateral is genuine or owned by any of the Grantors, to perfect the security interest of any other Agent or any other Claimholder or to preserve rights or benefits of any Person except as expressly set forth in this Section 5.5. The duties or responsibilities of the ABL Collateral Agent under this Section 5.5 shall be limited solely to holding the Pledged Collateral as bailee (and with respect to Deposit Accounts, agent) in accordance with this Section 5.5 and delivering the Pledged Collateral upon a Discharge of ABL Obligations as provided in Section 5.5 (d) below.

(c) None of the Agents shall have by reason of the Collateral Documents, this Agreement or any other document a fiduciary relationship in respect of any other Agent or Claimholder represented by such other Agent. Each Agent and the respective Claimholders represented by it hereby waives and releases each other Agent and the respective Claimholders represented by it from all claims and liabilities arising pursuant to such Agent's role under this Section 5.5 as gratuitous bailee and gratuitous agent with respect to the Pledged Collateral. It is understood and agreed that the interests of the ABL Collateral Agent and the ABL Claimholders, on the one hand, and the Senior Term Collateral Agents and the Senior Term Claimholders and the Junior Term Collateral Agents and the Junior Term Claimholders on the other hand, may differ and each of the ABL Collateral Agent, the Senior Term Collateral Agents and the Junior Term Collateral Agents and each of the ABL Claimholders, Senior Term Claimholders and Junior Term Claimholders shall be fully entitled to act in their own interest without taking into account the interests of any other Agents or Claimholders represented by such other Agent.

(d) Upon the Discharge of ABL Obligations, the ABL Collateral Agent shall deliver the remaining Pledged Collateral in its possession (if any) together with any necessary endorsements (such endorsement shall be without recourse and without any representations or warranties) in the following order: first, if a Discharge of Senior Term Obligations has not already occurred, to the Designated Senior Term Collateral Agent until a Discharge of Senior Term Obligations has occurred, second, if a Discharge of Senior Term Obligations has occurred, to the Designated Junior Term Collateral Agent until a Discharge of Junior Term Obligations has occurred, third, if there are any Excess ABL Obligations, to the ABL Collateral Agent for application to any Excess ABL Obligations until no Excess ABL Obligations remain outstanding, and fourth, to the extent a Discharge of ABL Obligations, a Discharge of Senior Term Obligations and a Discharge of Junior Term Obligations has occurred and no Excess ABL Obligations remain outstanding, to the Parent Borrower or as a court of competent jurisdiction may otherwise direct. The ABL Collateral Agent further agrees to take all other action reasonably requested by the Designated Senior Term Collateral Agent or the Designated Junior Term Collateral Agent, in each case, at the expense of the Designated Senior Term Collateral Agent or Designated Junior Term Collateral Agent, as applicable, or the Parent Borrower in connection with the Designated Senior Term Collateral Agent or Designated Junior Term Collateral Agent obtaining a first-priority interest in the ABL Priority Collateral.

(e) Notwithstanding anything to the contrary contained in this Agreement, any obligation of either Agent, to make any delivery to the other Agent under Section 5.5(d) or Section 5.6 is subject to (i) the order of any court of competent jurisdiction or (ii) any automatic stay imposed in connection with any Insolvency or Liquidation Proceeding.

5.6 When Discharge of Obligations Deemed to Not Have Occurred.

(a) [Reserved.]

(b) If, at any time after the Discharge of Senior Term Obligations has occurred or contemporaneously therewith, the Parent Borrower enters into any Additional Senior Term Credit Agreement which Additional Senior Term Credit Agreement is permitted by the ABL Loan Documents and the Junior Term Loan Documents, then such Discharge of Senior Term Obligations shall automatically be deemed not to have occurred for all purposes of this Agreement (other than with respect to any actions taken as a result of the occurrence of such first Discharge of Senior Term Obligations), and, from and after the date on which the Senior Term Collateral Agent under such Additional Senior Term Credit Agreement becomes a party to this Agreement in accordance with Section 8.18 hereof, the obligations under such Additional Senior Term Credit Agreement automatically shall be treated as Senior Term Obligations for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of ABL Priority Collateral set forth herein, and the Senior Term Collateral Agent under such Additional Senior Term Credit Agreement shall be the Senior Term Collateral Agent for all purposes of this Agreement and this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto from such date of reinstatement. Upon receipt of a designation from the Parent Borrower in accordance with Section 8.18 hereof, the ABL Collateral Agent and Junior Term Collateral Agent shall promptly enter into such documents and agreements (including amendments or supplements to this Agreement) as the Parent Borrower or such new Senior Term Collateral Agent shall reasonably request in order to provide to the new Senior Term Collateral Agent the rights contemplated hereby, in each case consistent in all material respects with the terms of this Agreement. As provided in Section 8.18 hereof, the new Senior Term Collateral Agent shall agree in a writing addressed to the ABL Collateral Agent and the ABL Claimholders and the Designated Junior Term Collateral Agent and the Junior Term Claimholders to be bound by the terms of this Agreement.

(c) If, at any time after the Discharge of Junior Term Obligations has occurred or contemporaneously therewith, the Parent Borrower enters into any Additional Junior Term Credit Agreement which Additional Junior Term Credit Agreement is permitted by the ABL Loan Documents and the Senior Term Loan Documents, then such Discharge of Junior Term Obligations shall automatically be deemed not to have occurred for all purposes of this Agreement (other than with respect to any actions taken as a result of the occurrence of such first Discharge of Junior Term Obligations), and, from and after the date on which the Junior Term Collateral Agent under such Additional Junior Term Credit Agreement becomes a party to this Agreement in accordance with Section 8.18 hereof, the obligations under such Additional Junior Term Credit Agreement automatically shall be treated as Junior Term Obligations for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of ABL Priority Collateral set forth herein, and the Junior Term Collateral Agent under such Additional Junior Term Credit Agreement shall be the Junior Term Collateral Agent for all purposes of this Agreement and this Agreement shall be reinstated in full force and effect, and such prior



termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto from such date of reinstatement. Upon receipt of a designation from the Parent Borrower in accordance with Section 8.18 hereof, the ABL Collateral Agent and Senior Term Collateral Agent shall promptly enter into such documents and agreements (including amendments or supplements to this Agreement) as the Parent Borrower or such new Junior Term Collateral Agent shall reasonably request in order to provide to the new Junior Term Collateral Agent the rights contemplated hereby, in each case consistent in all material respects with the terms of this Agreement. As provided in Section 8.18 hereof, the new Junior Term Collateral Agent shall agree in a writing addressed to the ABL Collateral Agent and the ABL Claimholders and the Designated Senior Term Collateral Agent and the Senior Term Claimholders to be bound by the terms of this Agreement.

5.7 Notice of Exercise. Upon the occurrence and during the continuance of an ABL Default, if such ABL Default remains uncured or unwaived for at least thirty (30) consecutive days and the requisite ABL Claimholders have not agreed to forbear from the exercise of remedies (other than in the case of an ABL Default arising from an Insolvency or Liquidation Proceeding, in which case there shall be no waiting period), subject to the Term Priority Intercreditor Agreement, all or a portion of the Term Claimholders, acting as a single group, or the Junior Term Claimholders, acting as a single group, shall have the option at any time upon five (5) Business Days' prior written notice to the ABL Collateral Agent to purchase all of the ABL Obligations (at par plus any prepayment premium, termination or similar fees) from the ABL Claimholders; provided that the Term Claimholders or Junior Term Claimholders, as applicable, may elect to not purchase any ABL Excess Obligations. Such notice from such Term Claimholders or the Junior Term Claimholders to the ABL Collateral Agent shall be irrevocable.

5.8 Purchase and Sale. On the date specified by the relevant Term Claimholders in the notice contemplated by Section 5.7 above (which shall not be less than five (5) Business Days, nor more than ten (10) Business Days, after the receipt by the ABL Collateral Agent of the notice of the relevant Term Claimholders' or Junior Term Claimholders' election to exercise such option), the ABL Claimholders shall sell to the relevant Term Claimholders or Junior Term Claimholders, as applicable, and the relevant Term Claimholders or Junior Term Claimholders, as applicable, shall purchase from the ABL Claimholders, the ABL Obligations, provided that, the ABL Collateral Agent and the ABL Claimholders shall retain all rights to be indemnified or held harmless by the ABL Credit Parties in accordance with the terms of the ABL Loan Documents but shall not retain any rights to the security therefor.

#### 5.9 Payment of Purchase Price.

Upon the date of such purchase and sale, the relevant Term Claimholders or Junior Term Claimholders, as applicable, shall (a) pay to the ABL Collateral Agent for the benefit of the ABL Claimholders (with respect to a purchase of the ABL Obligations) as the purchase price therefor the full amount of all the ABL Obligations (at par plus any prepayment premium, termination or similar fees) then outstanding and unpaid (including principal, interest, fees and expenses, including reasonable attorneys' fees and legal expenses); provided that the Term Claimholders or Junior Term Claimholders, as applicable, may elect to not purchase any ABL Excess Obligations, (b) with respect to a purchase of the ABL Obligations, furnish cash collateral to the ABL Collateral Agent in a manner and in such amounts as the ABL Collateral Agent determines is reasonably

necessary to secure the ABL Claimholders in connection with any issued and outstanding letters of credit, hedging obligations and cash management obligations secured by the ABL Loan Documents, (c) with respect to a purchase of the ABL Obligations, agree to reimburse the ABL Collateral Agent and the ABL Claimholders for any loss, cost, damage or expense (including reasonable attorneys' fees and legal expenses) in connection with any commissions, fees, costs or expenses related to any issued and outstanding letters of credit as described above or resulting from the granting of provisional credit for any checks, wires or ACH transfers that are reversed or not final or other payments provisionally credited under the ABL Credit Agreement, (d) agree to reimburse the ABL Claimholders in respect of indemnification obligations of the respective parties obligated under the ABL Loan Documents as to matters or circumstances known to the ABL Collateral Agent at the time of the purchase and sale which would reasonably be expected to result in any loss, cost, damage or expense (including reasonable attorneys' fees and legal expenses) to the ABL Claimholders and (e) agree to indemnify and hold harmless the ABL Claimholders from and against any loss, liability, claim, damage or expense (including reasonable fees and expenses of legal counsel) arising out of any claim asserted by a third party in respect of the ABL Obligations as a direct result of any acts by any Term Claimholder occurring after the date of such purchase. Such purchase price and cash collateral shall be remitted by wire transfer in federal funds to such bank account in New York, New York as the ABL Collateral Agent may designate in writing for such purpose.

(a) Limitation on Representations and Warranties. Such purchase shall be expressly made without representation or warranty of any kind by any selling party (or the applicable ABL Collateral Agent) and without recourse of any kind, except that the selling party shall represent and warrant: (a) the amount of the ABL Obligations being purchased from it, (b) that such ABL Claimholder owns the ABL Obligations free and clear of any Liens or encumbrances and (c) that such ABL Claimholder has the right to assign such ABL Obligations and the assignment is duly authorized.

## SECTION 6

### INSOLVENCY OR LIQUIDATION PROCEEDINGS

6.1 Finance and Sale Issues. Until the Discharge of ABL Obligations has occurred, if the Parent Borrower or any other Grantor shall be subject to any Insolvency or Liquidation Proceeding and the ABL Collateral Agent shall desire to permit the use of "Cash Collateral" (as such term is defined in Section 363(a) of the Bankruptcy Code) constituting ABL Priority Collateral or proceeds thereof or to permit any Grantor to obtain financing, whether from the ABL Claimholders or any other Person under Section 364 of the Bankruptcy Code or any similar Bankruptcy Law ("**DIP Financing**") then each Senior Term Collateral Agent, on behalf of itself and the Senior Term Claimholders represented by it, and each Junior Term Collateral Agent, on behalf of itself and the Junior Term Claimholders represented by it, agrees that it will raise no objection to such Cash Collateral use or DIP Financing so long as such Cash Collateral use or DIP Financing meet the following requirements: (i) the aggregate principal amount of the DIP Financing plus the aggregate outstanding principal amount of ABL Obligations plus the aggregate face amount of any letters of credit issued and outstanding under the ABL Credit Agreement does not exceed the ABL Cap Amount; (ii) the terms of the DIP Financing (a) do not compel the applicable Grantor to seek confirmation of a specific plan of reorganization for which all or

substantially all of the material terms are set forth in the DIP Financing documentation or a related document, (b) do not expressly require the liquidation and/or sale of any portion of the Term Priority Collateral and (c) do not grant any Liens on Term Priority Collateral or any other asset that does not constitute ABL Priority Collateral or do not otherwise modify any rights as between the ABL Claimholders, on the one hand, and the Senior Term Claimholders or Junior Term Claimholders, on the other hand, with respect to the Term Priority Collateral and (iii) all Liens on ABL Priority Collateral securing any DIP Financing shall be senior to or on a parity basis with the Liens of the ABL Collateral Agent and the ABL Claimholders on the ABL Priority Collateral securing the ABL Obligations. To the extent the Liens securing the ABL Obligations are subordinated to or pari passu with such DIP Financing which meets the requirements of clauses (i) through (iii) above, each Senior Term Collateral Agent and Junior Term Collateral Agent will subordinate its Liens on the ABL Priority Collateral to the Liens securing such DIP Financing on the same basis as the Liens on the ABL Priority Collateral securing the Term Obligations and the Junior Term Obligations are so subordinated to the Liens on the ABL Priority Collateral securing ABL Obligations under this Agreement, and will not request adequate protection or any other relief in connection therewith (and all obligations relating thereto) and will not request adequate protection or any other relief in connection therewith (except, as expressly agreed by the ABL Collateral Agent or to the extent permitted by Section 6.3). For the avoidance of doubt, nothing in this Agreement prevents or limits any Senior Term Claimholder or Junior Term Claimholder from proposing or providing financing to the Parent Borrower or any of its Affiliates under Section 364 of the Bankruptcy Code or any similar Bankruptcy Law.

6.2 Relief from the Automatic Stay. Until the Discharge of ABL Obligations has occurred, each Senior Term Collateral Agent, on behalf of itself and the Senior Term Claimholders represented by it, and each Junior Term Collateral Agent, on behalf of itself and the Junior Term Claimholders represented by it, agrees that none of them shall (i) seek (or support any other Person seeking) relief from the automatic stay or any other stay in any Insolvency or Liquidation Proceeding in respect of the ABL Priority Collateral, without the prior written consent of the ABL Collateral Agent, unless a motion for adequate protection permitted under Section 6.3 has been denied by a bankruptcy court or (ii) oppose (or support any other Person in opposing) any request by the ABL Collateral Agent for relief from such stay with respect to ABL Priority Collateral.

6.3 Adequate Protection.

(a) Until the Discharge of ABL Obligations has occurred, each Senior Term Collateral Agent, on behalf of itself and the Senior Term Claimholders represented by it, and each Junior Term Collateral Agent, on behalf of itself and the Junior Term Claimholders represented by it, agrees that none of them shall contest (or support any other Person contesting):

(i) any request by the ABL Collateral Agent or any ABL Claimholders for adequate protection under any Bankruptcy Law with respect to ABL Priority Collateral; or

(ii) any objection by the ABL Collateral Agent or any ABL Claimholders to any motion, relief, action or proceeding based on the ABL Collateral Agent or such ABL Claimholders claiming a lack of adequate protection with respect to ABL Priority Collateral;

(b) Notwithstanding the foregoing provisions in this Section 6.3, in any Insolvency or Liquidation Proceeding, (u) nothing contained in this Agreement shall prohibit or restrict any Non-ABL Claimholder from contesting or challenging (or supporting any other Person contesting or challenging) any request by the ABL Collateral Agent or any ABL Claimholder for “adequate protection” (or the grant of any such “adequate protection”) to the extent such “adequate protection” is in the form of a Lien on any Term Priority Collateral and (ii) if the ABL Claimholders (or any subset thereof) are granted adequate protection with respect to ABL Priority Collateral in the form of additional collateral in connection with any Cash Collateral use or DIP Financing, then each Senior Term Collateral Agent, on behalf of itself or any of the Senior Term Claimholders represented by it, and each Junior Term Collateral Agent, on behalf of itself or any of the Junior Term Claimholders represented by it, may seek or request adequate protection in the form of a Lien on such additional collateral, which Lien will be subordinated to the Liens securing the ABL Obligations and such Cash Collateral use or DIP Financing on the same basis as the other Liens securing the Senior Term Obligations or Junior Term Obligations, as applicable, are so subordinated to the ABL Obligations under this Agreement; and

(c) Each Senior Term Collateral Agent, on behalf of itself and the Senior Term Claimholders represented by it, and each Junior Term Collateral Agent, on behalf of itself and the Junior Term Claimholders represented by it, agrees that notice of a hearing to approve DIP Financing or use of Cash Collateral on a final basis shall be adequate if delivered to such Senior Term Collateral Agent or Junior Term Collateral Agent at least fifteen (15) days in advance of such hearing.

6.4 Avoidance Issues. If any ABL Claimholder is required in any Insolvency or Liquidation Proceeding or otherwise to turn over or otherwise pay to the estate of the Parent Borrower or any other Grantor any amount paid in respect of ABL Obligations (a “**Recovery**”), then such ABL Claimholders shall be entitled to a reinstatement of ABL Obligations with respect to all such recovered amounts on the date of such Recovery, and from and after the date of such reinstatement the Discharge of ABL Obligations shall be deemed not to have occurred for all purposes hereunder. If this Agreement shall have been terminated prior to such Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto from such date of reinstatement. This Section 6.4 shall survive termination of this Agreement.

6.5 Reorganization Securities. If, in any Insolvency or Liquidation Proceeding, debt obligations of the reorganized debtor secured by Liens upon any property of the reorganized debtor are distributed pursuant to a plan of reorganization, arrangement, compromise or liquidation or similar dispositive restructuring plan, on account of ABL Obligations and on account of Senior Term Obligations and Junior Term Obligations, then, to the extent the debt obligations distributed on account of the ABL Obligations and on account of the Senior Term Obligations and Junior Term Obligations are secured by Liens upon the same property and such property constitutes ABL Priority Collateral, the provisions of this Agreement will survive the distribution of such debt obligations pursuant to such plan and will apply with like effect to the Liens securing such debt obligations.

6.6 Post-Petition Interest. Neither the Senior Term Collateral Agents, the Senior Term Claimholders, the Junior Term Collateral Agents nor the Junior Term Claimholders shall oppose or seek to challenge any claim by the ABL Collateral Agent or any ABL Claimholder for allowance in any Insolvency or Liquidation Proceeding of ABL Obligations consisting of Post-Petition Interest to the extent of the value of any ABL Claimholder's Lien on ABL Priority Collateral, without regard to the existence of the Lien of the Senior Term Collateral Agent on behalf of the Senior Term Claimholders or the Junior Term Collateral Agent on behalf of the Junior Term Claimholders on such ABL Priority Collateral.

6.7 Waiver. Each Senior Term Collateral Agent, on behalf of itself and the Senior Term Claimholders represented by it, and each Junior Term Collateral Agent, on behalf of itself and the Junior Term Claimholders represented by it, waives any claim it may hereafter have against any ABL Claimholder arising out of the election of any ABL Claimholder of the application of Section 1111(b)(2) of the Bankruptcy Code, and/or out of any cash collateral or financing arrangement or out of any grant of a security interest in connection with the ABL Priority Collateral in any Insolvency or Liquidation Proceeding so long as such actions are not in express contravention of the terms of this Agreement.

6.8 Separate Grants of Security and Separate Classification. Each Senior Term Collateral Agent, on behalf of itself and the Senior Term Claimholders represented by it, each Junior Term Collateral Agent, on behalf of itself and the Junior Term Claimholders represented by it, and the ABL Collateral Agent, for itself and on behalf of each other ABL Claimholder represented by it, acknowledges and agrees that:

(a) the grants of Liens on ABL Priority Collateral pursuant to the ABL Collateral Documents, the Senior Term Collateral Documents and the Junior Term Collateral Documents constitute separate and distinct grants of Liens; and

(b) because of, among other things, their differing rights in the ABL Priority Collateral, the Senior Term Obligations, the Junior Term Obligations and the ABL Obligations are fundamentally different from each other and must be separately classified in any plan of reorganization proposed or adopted in an Insolvency or Liquidation Proceeding.

To further effectuate the intent of the parties as provided in the immediately preceding sentence, if it is held that the claims of the ABL Claimholders, the Senior Term Claimholders and the Junior Term Claimholders in respect of the ABL Priority Collateral constitute only one secured claim (rather than separate classes of senior and junior secured claims), then each of the parties hereto hereby acknowledges and agrees that, subject to Sections 2.1 and 4.1, all distributions shall be made as if there were separate classes of secured claims against the Grantors in respect of the ABL Priority Collateral (with the effect being that, to the extent that the aggregate value of the ABL Priority Collateral is sufficient (for this purpose ignoring all claims held by the Senior Term Claimholders and Junior Term Claimholders), the ABL Claimholders shall be entitled to receive, in addition to amounts distributed to them in respect of principal, pre-petition interest and other claims, all amounts owing (or that would be owing if there were such separate classes of senior and junior secured claims) in respect of Post-Petition Interest, including any additional interest payable pursuant to the ABL Loan Documents, arising from or related to a default, which is disallowed as a claim in any Insolvency or Liquidation Proceeding) before any distribution is made in respect of the claims held by the Senior Term Claimholders and Junior Term Claimholders with respect to the ABL Priority Collateral, with each Senior Term Collateral

Agent, on behalf of itself and the Senior Term Claimholders represented by it, and each Junior Term Collateral Agent, on behalf of itself and the Junior Term Claimholders represented by it, hereby acknowledging and agreeing to turn over to the ABL Collateral Agent, for itself and on behalf of each other ABL Claimholder, ABL Priority Collateral or proceeds of ABL Priority Collateral otherwise received or receivable by them to the extent necessary to effectuate the intent of this sentence, even if such turnover has the effect of reducing the claim or recovery of the Senior Term Claimholders or Junior Term Claimholders).

6.9 Effectiveness in Insolvency or Liquidation Proceedings. The parties hereto acknowledge that this Agreement is a “subordination agreement” under Section 510(a) of the Bankruptcy Code, which will be effective before, during and after the commencement of an Insolvency or Liquidation Proceeding. All references in this Agreement to any Grantor will include such Person as a debtor-in-possession and any receiver or trustee for such Person in an Insolvency or Liquidation Proceeding.

6.10 Asset Dispositions.

(a) Until the Discharge of ABL Obligations has occurred, each Senior Term Collateral Agent, on behalf of itself and the Senior Term Claimholders represented by it, and each Junior Term Collateral Agent, on behalf of itself and the Junior Term Claimholders represented by it, agrees that, in the event of any Insolvency or Liquidation Proceeding, neither the Senior Term Claimholders nor the Junior Term Claimholders will seek consultation rights in connection with, and will not object or oppose (or support any Person in objecting or opposing) a motion for any Disposition of any ABL Priority Collateral free and clear of the Liens of Senior Term Collateral Agents, the Senior Term Claimholders, the Junior Term Collateral Agents, the Junior Term Claimholders or other claims under Sections 363, 365, 1129 or 1141 of the Bankruptcy Code, or any comparable provision of any Bankruptcy Law (and including any motion for bid procedures or other procedures related to the Disposition that is the subject of such motion), and shall be deemed to have consented to any such Disposition of any ABL Priority Collateral under Section 363(f) of the Bankruptcy Code that has been consented to by the ABL Collateral Agent; provided that the proceeds of such Disposition of any ABL Priority Collateral to be applied to the ABL Obligations, Senior Term Obligations or the Junior Term Obligations are applied in accordance with Sections 4.1 and 4.2.

(b) The Senior Term Claimholders and the Junior Term Claimholders agree that the ABL Claimholders shall have the right to credit bid under Section 363(k) of the Bankruptcy Code with respect to any Disposition of the ABL Priority Collateral.

## SECTION 7

### RELIANCE; WAIVERS; ETC.

7.1 Reliance. Other than any reliance on the terms of this Agreement, the ABL Collateral Agent, on behalf of itself and the ABL Claimholders represented by it, acknowledges that it and such ABL Claimholders have, independently and without reliance on any Senior Term Collateral Agent or any Senior Term Claimholder or any Junior Term Collateral Agent or any Junior Term Claimholder, and based on documents and information deemed by them appropriate,

made their own credit analysis and decision to enter into each of the applicable ABL Loan Documents and be bound by the terms of this Agreement and they will continue to make their own credit decision in taking or not taking any action under the applicable ABL Loan Documents or this Agreement. Other than any reliance on the terms of this Agreement, each Senior Term Collateral Agent, on behalf of itself and the Senior Term Claimholders represented by it, and each Junior Term Collateral Agent, on behalf of itself and the Junior Term Claimholders represented by it, acknowledges that it and such Senior Term Claimholders or Junior Term Claimholders, as applicable, have, independently and without reliance on the ABL Collateral Agent or any ABL Claimholder, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into each of the applicable Senior Term Loan Documents or Junior Term Loan Documents, as applicable, and be bound by the terms of this Agreement and they will continue to make their own credit decision in taking or not taking any action under the applicable Senior Term Loan Documents, Junior Term Loan Documents or this Agreement.

7.2 No Warranties or Liability. The ABL Collateral Agent, on behalf of itself and the ABL Claimholders represented by it, acknowledges and agrees that each of the Senior Term Collateral Agents and the Senior Term Claimholders and each of the Junior Term Collateral Agents and the Junior Term Claimholders have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the Senior Term Loan Documents or Junior Term Loan Documents, the ownership of any ABL Priority Collateral or the perfection or priority of any Liens thereon. Except as otherwise provided herein, the Senior Term Claimholders and the Junior Term Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under the applicable Senior Term Loan Documents or Junior Term Loan Documents, as applicable, in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. Each Senior Term Collateral Agent, on behalf of itself and the Senior Term Claimholders represented by it, and each Junior Term Collateral Agent, on behalf of itself and the Junior Term Claimholders represented by it, acknowledges and agrees that each of the ABL Collateral Agent and the ABL Claimholders have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the ABL Loan Documents, the ownership of any ABL Priority Collateral or the perfection or priority of any Liens thereon. Except as otherwise provided herein, the ABL Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under the applicable ABL Loan Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. Each Senior Term Collateral Agent and the Senior Term Claimholders represented by it and each Junior Term Collateral Agent and the Junior Term Claimholders represented by it, shall have no duty to the ABL Collateral Agent or any of the ABL Claimholders, and the ABL Collateral Agent and the ABL Claimholders represented by it shall have no duty to any Senior Term Collateral Agent or any of the Senior Term Claimholders or any Junior Term Collateral Agent or any of the Junior Term Claimholders, to act or refrain from acting in a manner which allows, or results in, the occurrence or continuance of an event of default or default under any agreements with the Parent Borrower or any other Grantor (including the ABL Loan Documents, the Senior Term Loan Documents and the Junior Term Loan Documents), regardless of any knowledge thereof with which they may have or be otherwise charged with.

### 7.3 No Waiver of Lien Priorities.

(a) No right of the ABL Claimholders, the ABL Collateral Agent or any of them to enforce any provision of this Agreement or any ABL Loan Document shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Parent Borrower or any other Grantor or by any act or failure to act by any ABL Claimholder or the ABL Collateral Agent, or by any noncompliance by any Person with the terms, provisions and covenants of this Agreement, any of the ABL Loan Documents, any of the Senior Term Loan Documents or any of the Junior Term Loan Documents, regardless of any knowledge thereof which the ABL Collateral Agent or the ABL Claimholders, or any of them, may have or be otherwise charged with. No right of the Senior Term Claimholders, any Senior Term Collateral Agent, the Junior Term Claimholders, any Junior Term Collateral Agent or any of them to enforce any provision of this Agreement, any Senior Term Loan Document or any Junior Term Loan Document shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Parent Borrower or any other Grantor or by any act or failure to act by any Senior Term Claimholder, any Senior Term Collateral Agent, any Junior Term Claimholder or any Junior Term Collateral Agent, or by any noncompliance by any Person with the terms, provisions and covenants of this Agreement, any of the ABL Loan Documents, any of the Senior Term Loan Documents or any of the Junior Term Loan Documents, regardless of any knowledge thereof which any Senior Term Collateral Agent, the Senior Term Claimholders, any Junior Term Collateral Agent or the Junior Term Claimholders, or any of them, may have or be otherwise charged with.

(b) Without in any way limiting the generality of the foregoing paragraph (but subject to the rights of the Parent Borrower and the other Grantors under the ABL Loan Documents and subject to the provisions of Section 5.3), the ABL Claimholders, the ABL Collateral Agent and any of them may, at any time and from time to time in accordance with the ABL Loan Documents and/or applicable law, without the consent of, or notice to, the Designated Senior Term Collateral Agent, any Senior Term Claimholders, the Designated Junior Term Collateral Agent or any Junior Term Claimholders, without incurring any liabilities to any Senior Term Collateral Agent, any Senior Term Claimholders, any Junior Term Collateral Agent or any Junior Term Claimholders and without impairing or releasing the Lien priorities and other benefits provided in this Agreement (even if any right of subrogation or other right or remedy of any Senior Term Collateral Agent, any Senior Term Claimholders, any Junior Term Collateral Agent or any Junior Term Claimholders is affected, impaired or extinguished thereby) do any one or more of the following:

(i) change the manner, place or terms of payment or change or extend the time of payment of, or amend, renew, exchange, increase or alter, the terms of any of the ABL Obligations or any Lien on any ABL Priority Collateral or guaranty thereof or any liability of the Parent Borrower or any other Grantor, or any liability incurred directly or indirectly in respect thereof (including any increase in or extension of the ABL Obligations, without any restriction as to the tenor or terms of any such increase or extension) or otherwise amend, renew, exchange, extend, modify or supplement in any manner any Liens held by the ABL Collateral Agent or any of the ABL Claimholders, the ABL Obligations or any of the ABL Loan Documents; provided that any such increase in the ABL Obligations shall not increase the sum of the ABL Obligations to an amount in excess of the ABL Cap Amount;



(ii) sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner and in any order any part of the ABL Priority Collateral or any liability of the Parent Borrower or any other Grantor to the ABL Claimholders or the ABL Collateral Agent, or any liability incurred directly or indirectly in respect thereof;

(iii) settle or compromise any ABL Obligation or any other liability of the Parent Borrower or any other Grantor or any security therefor or any liability incurred directly or indirectly in respect thereof and apply any sums by whomsoever paid and however realized to any liability (including the ABL Obligations) in any manner or order; and

(iv) exercise or delay in or refrain from exercising any right or remedy against the Parent Borrower or any other Grantor or any other Person, elect any remedy and otherwise deal freely with the Parent Borrower, any other Grantor or any ABL Priority Collateral and any guarantor or any liability of the Parent Borrower or any other Grantor to the ABL Claimholders or any liability incurred directly or indirectly in respect thereof.

7.4 Obligations Unconditional. All rights, interests, agreements and obligations of the ABL Collateral Agent and the ABL Claimholders represented by it, each Senior Term Collateral Agent and the Senior Term Claimholders represented by it and each Junior Term Collateral Agent and the Junior Term Claimholders represented by it, respectively, hereunder shall remain in full force and effect irrespective of:

(a) any lack of validity or enforceability of any ABL Loan Documents, any Senior Term Loan Documents or any Junior Term Loan Documents;

(b) except as otherwise expressly set forth in this Agreement, any change in the time, manner or place of payment of, or in any other terms of, all or any of the ABL Obligations, Senior Term Obligations or Junior Term Obligations, or any amendment or waiver or other modification, including any increase in the amount thereof, whether by course of conduct or otherwise, of the terms of any ABL Loan Document, any Senior Term Loan Document or any Junior Term Loan Document;

(c) except as otherwise expressly set forth in this Agreement, any exchange of any security interest in any ABL Priority Collateral or any other collateral, or any amendment, waiver or other modification, whether in writing or by course of conduct or otherwise, of all or any of the ABL Obligations, Senior Term Obligations or Junior Term Obligations or any guaranty thereof;

(d) the commencement of any Insolvency or Liquidation Proceeding in respect of the Parent Borrower or any other Grantor; or

(e) any other circumstances which otherwise might constitute a defense available to, or a discharge of, the Parent Borrower or any other Grantor in respect of the ABL Collateral Agent, the ABL Obligations, any ABL Claimholder, any Senior Term Collateral Agent, the Senior Term Obligations, any Senior Term Claimholder, any Junior Term Collateral Agent, the Junior Term Obligations or any Junior Term Claimholder in respect of this Agreement.

## SECTION 8

### MISCELLANEOUS

8.1 Integration/Conflicts. This Agreement, the ABL Loan Documents, the Senior Term Loan Documents and the Junior Term Loan Documents represent the entire agreement of the Grantors, the ABL Claimholders, the Senior Term Claimholders and the Junior Term Claimholders with respect to the subject matter hereof and thereof, and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof and thereof. There are no promises, undertakings, representations or warranties by the ABL Claimholders, the Senior Term Claimholders or the Junior Term Claimholders relative to the subject matter hereof and thereof not expressly set forth or referred to herein or therein. As between the ABL Claimholders on the one hand and the Senior Term Claimholders and Junior Term Claimholders on the other, in the event of any conflict between the provisions of this Agreement and the provisions of the ABL Loan Documents, the Senior Term Loan Documents or the Junior Term Loan Documents, the provisions of this Agreement shall govern and control. Solely as among the Senior Term Claimholders and the Junior Term Claimholders, in the event of any conflict between this Agreement and the Term Priority Intercreditor Agreement, the Term Priority Intercreditor Agreement shall govern and control. Solely as among the Senior Term Claimholders, in the event of any conflict between this Agreement and the Senior Term Intercreditor Agreement, the Senior Term Intercreditor Agreement shall govern and control. Solely as among the Junior Term Claimholders, in the event of any conflict between this Agreement and the Junior Term Intercreditor Agreement, the Junior Term Intercreditor Agreement shall govern and control.

8.2 Effectiveness; Continuing Nature of this Agreement; Severability. This Agreement shall become effective when executed and delivered by the parties hereto. This is a continuing agreement of lien subordination and the ABL Claimholders, the Senior Term Claimholders and the Junior Term Claimholders may continue, at any time and without notice to any other Agent or any other Claimholder, to extend credit and other financial accommodations and lend monies to or for the benefit of the Parent Borrower or any Grantor in reliance hereof. The ABL Collateral Agent, on behalf of itself and the ABL Claimholders represented by it, each Senior Term Collateral Agent, on behalf of itself and the Senior Term Claimholders represented by it, and each Junior Term Collateral Agent, on behalf of itself and the Junior Term Claimholders represented by it, hereby waives any right it may have under applicable law to revoke this Agreement or any of the provisions of this Agreement. The terms of this Agreement shall survive, and shall continue in full force and effect, in any Insolvency or Liquidation Proceeding. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. The parties hereto shall endeavor in good-faith negotiations to replace any invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions. All references to the Parent Borrower or any other Grantor shall include the Parent Borrower or such Grantor as debtor and debtor-in-possession and any receiver, trustee or similar person for the Parent Borrower or any other Grantor (as the case may be) in any Insolvency or Liquidation Proceeding. This Agreement shall terminate and be of no further force and effect:

(a) with respect to (i) the ABL Collateral Agent, the ABL Claimholders and the ABL Obligations, (ii) each Senior Term Collateral Agent, the Senior Term Claimholders and the Senior Term Obligations and (iii) each Junior Term Collateral Agent, the Junior Term Claimholders and the Junior Term Obligations, on the date on which the ABL Obligations are no longer secured by, and no longer required to be secured by, any of the ABL Priority Collateral, subject to the rights of such ABL Claimholders under Sections 5.6 and 6.4;

(b) with respect to each Senior Term Collateral Agent, the Senior Term Claimholders and the Senior Term Obligations, on the date on which the Senior Term Obligations are no longer secured by, and no longer required to be secured by, any of the ABL Priority Collateral, subject to the rights of such Senior Term Claimholders under Sections 5.6 and 6.4; and

(c) with respect to each Junior Term Collateral Agent, the Junior Term Claimholders and the Junior Term Obligations, on the date on which the Junior Term Obligations are no longer secured by, and no longer required to be secured by, any of the ABL Priority Collateral, subject to the rights of such Junior Term Claimholders under Sections 5.6 and 6.4.

provided, however, that in each case, such termination shall not relieve any such part of its obligations incurred hereunder prior to the date of such termination.

**8.3 Amendments; Waivers.** No amendment, modification or waiver of any of the provisions of this Agreement by any Senior Term Collateral Agent, Junior Term Collateral Agent or the ABL Collateral Agent shall be deemed to be made unless the same shall be in writing signed on behalf of each party hereto or its authorized agent and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the parties making such waiver or the obligations of the other parties to such party in any other respect or at any other time. Notwithstanding the foregoing, the Parent Borrower and the other Grantors shall not have any right to consent to or approve any amendment, modification or waiver of any provision of this Agreement except with respect to this Section 8.3 or Section 8.18, in each case, to the extent its rights are directly and adversely affected.

**8.4 Information Concerning Financial Condition of the Parent Borrower and its Subsidiaries.**

(a) The ABL Collateral Agent and the ABL Claimholders, on the one hand, and the Senior Term Claimholders, the Senior Term Collateral Agents, the Junior Term Claimholders and the Junior Term Collateral Agents, on the other hand, shall each be responsible for keeping themselves informed of (i) the financial condition of the Parent Borrower and its Subsidiaries and all endorsers and/or guarantors of the ABL Obligations, the Senior Term Obligations or the Junior Term Obligations and (ii) all other circumstances bearing upon the risk of nonpayment of the ABL Obligations, the Senior Term Obligations or the Junior Term Obligations. The ABL Collateral Agent and the ABL Claimholders shall have no duty to advise the Senior Term Collateral Agents, any Senior Term Claimholder, the Junior Term Collateral Agents or any Junior Term Claimholder of information known to it or them regarding such condition or any such circumstances or otherwise. The Senior Term Collateral Agents and the Senior Term Claimholders shall have no duty to advise the ABL Collateral Agent, any ABL Claimholder, the Junior Term Collateral Agents or any Junior Term Obligations of information known to it or them regarding such condition or

any such circumstances or otherwise. The Junior Term Collateral Agents and the Junior Term Claimholders shall have no duty to advise the ABL Collateral Agent, any ABL Claimholder, the Senior Term Collateral Agents or any Senior Term Obligations of information known to it or them regarding such condition or any such circumstances or otherwise.

(b) In the event the ABL Collateral Agent or any of the ABL Claimholders, in its or their sole discretion, undertakes at any time or from time to time to provide any such information to any Senior Term Collateral Agent, any Senior Term Claimholder, any Junior Term Collateral Agent or any Junior Term Claimholder, it or they shall be under no obligation:

(i) to make, and the ABL Collateral Agent and the ABL Claimholders shall not make, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of any such information so provided;

(ii) to provide any additional information or to provide any such information on any subsequent occasion;

(iii) to undertake any investigation; or

(iv) to disclose any information, which pursuant to accepted or reasonable commercial finance practices, such party wishes to maintain confidential or is otherwise required to maintain confidential.

(c) In the event any Senior Term Collateral Agent or any of the Senior Term Claimholders, in its or their sole discretion, undertakes at any time or from time to time to provide any such information to the ABL Collateral Agent, any ABL Claimholder, any Junior Term Collateral Agent or any Junior Term Claimholder, it or they shall be under no obligation:

(i) to make, and the Senior Term Collateral Agents and the Senior Term Claimholders shall not make, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of any such information so provided;

(ii) to provide any additional information or to provide any such information on any subsequent occasion;

(iii) to undertake any investigation; or

(iv) to disclose any information, which pursuant to accepted or reasonable commercial finance practices, such party wishes to maintain confidential or is otherwise required to maintain confidential.

(d) In the event any Junior Term Collateral Agent or any of the Junior Term Claimholders, in its or their sole discretion, undertakes at any time or from time to time to provide any such information to the ABL Collateral Agent, any ABL Claimholder, any Senior Term Collateral Agent or any Senior Term Claimholder, it or they shall be under no obligation:

(i) to make, and the Junior Term Collateral Agents and the Junior Term Claimholders shall not make, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of any such information so provided;

(ii) to provide any additional information or to provide any such information on any subsequent occasion;

(iii) to undertake any investigation; or

(iv) to disclose any information, which pursuant to accepted or reasonable commercial finance practices, such party wishes to maintain confidential or is otherwise required to maintain confidential.

8.5 Subrogation. With respect to the value of any payments or distributions in cash, property or other assets that any of the Senior Term Claimholders, the Senior Term Collateral Agent, the Junior Term Claimholders or the Junior Term Collateral Agent pays over to the ABL Collateral Agent or the ABL Claimholders under the terms of this Agreement, the Senior Term Claimholders, the Senior Term Collateral Agents, the Junior Term Claimholders and the Junior Term Collateral Agents shall be subrogated to the rights of the ABL Collateral Agent and the ABL Claimholders; provided that each Senior Term Collateral Agent, on behalf of itself and the Senior Term Claimholders represented by it, and each Junior Term Collateral Agent, on behalf of itself and the Junior Term Claimholders represented by it, hereby agrees not to assert or enforce all such rights of subrogation it may acquire as a result of any payment hereunder until the Discharge of ABL Obligations has occurred. The Parent Borrower and the other Grantors acknowledge and agree that the value of any payments or distributions in cash, property or other assets received by any Senior Term Claimholders, any Senior Term Collateral Agent, any Junior Term Claimholders or any Junior Term Collateral Agent that are paid over to the ABL Collateral Agent or the ABL Claimholders pursuant to this Agreement shall not reduce any of the Senior Term Obligations or Junior Term Obligations.

8.6 Submission to Jurisdiction; Certain Waivers. Each party hereto hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the Collateral Documents (whether arising in contract, tort or otherwise), or for recognition and enforcement of any judgment in respect thereof, to the exclusive general jurisdiction of the courts of the State of New York sitting in the Borough of Manhattan, the courts of the United States for the Southern District of New York sitting in the Borough of Manhattan, and appellate courts from any thereof;

(b) agrees that all claims in respect of any such action or proceeding shall be heard and determined in such New York state court or, to the fullest extent permitted by applicable law, in such federal court;

(c) 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 and that nothing in this Agreement or any other ABL Loan Document or Senior Term Loan Document or any other Junior Term Loan Document shall affect any right that any ABL Claimholder or Senior Term Claimholder or Junior Term Claimholder may otherwise have to bring any action or proceeding relating to this Agreement or any other ABL Loan Document or Senior Term Loan Document or Junior Term Loan Document against any Grantor or any of its assets in the courts of any jurisdiction;

(d) waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (a) of this Section (and irrevocably waives to the fullest extent permitted by applicable law the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court);

(e) consents to service of process in any such proceeding in any such court may be made by registered or certified mail, return receipt requested, to the applicable party at its address provide in accordance with Section 8.8 (and agrees that nothing in this Agreement or any other ABL Loan Document or Senior Term Loan Document or Junior Term Loan Document will affect the right of any party hereto to serve process in any other manner permitted by applicable law);

(f) agrees that service as provided in clause (e) above is sufficient to confer personal jurisdiction over the applicable party in any such proceeding in any such court, and otherwise constitutes effective and binding service in every respect; and

(g) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover any special, exemplary, punitive or consequential damages.

**8.7 WAIVER OF JURY TRIAL. EACH PARTY HERETO, THE PARENT BORROWER AND EACH OTHER GRANTOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT, BREACH OF DUTY, COMMON LAW, STATUTE OR ANY OTHER THEORY). EACH PARTY HERETO AND THE PARENT BORROWER AND THE OTHER GRANTORS (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. EACH PARTY HERETO AND THE PARENT BORROWER AND THE OTHER GRANTORS FURTHER REPRESENTS AND WARRANTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.**

8.8 Notices. All notices to the Senior Term Claimholders, the Junior Term Claimholders and the ABL Claimholders permitted or required under this Agreement shall also be sent to the Designated Senior Term Collateral Agent, Designated Junior Term Collateral Agent and the ABL Collateral Agent, respectively. Unless otherwise specifically provided herein, any notice hereunder shall be in writing and may be personally served, telexed or sent by telefacsimile or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of telefacsimile or telex, or three Business Days after depositing it in the United States mail with postage prepaid and properly addressed. For the purposes hereof, the addresses of the parties hereto shall be as set forth below each party's name on the signature pages hereto or in the joinder agreement pursuant to which it becomes a party hereto, or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties.

8.9 Further Assurances. The ABL Collateral Agent, for itself and on behalf of each other ABL Claimholder represented by it under the applicable ABL Loan Documents, and each Senior Term Collateral Agent, for itself and on behalf of each other Senior Term Claimholder represented by it under the applicable Senior Term Loan Documents, and each Junior Term Collateral Agent, for itself and on behalf of each other Junior Term Claimholder represented by it under the applicable Junior Term Loan Documents, and the Parent Borrower and the other Grantors, agree that each of them shall take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as the ABL Collateral Agent, the Designated Junior Term Collateral Agent or the Designated Junior Term Collateral Agent may reasonably request to effectuate the terms of and the Lien priorities contemplated by this Agreement.

8.10 **APPLICABLE LAW. THIS AGREEMENT AND ANY DISPUTE, CLAIM OR CONTROVERSY ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE) SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICTS OF LAW RULES THAT WOULD RESULT IN THE APPLICATION OF A DIFFERENT GOVERNING LAW (OTHER THAN ANY MANDATORY PROVISIONS OF THE UCC RELATING TO THE LAW GOVERNING PERFECTION AND THE EFFECT OF PERFECTION OR PRIORITY OF THE SECURITY INTERESTS IN THE ABL PRIORITY COLLATERAL).**

8.11 Binding on Successors and Assigns. This Agreement shall be binding upon the ABL Collateral Agent, the ABL Claimholders, the Senior Term Collateral Agents, the Senior Term Claimholders, the Junior Term Collateral Agents, the Junior Term Claimholders, the Parent Borrower and the other Grantors and their respective successors and assigns from time to time. If any of the ABL Collateral Agent, the Senior Term Collateral Agents or the Junior Term Collateral Agents resigns or is replaced pursuant to the ABL Credit Agreement, the Senior Term Credit Agreement or the Junior Term Credit Agreement, as applicable, its successor shall be deemed to be a party to this Agreement and shall have all the rights of, and be subject to all the obligations of, this Agreement. No provision of this Agreement will inure to the benefit of a trustee, debtor-in-possession, creditor trust or other representative of an estate or creditor of any Grantor, including where any such trustee, debtor-in-possession, creditor trust or other representative of an estate is the beneficiary of a Lien securing ABL Priority Collateral by virtue of the avoidance of such Lien in an Insolvency or Liquidation Proceeding.

8.12 Headings. The section headings and table of contents used in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose, be given any substantive effect, affect the construction hereof or be taken into consideration in the interpretation hereof.

8.13 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by facsimile or other electronic imaging means), and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed signature page of this Agreement by facsimile or other electronic transmission (e.g. "pdf" or "tif" format) shall be effective as delivery of a manually executed counterpart hereof.

8.14 Authorization. By its signature, each Person executing this Agreement, on behalf of such Person but not in his or her personal capacity as a signatory, represents and warrants to the other parties hereto that it is duly authorized to execute this Agreement.

8.15 No Third Party Beneficiaries/ Provisions Solely to Define Relative Rights. This Agreement and the rights and benefits hereof shall inure to the benefit of each of the ABL Claimholders and the Senior Term Claimholders and the Junior Term Claimholders and their respective successors and assigns from time to time. The provisions of this Agreement are and are intended solely for the purpose of defining the relative rights of the ABL Collateral Agent and the ABL Claimholders on the one hand and the Senior Term Collateral Agents, the Senior Term Claimholders, the Junior Term Collateral Agents and the Senior Term Claimholders, on the other hand. Nothing herein shall be construed to limit the relative rights and obligations as among the ABL Claimholders, as among the Junior Term Claimholders, as among the Senior Term Claimholders or as among the Junior Term Claimholders and the Senior Term Claimholders. Other than as set forth in Section 8.3 and 8.18, none of the Parent Borrower, any other Grantor or any other creditor thereof shall have any rights hereunder and neither the Parent Borrower nor any Grantor may rely on the terms hereof. Nothing in this Agreement is intended to or shall impair the obligations of the Parent Borrower or any other Grantor, which are absolute and unconditional, to pay the ABL Obligations, the Senior Term Obligations and the Junior Term Obligations as and when the same shall become due and payable in accordance with their terms.

8.16 No Indirect Actions. Unless otherwise expressly stated, if a party may not take an action under this Agreement, then it may not take that action indirectly, or support any other Person in taking that action directly or indirectly. "Taking an action indirectly" means taking an action that is not expressly prohibited for the party but is intended to have substantially the same effects as the prohibited action.

8.17 Additional Grantors. Each Grantor agrees that it shall ensure that each of its Subsidiaries that is or is to become a party to any ABL Loan Document, Senior Term Loan Document or any Junior Term Loan Document shall either execute this Agreement on the date hereof or shall confirm that it is a Grantor hereunder pursuant to a joinder agreement substantially in the form attached hereto as Exhibit A that is executed and delivered by such Subsidiary prior to or concurrently with its execution and delivery of such ABL Loan Document, such Senior Term Loan Document or such Junior Term Loan Document.



8.18 Additional Credit Agreements. To the extent, but only to the extent, permitted by the provisions of the ABL Loan Documents, the Senior Term Loan Documents and the Junior Term Loan Documents, the Parent Borrower may incur or issue and sell one or more series or classes of Indebtedness under credit agreements, debt facilities, indentures and/or commercial paper facilities that the Parent Borrower designates an Additional Senior Term Credit Agreement or Additional Junior Term Credit Agreement as applicable. In order to so designate any credit agreements, debt facilities, indentures and/or commercial paper facilities as an Additional Junior Term Credit Agreement or an Additional Senior Term Credit Agreement as applicable, such credit agreements, debt facilities, indentures and/or commercial paper facilities must satisfy the requirements of the definition of Additional Senior Term Credit Agreement or Additional Junior Term Credit Agreement as applicable and the Parent Borrower must deliver to each Agent a designation in substantially the form of Exhibit B hereto. Additionally the Agent under such Additional Senior Term Credit Agreement or Additional Junior Term Credit Agreement shall have executed and delivered to each other Collateral Agent a joinder agreement in substantially the form of Exhibit C hereto whereby such new Collateral Agent agrees to be bound by the terms of this Agreement and represents and warrants that the Additional Senior Term Credit Agreement or Additional Junior Term Credit Agreement, as applicable, provides that the Claimholders thereunder will be subject to and bound by the provisions of this Agreement.

8.19 Acknowledgement. The ABL Collateral Agent hereby acknowledges for itself and on behalf of each ABL Claimholder that there are assets of the Parent Borrower and its Subsidiaries (including Grantors) which are subject to Liens in favor of the Non-ABL Claimholders or other creditors but which do not constitute ABL Priority Collateral and, notwithstanding anything to the contrary herein, nothing in this Agreement shall grant or imply the grant of any Lien or other security interest in such assets in favor of the ABL Collateral Agent to secure any ABL Obligations and nothing in this Agreement shall affect or limit the rights of any Non-ABL Claimholder in any Term Priority Collateral or any other assets of the Parent Borrower or any of its Subsidiaries (other than ABL Priority Collateral) securing any Senior Term Obligations or Junior Term Obligations.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Intercreditor Agreement as of the date first written above.

**Initial ABL Collateral Agent**

**CIT NORTHBRIDGE CREDIT LLC,**  
as ABL Collateral Agent,

By: /s/ Donna Evans

Name: Donna Evans

Title: Authorized Signatory

Address: 11 West 42nd Street, 13th Floor  
New York, NY 10036

**Initial Term Collateral Agent**

**WILMINGTON TRUST, NATIONAL ASSOCIATION,**  
as Initial Term Collateral Agent

By: /s/ Nicole Kroll

Name: Nicole Kroll

Title: Assistant Vice President

Address: 50 South Sixth St., Suite 1290  
Minneapolis, MN 55402

**WILMINGTON TRUST, NATIONAL ASSOCIATION,**  
as Initial Junior Term Collateral Agent

By: /s/ Nicole Kroll

Name: Nicole Kroll

Title: Assistant Vice President

Address: 50 South Sixth St., Suite 1290  
Minneapolis, MN 55402

[Signature Page to Revolver/Term Intercreditor Agreement]

**Acknowledged and Agreed to by:**

HORNBECK OFFSHORE SERVICES, INC.  
HORNBECK OFFSHORE SERVICES, LLC  
HORNBECK OFFSHORE OPERATORS, LLC  
HOS PORT, LLC

By: /s/ James O. Harp, Jr.

Name: James O. Harp, Jr.

Title: Executive Vice President and Chief Financial Officer

[Signature Page to Revolver/Term Intercreditor Agreement]

**Acknowledged and Agreed to by:**

HORNBECK OFFSHORE SERVICES DE MEXICO  
S. DE R.L. DE C.V.

By: /s/ Samuel A. Giberga

\_\_\_\_\_  
Name: Samuel A. Giberga

Title: Vice President

[Signature Page to Revolver/Term Intercreditor Agreement]

**Acknowledged and Agreed to by:**

HORNBECK OFFSHORE NAVEGACAO LTDA.

By: /s/ Robert Thomas Gang

Name: Robert Thomas Gang

Title: Officer

[Signature Page to Revolver/Term Intercreditor Agreement]

**AMENDMENT NO. 2 TO FIRST LIEN TERM LOAN AGREEMENT**

AMENDMENT NO. 2 (this “**Amendment**”) dated as of June 28, 2019 (the “**Amendment Effective Date**”) to the First Lien Term Loan Agreement dated as of June 15, 2017 (as amended, supplemented or otherwise modified prior to the date hereof (including pursuant to Amendment No. 1 to First Lien Term Loan Agreement, dated as of March, 27, 2018, Increase Joinder No. 1A, dated as of March 1, 2019, Increase Joinder No. 1B, dated as of March 1, 2019, and Increase Joinder No. 1C, dated as of March 1, 2019), the “**Loan Agreement**”), among HORNBECK OFFSHORE SERVICES, INC. (the “**Parent Borrower**”), HORNBECK OFFSHORE SERVICES, LLC (the “**Co-Borrower**” and, together with the Parent Borrower, collectively, the “**Borrowers**”), each lender from time to time party thereto (collectively, the “**Lenders**”) and WILMINGTON TRUST, NATIONAL ASSOCIATION, as administrative agent (in such capacity, the “**Administrative Agent**”) and collateral agent (in such capacity, the “**Collateral Agent**”).

WHEREAS, the Borrowers have requested that the Loan Agreement be amended on the terms set forth herein, and each Lender party hereto consents to this Amendment.

WHEREAS, this Amendment includes amendments to the Loan Agreement that are subject to the approval of the Required Lenders, and that, in each case, will become effective on the Amendment Effective Date (as defined below) on the terms and subject to the conditions set forth herein.

WHEREAS, the Lenders party hereto constitute, collectively, the Required Lenders.

Accordingly, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**ARTICLE I  
DEFINITIONS**

Section 1.01 **Definitions**. Capitalized terms used and not otherwise defined herein have the meanings assigned to them in the Loan Agreement as amended by this Amendment.

**ARTICLE II  
AMENDMENTS TO THE LOAN AGREEMENT**

Section 2.01 **Amendments to Loan Agreement**. Each of the parties hereto agrees that, effective on the Amendment Effective Date, the Loan Agreement shall be amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the changed pages of the Loan Agreement attached as Exhibit A hereto.

**ARTICLE III  
REPRESENTATIONS AND WARRANTIES**

Section 3.01 **Representations and Warranties**. To induce the other parties hereto to enter into this Amendment, each Loan Party represents and warrants to the Administrative Agent and each Lender that, on and as of the Amendment Effective Date:

(a) The execution, delivery and performance by such Loan Party of this Amendment have been duly authorized by all necessary limited liability company or corporate and, if required, member, or shareholder action, and do not and will not violate the Organizational Documents of such Loan Party or any Restricted Subsidiary of the Parent Borrower.

(b) This Amendment has been duly executed and delivered by such Loan Party and constitutes a legal, valid and binding obligation of such Loan Party enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(c) The representations and warranties of the Loan Parties set forth in Article VII of the Loan Agreement and in the other Loan Documents are true and correct, except to the extent any such representations and warranties are expressly limited to an earlier date (in which case such representations and warranties shall be true and correct on and as of such earlier date); provided, that the representations and warranties contained in Section 7.04(a) of the Loan Agreement shall be deemed to refer to the most recent financial statements furnished pursuant to clause (a) of Section 8.01 of the Loan Agreement and the representations and warranties contained in Section 7.04(c) of the Loan Agreement shall be deemed to include a reference to the 2019 Senior Credit Agreement (as defined in the Loan Agreement as amended hereby).

(d) No Default exists immediately before or immediately after giving effect to this Amendment.

(e) All material terms of the credit facilities governed by the 2019 Senior Credit Agreement (as defined in the Loan Agreement as amended hereby), other than any fees related thereto, have been disclosed in writing to the Lenders party hereto.

#### ARTICLE IV CONDITIONS TO EFFECTIVENESS

Section 4.01 **Amendment Effective Date**. This Amendment shall become effective as of the first date (the "**Amendment Effective Date**") on which each of the following conditions shall have been satisfied:

(a) **Execution and Delivery of this Amendment**. The Administrative Agent shall have received a counterpart signature page of this Amendment duly executed by each of the Loan Parties, the Administrative Agent and Lenders sufficient to constitute, collectively, the Required Lenders.

(b) **Payment of Expenses**. The Administrative Agent and the Lenders shall have received reimbursement or payment of all out-of-pocket fees, charges and disbursements of counsel required to be reimbursed or paid by the Borrowers under Section 12.03 of the Loan Agreement.

Section 4.02 **Effects of this Amendment**.

(a) Except as expressly set forth herein, this Amendment shall not by implication or otherwise limit, impair, constitute a waiver of or otherwise affect the rights and remedies of the Lenders, the Administrative Agent or the Collateral Agent under the existing Loan Agreement or any other Loan Document, and shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the existing Loan Agreement or any other provision of the existing Loan Agreement or of any other Loan Document, all of which are ratified and affirmed in all respects and shall continue in full force and effect. Except as expressly set forth herein, nothing herein shall be deemed to be a waiver, amendment, modification or other change of, any of the terms, conditions, obligations, covenants or agreements contained in the Loan Agreement or any other Loan Document in similar or different circumstances.

(b) From and after the Amendment Effective Date, each reference in the Loan Agreement to “this Agreement”, “hereunder”, “hereof”, “herein”, or words of like import, and each reference to the Loan Agreement in any other Loan Document shall be deemed a reference to the Loan Agreement as amended hereby. This Amendment shall constitute a “Loan Document” for all purposes of the Loan Agreement and the other Loan Documents.

## ARTICLE V REAFFIRMATION

Section 5.01 **Reaffirmation.** Notwithstanding the effectiveness of this Amendment and the transactions contemplated hereby, (i) each Loan Party acknowledges and agrees that each Loan Document to which it is a party is hereby confirmed and ratified and shall remain in full force and effect according to its respective terms (in the case of the Loan Agreement, as amended hereby and in the case of the Guaranty and Collateral Agreement, as amended through the date hereof) and (ii) each Guarantor hereby confirms and ratifies its continuing unconditional obligations as Guarantor under the Loan Agreement with respect to all of the Obligations.

## ARTICLE VI MISCELLANEOUS

Section 6.01 **Governing Law.** THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 6.02 **Expenses.** The Borrowers agree to reimburse the Administrative Agent and the Lenders for all out-of-pocket fees, charges and disbursements of counsel in connection with this Amendment, in each case to the extent required pursuant to Section 12.03 of the Loan Agreement.

Section 6.03 **Counterparts.** This Amendment may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. The exchange of copies of this Amendment and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Amendment as to the parties hereto and may be used in lieu of the original Amendment and signature pages for all purposes.

Section 6.04 **Headings.** Section headings used herein are for convenience of reference only, are not part of this Amendment and shall not affect the construction of, or be taken into consideration in interpreting, this Amendment.

Section 6.05 **Direction to Administrative Agent.** Each of the Lenders party hereto hereby (i) authorizes and directs the Administrative Agent to enter into this Amendment, (ii) authorizes and directs the Collateral Agent, in its capacity as such, to enter into the 2019 ABL/Term Intercreditor Agreement (as defined below) and (iii) confirms that it is a Lender under the Loan Agreement as of the date hereof. As used above, “2019 ABL/Term Intercreditor Agreement” means that certain ABL/Term Intercreditor Agreement, dated as of the date hereof, among CIT Northbridge Credit LLC, as ABL Collateral Agent (as defined therein), Wilmington Trust, National Association, as Initial Term Collateral Agent and as Initial Junior Term Collateral Agent (each as defined therein), and acknowledged and agreed to by the Parent Borrower and the other grantors referred to therein.



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[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

PARENT BORROWER:

HORNBECK OFFSHORE SERVICES, INC.

By: /s/ James O. Harp, Jr.

Name: James O. Harp, Jr.

Title: Executive Vice President and  
Chief Financial Officer

CO-BORROWER:

HORNBECK OFFSHORE SERVICES, LLC

By: /s/ James O. Harp, Jr.

Name: James O. Harp, Jr.

Title: Executive Vice President and  
Chief Financial Officer

*[HOS - Signature Page to Amendment No. 2 to First Lien Term Loan Agreement]*

GUARANTORS:

HORNBECK OFFSHORE TRANSPORTATION, LLC

HOS-IV, LLC

HORNBECK OFFSHORE TRINIDAD & TOBAGO, LLC

HORNBECK OFFSHORE OPERATORS, LLC

ENERGY SERVICES PUERTO RICO, LLC

HORNBECK OFFSHORE INTERNATIONAL, LLC

HOS PORT, LLC

By: /s/ James O. Harp, Jr.

Name: James O. Harp, Jr.

Title: Executive Vice President and  
Chief Financial Officer

*[HOS - Signature Page to Amendment No. 2 to First Lien Term Loan Agreement]*

ADMINISTRATIVE AGENT:

WILMINGTON TRUST, NATIONAL ASSOCIATION

By: /s/ Nicole Kroll

Name: Nicole Kroll

Title: Assistant Vice President

*[HOS - Signature Page to Amendment No. 2 to First Lien Term Loan Agreement]*

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**EXHIBIT A**

**See Attached.**

“2019 Convertible Senior Notes Indenture” means that certain Indenture, dated as of August 13, 2012, among HOSI, the Guarantors (as defined therein) party thereto and Wells Fargo, as trustee, as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof.

“2019 Senior Credit Agreement” means that certain Senior Credit Agreement, dated as of the Amendment No. 2 Effective Date, among HOSI, as borrower, certain financial institutions, as lenders, and CIS Northbridge Credit LLC, as collateral agent and as administrative agent thereunder.

“2020 Senior Notes” means the 5.875% Senior Notes due 2020 issued pursuant to the 2020 Senior Notes Indenture.

“2020 Senior Notes Indenture” means that certain Indenture, dated as of March 16, 2012, among HOSI, the Guarantors (as defined therein) party thereto and Wells Fargo, as trustee, as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof.

“2021 Senior Notes” means the 5.000% Senior Notes due 2021 issued pursuant to the 2021 Senior Notes Indenture.

“2021 Senior Notes Indenture” means that certain Indenture, dated as of March 28, 2013, among HOSI, the Guarantors (as defined therein) party thereto and Wells Fargo, as trustee, as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof.

“ABR”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

“Account Control Agreement” has the meaning assigned such term in the Guaranty and Collateral Agreement.

“Additional Eligible Vessel” means (i) each High Spec Vessel and each MPSV owned by the Parent Borrower or any of its Restricted Subsidiaries as of the Effective Date that does not constitute Vessel Collateral as of the Effective Date and (ii) each High Spec Vessel and each MPSV acquired by the Parent Borrower or any of its Restricted Subsidiaries after the Effective Date (A) for consideration consisting entirely of the Equity Interests (other than Disqualified Stock) of the Parent Borrower or the proceeds from any issuance of the Equity Interests (other than Disqualified Stock) of the Parent Borrower or (B) pursuant to a concurrent purchase and sale or in-kind exchange of Vessels (or a combination thereof) that are not Vessel Collateral.

“Additional Lender” has the meaning assigned such term in Section 2.09(d).

“Additional Vessel” has the meaning assigned such term in Section 8.14(b).

“Agreement” means this First Lien Term Loan Agreement, together with any and all supplements, restatements, renewals, refinances, modifications, amendments, extensions for any period, increases or rearrangements thereof.

“Alternate Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus 0.50% and (c) the LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the LIBO Rate, respectively. Notwithstanding the foregoing, the Alternate Base Rate shall never be less than 2.00%.

“Amendment No. 2 Effective Date” means June 28, 2019.

“Anti-Terrorism Laws” means any laws relating to sanctions, terrorism or money laundering, including the USA PATRIOT Act, the laws comprising or implementing the Bank Secrecy Act (as any of the foregoing laws may from time to time be amended, renewed, extended, or replaced).

“Applicable Margin” means, for any day,

(a) from the Effective Date until the first anniversary thereof, with respect to any ABR Loan, 5.00%, and with respect to any Eurodollar Loan, 6.00%,

(b) from the first anniversary of the Effective Date until the second anniversary of the Effective Date, with respect to any ABR Loan, 5.50%, and with respect to any Eurodollar Loan, 6.50%,

(c) from the second anniversary of the Effective Date until the third anniversary of the Effective Date, with respect to any ABR Loan, 6.00%, and with respect to any Eurodollar Loan, 7.00%,

(d) from the third anniversary of the Effective Date until the fourth anniversary of the Effective Date, with respect to any ABR Loan, 6.25%, and with respect to any Eurodollar Loan, 7.25%, and

(e) thereafter, with respect to any ABR Loan, 6.50%, and with respect to any Eurodollar Loan, 7.50%;

provided that if the Borrowers elect to pay any amount of accrued interest as PIK Interest pursuant to Section 3.02(f), then the “Applicable Margin” (including in respect of such accrued interest) shall be increased by 1.00% for so long as the Borrowers elect to pay PIK Interest.

restrictions on sale or transfer (including any volume restrictions under Rule 144 under the Securities Act or any other restrictions imposed by the Securities Act to the extent such restrictions would prevent the sale of such equity securities within 365 days following the applicable Asset Sale), (b) a registration statement under the Securities Act covering the resale thereof is in effect, or (c) the Parent Borrower or any of its Restricted Subsidiaries is entitled to registration rights under the Securities Act and has exercised such rights and such registration process is under way.

“Loan Documents” means this Agreement, any Increase Joinder, the Notes, Fee Letters and the Security Instruments.

“Loan Guarantees” means, collectively, the guarantees of the Indebtedness made by the Guarantors pursuant to the Guaranty and Collateral Agreement.

“Loan Parties” means the Borrowers and the Guarantors, and “Loan Party” means any one of them.

“Loans” means the loans made by the Lenders to the Borrowers pursuant to this Agreement, including for the avoidance of doubt, Loans made pursuant to Section 2.01 and the Incremental Term Loans.

“Material Adverse Effect” means a material adverse change in, or material adverse effect on (a) the business, Properties, condition (financial or otherwise) or results of operations of the Parent Borrower and its Subsidiaries taken as a whole, (b) the ability of the Borrowers and the Guarantors, taken as a whole, to perform any of their payment or other material obligations under the Loan Documents, (c) the validity or enforceability of any Loan Document or (d) the ability of the Administrative Agent or any Lender to enforce any of their respective material rights under the Loan Documents.

“Material Indebtedness” means (i) Funded Debt (other than the Loans) or Hedging Obligations, of any one or more of the Borrowers and the Guarantors in an aggregate principal amount exceeding \$25,000,000 and (ii) Debt outstanding under the 2019 Senior Credit Agreement. For purposes of determining Material Indebtedness, the “principal amount” of any Hedging Obligations shall be the Swap Termination Value.

“Maturity Date” means the sixth (6<sup>th</sup>) anniversary of the Effective Date; provided that the Maturity Date with respect to the Loans made pursuant to any Incremental Term Commitment shall mean the maturity date specified with respect thereto in the Increase Joinder.

“Minimum Fixed Charge Coverage Ratio Test” has the meaning assigned such term in Section 9.02.

“Minimum Liquidity Amount” means \$25,000,000.

“MPSV” means a multi-purpose support vessel.



Agreement and any and all other agreements now or hereafter executed and delivered by the Borrowers or any other Person as security for the payment or performance of the Indebtedness, as such agreements securing the Indebtedness may be amended, modified, supplemented or restated from time to time.

“Senior Secured Leverage Ratio” means, with respect to any Test Period, the ratio of (a) Indebtedness as of the last day of such Test Period to (b) Consolidated EBITDA for such Test Period. For the avoidance of doubt, Senior Secured Leverage Ratio shall be determined for the relevant Test Period on a Pro Forma Basis.

“Series of Junior Lien Debt” means, severally, each issue or series of Junior Lien Debt for which a single transfer register is maintained.

“Specified Deposit Accounts” means, collectively, the Tranche A Unrestricted Account, the Tranche B-1 Blocked Account and the Tranche B-2 Blocked Account.

“Specified Equity Interests” has the meaning assigned such term in the definition of “Asset Sale”.

“Specified Foreign Subsidiary” has the meaning assigned such term in Section 8.14(a)(ii).

“Specified Non-Cash Consideration” has the meaning assigned such term in Section 9.08.

“Specified Qualified Appraisers” means (i) Dufour Laskay & Strouse, Inc., (ii) Fearnley Offshore, (iii) RS Platou, (iv) ODS-Petrodata, (v) Clarksons, (vi) Marcon International and (vii) each other Person that is an independent shipbroker and that is reasonably satisfactory to the Required Lenders.

“Specified Representations” shall mean the representations and warranties set forth in Sections 7.01(a), 7.02 (as related to the borrowing under, guaranteeing under, granting of security interests in the Collateral to, and performance of, the Loan Documents), 7.03(b)(ii) (as related to the borrowing under, guaranteeing under, granting of security interests in the Collateral to, and performance of, the Loan Documents), 7.08, 7.16 (other than clauses (c) and (d) thereof), 7.18, and 7.19.

“Specified Transaction” shall mean, with respect to any period, any Investment (including a Permitted Acquisition), any asset acquisition or sale, incurrence or Redemption of Debt, Restricted Payment, Subsidiary designation, or other event or action that in each case by the terms of this Agreement requires Pro Forma Compliance with a test or covenant hereunder or requires such test or covenant to be calculated on a Pro Forma Basis.

“Specified Value” means, subject in all cases to Section 1.06:

(a) with respect to any Existing Vessel, the Vessel Book Value thereof; provided, that (A) subject to the following clause (B), if the Vessel Book Value of any Existing Vessel is greater than \$25,000,000, the Specified Value of such Existing Vessel shall instead be the Appraised Value thereof and (B) if the sum of (i) the aggregate Vessel Book Value of all

power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by the Parent Borrower or one or more of its Subsidiaries. Unless otherwise indicated herein, each reference to the term “Subsidiary” shall mean a direct or indirect Subsidiary of the Parent Borrower.

“Successor Company” has the meaning assigned such term in Section 9.04(a).

“Swap Termination Value” means, in respect of any Hedging Obligation, after taking into account the effect of any legally enforceable netting agreement relating to such Hedging Obligations, (a) for any date on or after the date such Hedging Obligations have been closed out and termination value(s) determined in accordance therewith, such termination value(s) and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Hedging Obligations, as determined by the counterparties to such Hedging Obligations.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Test Period” shall mean, for any determination under this Agreement, the four consecutive fiscal quarters of the Parent Borrower most recently ended on or prior to such date of determination and for which financial statements are internally available at the time of such determination.

“Tranche A Unrestricted Account” means the Tranche A Unrestricted Account as defined, and used for the purposes set forth, in the 2019 Senior Credit Agreement as in effect on the Amendment No. 2 Effective Date.

“Tranche B-1 Blocked Account” means the Tranche B-1 Blocked Account as defined, and used for the purposes set forth, in the 2019 Senior Credit Agreement as in effect on the date Amendment No. 2 Effective Date.

“Tranche B-2 Blocked Account” means the Tranche B-2 Blocked Account as defined, and used for the purposes set forth, in the 2019 Senior Credit Agreement as in effect on the Amendment No. 2 Effective Date.

“Transaction Expenses” shall mean any fees, costs, or expenses incurred or paid by the Borrowers in connection with the Transactions, this Agreement, and the other Loan Documents, and the transactions contemplated hereby and thereby.

“Transactions” means, with respect to (a) the Borrowers, the execution, delivery and performance by the Borrowers of this Agreement, and each other Loan Document to which it is a party, the borrowing of Loans, the use of the proceeds thereof, and the granting of Liens by the Borrowers on Collateral pursuant to the Security Instruments and (b) each Guarantor, the execution, delivery and performance by such Guarantor of each Loan Document to which it is a party, the guaranteeing of the Indebtedness and the other obligations under the Guaranty and Collateral Agreement by such Guarantor, and the granting of Liens by such Guarantor on

or another Restricted Subsidiary of the Parent Borrower that was permitted to be incurred by another provision of this Section 9.02; provided, that this clause (vii) shall not permit the guarantee by any Restricted Subsidiary of the Parent Borrower that is not a Loan Party of any Indebtedness incurred under Section 9.02(b)(i) (or any Permitted Refinancing Indebtedness in respect thereof) or Section 9.02(b)(x);

(viii) Permitted Refinancing Indebtedness incurred in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund Debt incurred pursuant to Section 9.02(a), 9.02(b)(i), 9.02(b)(ii), this clause (viii) or Section 9.02(b)(xi);

(ix) Permitted Acquisition Indebtedness and any Permitted Refinancing Indebtedness in respect thereof (including any subsequent Permitted Refinancing Indebtedness in respect of any Debt previously incurred under this Section 9.02(b)(ix));

(x) Debt of the Borrowers (and any Guarantee thereof by a Guarantor) under the Revolver Facility in an aggregate principal amount at any time outstanding not to exceed the lesser of (1) \$100,000,000 and (2) 85% of the Loan Parties' eligible accounts receivable so long as on or before the date on which the such Debt is incurred under the Revolver Facility, (y) the Administrative Agent, the Collateral Agent and the representative with respect to the Revolver Facility shall become a party to the Revolver/Term Intercreditor Agreement and (z) any other requirements set forth in the Revolver/Term Intercreditor Agreement shall have been satisfied; and

(xi) other Debt and/or Disqualified Stock in an aggregate principal amount and/or liquidation preference, as applicable, that, when taken together with the aggregate principal amount and/or liquidation preference, as applicable, of all other Debt and/or Disqualified Stock incurred pursuant to this clause (xi) and then outstanding will not exceed, together with any outstanding Permitted Refinancing Indebtedness in respect thereof (but excluding any Increased Amount) the greater of (1) \$75,000,000 (provided that, until the earlier of (y) the date that is 90 days after the Amendment No. 2 Effective Date and (z) the date on which the Field Examination Condition (as defined in the 2019 Senior Credit Agreement as in effect on the date hereof) has been satisfied, the amount in this clause (1) shall equal \$100,000,000) and (2) 2.5% of the Parent Borrower's Consolidated Net Tangible Assets determined as of the end of the Parent Borrower's most recently completed fiscal quarter for which internal financial statements are available; provided that (i) any such Debt or Disqualified Stock shall not be secured by any assets that are Collateral and (ii) any such Debt or Disqualified Stock of a Loan Party referred to in this clause (xi) does not mature and does not have any mandatory or scheduled principal payments or sinking fund obligations prior to 91 days after the Maturity Date (except as a result of a customary change of control or asset sale repurchase offer provisions, subject to the prior making of any required payments on the Indebtedness hereunder).

(c) The Borrowers shall not, and shall not permit any Guarantor to, directly or indirectly, incur any Debt which by its terms (or by the terms of any agreement governing such

Section 9.10 Restrictions on Leveraged Vessel Acquisition Transactions. The Parent Borrower will not, and will not permit any Restricted Subsidiary of the Parent Borrower to, consummate any Leveraged Vessel Acquisition Transaction that is not a Permitted Leveraged Vessel Acquisition Transaction.

Section 9.11 Restrictions on Deposit Accounts. The Parent Borrower will not, and will not permit any Subsidiary of the Parent Borrower to, (i) use any Specified Deposit Account for purposes other than those set forth in the 2019 Senior Credit Agreement as in effect on the Amendment No. 2 Effective Date or permit any Specified Deposit Account to hold any funds not expressly contemplated by the 2019 Senior Credit Agreement as in effect on the Amendment No. 2 Effective Date or (ii) use any Collection Account or Collection/Disbursement Account (each as defined in the 2019 Senior Credit Agreement as in effect on the Amendment No. 2 Effective Date) for any purpose other than (A) collecting the (1) proceeds of accounts receivable and (2) proceeds transferred from other deposit or investment accounts of the Parent Borrower or any of its Subsidiaries and (B) disbursing those proceeds; provided that, in the case of any disbursement of proceeds of the type described in the foregoing clause (A)(2), such disbursement is made either no later than 3 Business Days after receipt of such proceeds in the applicable Collection Account or Collection/Disbursement Account or pursuant to a check, draft or other instrument written no later than 3 Business Days after receipt of such proceeds in the applicable Collection Account or Collection/Disbursement Account.

## ARTICLE X Events of Default; Remedies

Section 10.01 Events of Default. One or more of the following events shall constitute an “Event of Default”:

(a) the Borrowers shall fail to pay any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof, by acceleration or otherwise; and (other than a payment due on the Maturity Date) such failure is not cured within three (3) Business Days after the applicable due date.

(b) the Borrowers shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in Section 10.01(a)) payable under any Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days.

(c) any representation or warranty made or deemed made pursuant to Section 6.02 by or on behalf of the Parent Borrower, the Co-Borrower or any Guarantor in or in connection with any Loan Document or any amendment or modification of any Loan Document or waiver under such Loan Document, or in any report, certificate, financial statement or other document

**SUPPLEMENT NO. 2 TO THE  
FIRST LIEN GUARANTY AND COLLATERAL AGREEMENT**

This SUPPLEMENT NO. 2 TO THE FIRST LIEN GUARANTY AND COLLATERAL AGREEMENT (this “Supplement”) is dated as of June 28, 2019 and is entered into by and among Hornbeck Offshore Services, Inc., a Delaware corporation (“HOSI” or the “Parent Borrower”), Hornbeck Offshore Services, LLC, a Delaware limited liability company (the “Co-Borrower” and, together with the Parent Borrower, collectively, the “Borrowers” and each, a “Borrower”), each of the signatories hereto, other than the Collateral Agent, as defined below (the Borrowers and each of the signatories hereto (other than the Collateral Agent), together with any other Restricted Subsidiary of the Parent Borrower that becomes a party hereto from time to time after the date hereof pursuant to an Assumption Agreement or otherwise, the “Obligors”) and Wilmington Trust, National Association, as collateral agent (in such capacity, together with its successors in such capacity, the “Collateral Agent”). Unless otherwise defined herein, terms defined in the Credit Agreement and used herein have the meanings given to them in the Credit Agreement.

R E C I T A L S

WHEREAS, in connection with that certain First Lien Term Loan Agreement dated as of June 15, 2017, as amended by that certain Amendment No. 1 to First Lien Term Loan Agreement dated as of March 27, 2018 and that certain Amendment No. 2 to First Lien Term Loan Agreement dated as of June 28, 2019 (as further amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), by and among the Borrowers, certain financial institutions (the “Lenders”), the Collateral Agent and Wilmington Trust, National Association, as administrative agent (in such capacity, together with its successors in such capacity, the “Administrative Agent”), the Borrowers, the other Obligors and the Collateral Agent entered into that certain First Lien Term Guaranty and Collateral Agreement dated as of June 15, 2017 as amended by that certain Supplement No. 1 to the First Lien Guaranty and Collateral Agreement dated as of May, 2018 (as amended, restated, supplemented or otherwise modified from time to time, the “Guaranty and Collateral Agreement”);

WHEREAS, the parties hereto now desire to further supplement and amend the Guaranty and Collateral Agreement as set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

- I. **Amendment to the Guaranty and Collateral Agreement.** Pursuant to Section 9.04 of the Guaranty and Collateral Agreement and Section 12.02 of the Credit Agreement, the Guaranty and Collateral Agreement is hereby amended as follows:

The definition of “Excluded Accounts” is amended and restated in its entirety by deleting the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and adding the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the changed definition for inclusion in the Guaranty and Collateral Agreement attached as Appendix A hereto.

- II. **Reaffirmation of Other Provisions.** Except as amended and modified hereby, any and all of the terms and provisions of the Guaranty and Collateral Agreement shall remain in full force and effect and are hereby in all respects ratified and confirmed by each party hereto.
- III. **Governing Law.** This Supplement shall be governed by, and construed in accordance with, the laws of the State of New York.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, each of the undersigned has caused this Supplement to be duly executed and delivered to be effective as of the date first above written.

**BORROWERS:**

**HORNBECK OFFSHORE SERVICES, INC.**

**HORNBECK OFFSHORE SERVICES, LLC**

By: /s/ James O. Harp, Jr.

Name: James O. Harp, Jr.

Title: Executive Vice President and  
Chief Financial Officer

[Signature Page to Supplement No. 2 to First Lien Guaranty and Collateral Agreement]

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed and delivered to be effective as of the date first above written.

**GUARANTORS:**

**HORNBECK OFFSHORE TRANSPORTATION, LLC**

**HOS-IV, LLC**

**HORNBECK OFFSHORE TRINIDAD & TOBAGO, LLC**

**HORNBECK OFFSHORE OPERATORS, LLC**

**ENERGY SERVICES PUERTO RICO, LLC**

**HORNBECK OFFSHORE INTERNATIONAL, LLC**

**HOS PORT, LLC**

**HOI HOLDING, LLC**

**HOS HOLDING, LLC**

By: /s/ James O. Harp, Jr.

Name: James O. Harp, Jr.

Title: Executive Vice President and  
Chief Financial Officer

[Signature Page to Supplement No. 2 to First Lien Guaranty and Collateral Agreement]



IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed and delivered to be effective as of the date first above written.

**COLLATERAL AGENT:**

**WILMINGTON TRUST, NATIONAL ASSOCIATION**

By: /s/ Nicole Kroll

Name: Nicole Kroll

Title: Assistant Vice President

[Signature Page to Supplement No. 2 to First Lien Guaranty and Collateral Agreement]

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**APPENDIX A**

**Amended and Restated Text of the Definition of  
“Excluded Accounts”**

“Excluded Accounts” means (i) those Deposit Accounts that are used exclusively for payroll, payroll taxes, workers compensation and employee benefits, or withholding, sales, use, value added or similar taxes, (ii) Deposit Accounts held in trust for a third party; provided that such accounts consist solely of funds set aside for such purpose, (iii) escrow accounts that have an overnight balance of which in the aggregate, together with the overnight balance of all such other escrow accounts excluded pursuant to this clause (iii), do not exceed \$5,000,000, (iv) Deposit Accounts and Securities Accounts that exclusively hold the proceeds generated from Property that does not constitute Collateral (including cash receipts of any revenues generated from such Property), (v) those Deposit Accounts, Securities Accounts and Commodity Accounts that have an overnight balance of which in the aggregate, together with the overnight balance of all such other Deposit Accounts, Securities Accounts and Commodity Accounts excluded pursuant to this clause (v), do not exceed \$5,000,000, ~~and~~ (vi) foreign Deposit Accounts, foreign Securities Accounts and foreign Commodity Accounts of the Obligors that have an overnight balance of which in the aggregate, together with the overnight balance of all such other foreign Deposit Accounts, foreign Securities Accounts and foreign Commodity Accounts excluded pursuant to this clause (vi), do not exceed \$5,000,000, and (vii) the Specified Deposit Accounts. Notwithstanding the foregoing, in no event shall (x) any Effective Date Deposit Account, (y) the Collateral Proceeds Account or (z) any deposit account holding escrowed amounts in respect of the Specified Vessels constitute an Excluded Account. As used above, “Specified Deposit Accounts” has the meaning assigned to such term in the Credit Agreement; provided that, each of the Deposit Accounts that constitutes a Specified Deposit Account under the Credit Agreement shall automatically cease to be a Specified Deposit Account hereunder if at any time such Deposit Account is used for purposes other than those set forth in the 2019 Senior Credit Agreement as in effect on the Amendment No. 2 Effective Date or holds any funds not expressly contemplated by the 2019 Senior Credit Agreement as in effect on the Amendment No. 2 Effective Date (other than a de minimus amount of funds that are transferred to any such Deposit Account without the Borrower’s knowledge so long as such funds are transferred from such deposit account promptly following the Borrower obtaining knowledge that such Deposit Account holds funds that are not expressly contemplated by the 2019 Credit Agreement as in effect on the Amendment No. 2 Effective Date).

CONFORMED COPY SHOWING AMENDMENTS UNDER:

Amendments No. 1 and No. 2 to Credit Agreement, dated March 27, 2019 and June 28, 2019, respectively.

**CONFORMED CONVENIENCE COPY. NOTE THAT THIS CONFORMED COPY IS NOT AN OPERATIVE DOCUMENT. PLEASE REFERENCE THE EXECUTED VERSION OF THE FIRST LIEN TERM LOAN AGREEMENT DATED JUNE 15, 2017 AND THE EXECUTED VERSIONS OF AMENDMENT NOS. 1 AND 2 FOR FINAL TERMS OF THE FIRST LIEN TERM LOAN AGREEMENT, AS AMENDED.**

**FIRST LIEN TERM LOAN AGREEMENT**

**DATED AS OF**

**June 15, 2017**

**AMONG**

**HORNBECK OFFSHORE SERVICES, INC.,**

**AS PARENT BORROWER,**

**HORNBECK OFFSHORE SERVICES, LLC,**

**AS CO-BORROWER,**

**WILMINGTON TRUST, NATIONAL ASSOCIATION,**

**AS ADMINISTRATIVE AGENT,**

**WILMINGTON TRUST, NATIONAL ASSOCIATION,**

**AS COLLATERAL AGENT**

**AND**

**THE LENDERS PARTY HERETO**

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**THIS FIRST LIEN TERM LOAN AGREEMENT** dated as of June 15, 2017 (the “Effective Date”), is entered into by and among: Hornbeck Offshore Services, Inc., a Delaware corporation (“HOSI” or the “Parent Borrower”); Hornbeck Offshore Services, LLC, a Delaware limited liability company (“HOS” or the “Co-Borrower”); and the Parent Borrower together with the Co-Borrower, collectively, the “Borrowers” and each, a “Borrower”; each of the Lenders from time to time party hereto; Wilmington Trust, National Association, as administrative agent for the Lenders (in such capacity, together with its successors in such capacity, the “Administrative Agent”); and Wilmington Trust, National Association, as collateral agent for the Lenders (in such capacity, together with its successors in such capacity, the “Collateral Agent”).

## **RECITALS**

A. HOS, as borrower, HOSI, as parent guarantor, Wells Fargo Bank, National Association, as the administrative agent and the other parties thereto entered into the Existing Credit Agreement (as defined below).

B. HOS has requested and the Lenders have agreed (x) to refinance the obligations of the Loan Parties under and replace the Existing Credit Agreement with the term loan facility evidenced by this Agreement and to make new extensions of credit under such term loan facility and (y) to permit the refinancing and replacement of the obligations of the Loan Parties under the Existing Credit Agreement with any other Credit Facility evidenced by the Junior Lien Documents or the Revolver Facility permitted hereunder that may subsequently be provided to the Loan Parties by lenders or other investors, in each case on the terms and subject to the conditions set forth herein.

C. In consideration of the mutual covenants and agreements herein contained and of the loans, extensions of credit and commitments hereinafter referred to, the parties hereto agree as follows:

## **ARTICLE I**

### **Definitions and Accounting Matters**

Section 1.01 Terms Defined Above. As used in this Agreement, each term defined above has the meaning indicated above.

Section 1.02 Certain Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“2004 Issue Date” means November 23, 2004, the initial date of issuance of HOSI’s previously outstanding 6.125% Senior Notes due 2014.

“2019 Convertible Senior Notes” means the 1.500% Convertible Senior Notes due 2019 issued pursuant to the 2019 Convertible Senior Notes Indenture.

“2019 Convertible Senior Notes Indenture” means that certain Indenture, dated as of August 13, 2012, among HOSI, the Guarantors (as defined therein) party thereto and Wells Fargo, as trustee, as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof.

“2019 Senior Credit Agreement” means that certain Senior Credit Agreement, dated as of the Amendment No. 2 Effective Date, among HOSI, as borrower, certain financial institutions, as lenders, and CIS Northbridge Credit LLC, as collateral agent and as administrative agent thereunder.

“2020 Senior Notes” means the 5.875% Senior Notes due 2020 issued pursuant to the 2020 Senior Notes Indenture.

“2020 Senior Notes Indenture” means that certain Indenture, dated as of March 16, 2012, among HOSI, the Guarantors (as defined therein) party thereto and Wells Fargo, as trustee, as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof.

“2021 Senior Notes” means the 5.000% Senior Notes due 2021 issued pursuant to the 2021 Senior Notes Indenture.

“2021 Senior Notes Indenture” means that certain Indenture, dated as of March 28, 2013, among HOSI, the Guarantors (as defined therein) party thereto and Wells Fargo, as trustee, as amended, restated, supplemented or otherwise modified from time to time in accordance with the requirements thereof.

“ABR”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

“Account Control Agreement” has the meaning assigned such term in the Guaranty and Collateral Agreement.

“Additional Eligible Vessel” means (i) each High Spec Vessel and each MPSV owned by the Parent Borrower or any of its Restricted Subsidiaries as of the Effective Date that does not constitute Vessel Collateral as of the Effective Date and (ii) each High Spec Vessel and each MPSV acquired by the Parent Borrower or any of its Restricted Subsidiaries after the Effective Date (A) for consideration consisting entirely of the Equity Interests (other than Disqualified Stock) of the Parent Borrower or the proceeds from any issuance of the Equity Interests (other than Disqualified Stock) of the Parent Borrower or (B) pursuant to a concurrent purchase and sale or in-kind exchange of Vessels (or a combination thereof) that are not Vessel Collateral.

“Additional Lender” has the meaning assigned such term in Section 2.09(d).

“Additional Vessel” has the meaning assigned such term in Section 8.14(b).

“Additional Vessel Collateral Value” means (a) in connection with any Collateral Substitution Transaction (i) the excess (if any) of the Specified Value of any Additional Vessel mortgaged pursuant to Section 8.14(b) minus (ii) the Specified Value of the transferred Vessel

Collateral in respect of which such Additional Vessel was substituted, for so long as such Additional Vessel remains Collateral and is otherwise subject to no Liens other than (i) Permitted Liens of the type described in clauses (k) and (l) of the definition thereof and (ii) Liens securing Junior Lien Debt or any Permitted Refinancing Indebtedness in respect thereof permitted hereunder and (b) in connection with any Additional Eligible Vessel mortgaged pursuant to Section 8.14(b), the Specified Value of such Additional Eligible Vessel, for so long as such Additional Vessel remains Collateral and is otherwise subject to no Liens other than (i) Permitted Liens of the type described in clauses (k) and (l) of the definition thereof and (ii) Liens securing Junior Lien Debt or any Permitted Refinancing Indebtedness in respect thereof permitted hereunder; provided that, unless otherwise approved by the Initial Lenders in writing, the Additional Vessel Collateral Value attributable to any Collateral Substitution Transaction or Additional Eligible Vessel mortgaged pursuant to Section 8.14(b) shall be deemed to be \$0 until the date that is 91 days after the date on which the applicable Additional Vessel or Additional Vessels have become subject to a first priority perfected security interest in favor of the Collateral Agent in accordance with Section 8.14(b).

“Adjusted LIBO Rate” means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

“Administrative Agent” has the meaning specified in the recital of parties to this Agreement.

“Administrative Agent Parties” has the meaning assigned such term in Section 12.14(f).

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affected Loans” has the meaning assigned such term in Section 5.05.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. For the avoidance of doubt, an employee stock ownership plan sponsored by any Borrower shall not be an “Affiliate”.

“Affiliate Transaction” has the meaning assigned such term in Section 9.06.

“After-Acquired Vessel” means any Vessel that is acquired or constructed by the Co-Borrower or any Restricted Subsidiary of the Parent Borrower following the Effective Date (and for the avoidance of doubt, excluding all Vessels that are included in the Vessel Collateral as of the Effective Date, but including the HOS Warhorse and HOS Wild Horse).

“Agents” means the Administrative Agent and the Collateral Agent.

“Agreement” means this First Lien Term Loan Agreement, together with any and all supplements, restatements, renewals, refinances, modifications, amendments, extensions for any period, increases or rearrangements thereof.

“Alternate Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus 0.50% and (c) the LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the LIBO Rate, respectively. Notwithstanding the foregoing, the Alternate Base Rate shall never be less than 2.00%.

“Amendment No. 2 Effective Date” means June 28, 2019.

“Anti-Terrorism Laws” means any laws relating to sanctions, terrorism or money laundering, including the USA PATRIOT Act, the laws comprising or implementing the Bank Secrecy Act (as any of the foregoing laws may from time to time be amended, renewed, extended, or replaced).

“Applicable Margin” means, for any day,

(a) from the Effective Date until the first anniversary thereof, with respect to any ABR Loan, 5.00%, and with respect to any Eurodollar Loan, 6.00%,

(b) from the first anniversary of the Effective Date until the second anniversary of the Effective Date, with respect to any ABR Loan, 5.50%, and with respect to any Eurodollar Loan, 6.50%,

(c) from the second anniversary of the Effective Date until the third anniversary of the Effective Date, with respect to any ABR Loan, 6.00%, and with respect to any Eurodollar Loan, 7.00%,

(d) from the third anniversary of the Effective Date until the fourth anniversary of the Effective Date, with respect to any ABR Loan, 6.25%, and with respect to any Eurodollar Loan, 7.25%, and

(e) thereafter, with respect to any ABR Loan, 6.50%, and with respect to any Eurodollar Loan, 7.50%;

provided that if the Borrowers elect to pay any amount of accrued interest as PIK Interest pursuant to Section 3.02(f), then the “Applicable Margin” (including in respect of such accrued interest) shall be increased by 1.00% for so long as the Borrowers elect to pay PIK Interest.

“Applicable Percentage” means, with respect to any Lender, the percentage of the total unused Commitments and Loans represented by such Lender’s Commitment and outstanding Loans from time to time in effect.

“Appraisal Report” has the meaning assigned such term in the definition of “Appraised Value”.

“Appraised Value” means (a) with respect to any Vessel with a Vessel Book Value equal to or less than \$35,000,000, the appraised value thereof determined by a Specified Qualified Appraiser (each such report, an “Appraisal Report”) and (b) with respect to any Vessel with a Vessel Book Value greater than \$35,000,000, the lesser of the appraised value thereof determined by each of two Specified Qualified Appraisers; provided that, if the greater of the two appraised values has an appraised value that exceeds 110% of the other appraised value, then the “Appraised Value” of such Vessel shall be the average value of the two appraised values.

“Approved Fund” means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in commercial loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“Approved Lender” means (i) each Initial Lender, (ii) any fund or similar investment vehicle the investment decisions with respect to which are made by an (x) Initial Lender or (y) investment manager or other Person that manages an Initial Lender and (iii) the Affiliates of each of the foregoing to the extent that the investment decisions with respect to which are made as specified in (x) and (y) above.

“Asset Sale” means the sale, lease, conveyance or other disposition (a “disposition”) of any Collateral (including, without limitation, by way of a sale and leaseback or a Permitted Asset Swap or as the result of an Event of Loss) or Equity Interests of any Person that owns Vessel Collateral (“Specified Equity Interests”) (provided that the disposition of all or substantially all of the Property of the Parent Borrower and its Restricted Subsidiaries taken as a whole will be subject to Section 9.04 of this Agreement), whether in a single transaction or a series of related transactions, provided that such transaction or series of related transactions (i) involves Collateral having a Specified Value in excess of \$10,000,000 or (ii) results in the receipt of consideration having a value in excess of \$10,000,000. Notwithstanding the foregoing provisions of this definition, the following transactions will be deemed not to be Asset Sales: (A) the sale, lease, conveyance or other disposition of any Property other than Collateral; (B) a disposition of Collateral by any Borrower to another Loan Party or by a Guarantor to any Borrower or another Guarantor; (C) a disposition of Collateral that constitutes a Permitted Investment or a Restricted Payment that is permitted by Section 9.01; (D) any charter or lease of any Vessel Collateral entered into in the ordinary course of business and with respect to which the Parent Borrower or any Restricted Subsidiary thereof is the lessor or Person granting the charter, unless such charter or lease provides for the acquisition of such Vessel Collateral by the lessee during or at the end of the term thereof; (E) a disposition of inventory in the ordinary course of business; (F) a disposition of cash, Cash Equivalents or similar investments; (G) any charter or lease of any equipment or other properties or assets (other than Vessel Collateral) entered into in the ordinary course of business and with respect to which the Parent Borrower or any Restricted Subsidiary thereof is the lessor or Person granting the charter, unless such charter or lease provides for the acquisition of such properties or assets by the lessee during or at the end of the term thereof for an amount that is less than the fair market value thereof at the time the right to acquire such properties or assets occurs, (H) any disposition of obsolete or excess equipment or other properties or assets; (I) a disposition of properties or assets by a Restricted Subsidiary of the

Parent Borrower to a Loan Party or by a Restricted Subsidiary of the Parent Borrower that is not a Loan Party to another Restricted Subsidiary of the Parent Borrower that is not a Loan Party; and (J) dispositions of property (other than Vessel Collateral) to the extent that (1) such property is exchanged for credit against the purchase price of similar replacement property that is promptly purchased or (2) the proceeds of such disposition are promptly applied to the purchase price of such replacement property (which replacement property is actually promptly purchased).

“Assignment” has the meaning assigned such term in Section 12.04(b)(i).

“Availability Period” means the period from and including the Effective Date to but excluding the tenth Business Day following September 1, 2019.

“Available Liquidity” means, on any date of determination, the sum as of such date of (i) all amounts available to be borrowed by the Borrowers under this Agreement plus (ii) all amounts available to be borrowed by any Loan Party under any unused commitments under the Revolver Facility (if any then in effect), after giving effect to any borrowing base limitations in such Revolver Facility plus (iii) the amount of cash and Cash Equivalents (determined in accordance with GAAP) of the Parent Borrower and its Restricted Subsidiaries; provided, that amounts described in this clause (iii) attributable to Restricted Subsidiaries of the Parent Borrower that are not Loan Parties shall not exceed \$10,000,000.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers.

“Bail-In Legislation” means (a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, the relevant implementing law or regulation for such EEA Member Country as described in the EU Bail-In Legislation Schedule from time to time; and (b) in relation to any other state, any analogous law or regulation from time to time which requires contractual recognition of any Write-Down and Conversion Powers contained in that law or regulation.

“Bank Secrecy Act” means the Bank Secrecy Act of 1970 (Titles I and II of Pub. L. No. 91-508 (signed into law October 26, 1970 and as modified, amended, supplemented or restated from time to time)).

“Board” means the Board of Governors of the Federal Reserve System of the United States of America or any successor Governmental Authority.

“Board of Directors” means the Board of Directors of the Parent Borrower or any other Person, as applicable, or any authorized committee of the Board of Directors.

“Borrower” and “Borrowers” have the meanings specified in the recital of parties to this Agreement.

“Borrowing” means Loans of the same Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

“Borrowing Request” means a request by a Borrower for a Borrowing in accordance with Section 2.03.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York are authorized or required by law to remain closed; and if such day relates to a Borrowing or continuation of, a payment or prepayment of principal of or interest on, or a conversion of or into, or the Interest Period for, a Eurodollar Loan or a notice by any Borrower with respect to any such Borrowing or continuation, payment, prepayment, conversion or Interest Period, any day which is also a day on which dealings in dollar deposits are carried out in the London interbank market.

“Calculation Date” has the meaning assigned to such term in the definition of “Pro Forma Basis,” “Pro Forma Compliance” and “Pro Forma Effect”.

“Capital Lease Obligation” means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized on a balance sheet in accordance with GAAP. Notwithstanding the foregoing, any lease (whether entered into before or after the Effective Date) that would have been classified as an operating lease pursuant to GAAP as in effect on the Effective Date will be deemed not to represent a Capital Lease Obligation.

“Cash Equivalents” means

(a) securities issued or directly and fully guaranteed or insured by the government of the United States of America or any agency or instrumentality of any such government having maturities of not more than six months from the date of acquisition,

(b) certificates of deposit and Eurodollar time deposits with maturities of six months or less from the date of acquisition, bankers’ acceptances with maturities not exceeding six months and overnight bank deposits, in each case with or issued by any commercial bank organized under the laws of any country that is a member of the Organization for Economic Cooperation and Development having capital and surplus in excess of \$300,000,000 and whose long-term debt securities are rated at least A3 by Moody’s and at least A by S&P,

(c) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (a) and (b) above entered into with any financial institution meeting the qualifications specified in clause (b) above,

(d) commercial paper having a rating of at least P-1 from Moody’s or at least A-1 from S&P and in each case maturing within 270 days after the date of acquisition,

(e) deposits available for withdrawal on demand with any commercial bank not meeting the qualifications specified in clause (b) above, provided that all deposits referred to in this clause (e) are made in the ordinary course of business and do not exceed \$5,000,000 in the aggregate at any one time, and

(f) money market mutual funds substantially all of the assets of which are of the type described in any of the foregoing clauses (a) through (d).

“Cash Interest” has the meaning assigned such term in Section 3.02(f).

“Certificate of Incorporation” means HOSI’s Second Restated Certificate of Incorporation.

“Change in Control” means the occurrence of any of the following: (a) except as permitted pursuant to Section 9.04, the sale, assignment, transfer, lease, conveyance or other disposition (other than by way of merger or consolidation), in one or a series of related transactions, of all or substantially all of (x) the Property of the Parent Borrower and its Subsidiaries, taken as a whole or (y) the Vessel Collateral (including pursuant to a sale, assignment, transfer, lease or other disposition of Specified Equity Interests), (b) the adoption of a voluntary plan relating to the liquidation or dissolution of any Borrower, (c) the consummation of any transaction (including, without limitation, any merger or consolidation, but excluding the effect of any voting arrangement pursuant to any agreement among the Parent Borrower and any stockholders of the Parent Borrower as in effect on the Effective Date) the result of which is that any “person,” “persons” or “group” (as such terms are used in Section 13(d) (3) of the Exchange Act) becomes the “beneficial owner” (as such term is defined in Rule 13d-3 and Rule 13d-5 under the Exchange Act), directly or indirectly through one or more intermediaries, of more than 50% of the voting power of the outstanding Voting Stock of the Parent Borrower; provided, however, that a transaction in which the Parent Borrower becomes a Subsidiary of another Person (other than a Person that is an individual) shall not constitute a Change in Control if (i) the shareholders of the Parent Borrower immediately prior to such transaction “beneficially own” (as such term is defined in Rule 13d-3 and Rule 13d-5 under the Exchange Act), directly or indirectly through one or more intermediaries, a majority of the voting power of the outstanding Voting Stock of such other Person immediately following the consummation of such transaction and (ii) immediately following the consummation of such transaction, no “person,” “persons” or “group” (as such terms are defined above), other than such other Person (but including the holders of the Equity Interests of such other Person), “beneficially owns” (as such term is defined above), directly or indirectly through one or more intermediaries, more than 50% of the voting power of the outstanding Voting Stock of the Parent Borrower, (d) the occurrence of a “Change of Control” (or similar event, however denominated), as defined in the Unsecured Indentures (and any Permitted Refinancing Indebtedness in respect thereof) or the documentation governing any Revolver Facility, any Junior Lien Debt or any other Material Indebtedness. For purposes of this definition, a time charter of, bareboat charter or other contract for, Vessels to customers in the ordinary course of business shall not be deemed a lease under clause (a) above, or (e) the Parent Borrower shall fail to own and control 100% of the Equity Interests of the Co-Borrower, except as otherwise expressly permitted under Section 9.04.

“Change in Control Offer” has the meaning assigned such term in Section 3.04(c)(ii).

“Change in Control Payment Date” has the meaning assigned such term in Section 3.04(c)(ii).



“Change in Law” means the occurrence, after the Effective Date, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Co-Borrower” has the meaning specified in the recital of parties to this Agreement.

“Code” means the Internal Revenue Code of 1986, as amended from time to time (unless otherwise provided herein), and any successor statute.

“Collateral” means any and all assets, whether real or personal, tangible or intangible, on which Liens are purported to be granted pursuant to the Security Instruments as security for the payment or performance of the Indebtedness (including, for the avoidance of doubt, the Vessel Collateral).

“Collateral Agent” has the meaning specified in the recital of parties to this Agreement and shall include the institution named as Collateral Agent acting as trustee/mortgagee under the Fleet Mortgage.

“Collateral Proceeds Account” means a deposit account and/or securities account (as applicable) of a Borrower at a bank or other financial institution reasonably satisfactory to the Required Lenders that is subject to an Account Control Agreement that provides for control and, following an Event of Default, full dominion in favor of the Collateral Agent (in form and substance reasonably satisfactory to the Collateral Agent and the Required Lenders) and into which are deposited the proceeds (whether in the form of cash, Cash Equivalents or securities or like instruments (unless such securities or like instruments have been pledged to the Collateral Agent by the physical delivery thereof)) of any Asset Sale (and into which no other amounts are deposited).

“Collateral Substitution Transaction” has the meaning specified in Section 8.14(b).

“Commitment” means, with respect to each Lender, the commitment of such Lender to make Loans pursuant to Section 2.01 as such commitment may be (a) reduced or terminated from time to time pursuant to Section 2.06, (b) terminated pursuant to ARTICLE X, or (c) modified from time to time to reflect any assignments permitted by Section 12.04. The amount of each Lender’s Commitment on the Effective Date shall be the amount set forth on its signature page hereto.

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. 1 et seq.), as amended from time to time, and any successor statute.

“Communications” has the meaning assigned such term in Section 12.14(a).

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Consolidated EBITDA” means, with respect to any Person for any period, the Consolidated Net Income of such Person for such period plus, to the extent deducted or excluded in calculating Consolidated Net Income for such period and without duplication,

(a) an amount equal to any extraordinary loss plus any net loss realized by such Person or any of its Restricted Subsidiaries in connection with an Asset Sale,

(b) provision for taxes based on income or profits of such Person and its Restricted Subsidiaries,

(c) Consolidated Interest Expense of such Person and its Restricted Subsidiaries,

(d) depreciation and amortization (including impairment charges, write-offs and amortization of goodwill and other intangibles but excluding amortization of prepaid cash expenses that were paid in a prior period) and all other non-cash expenses of such Person and its Restricted Subsidiaries,

(e) losses (or minus any gains) on early extinguishment of debt for that period (including, without limitation, any nonrecurring charges relating to any premium or penalty paid, write off of deferred finance costs or original issue discount or other charges in connection with redeeming or otherwise retiring any Debt prior to its Stated Maturity),

(f) stock-based compensation expense (or minus any gains) reported for such period under FAS 123R,

(g) all Transaction Expenses and any expenses, fees, charges, or losses (other than depreciation or amortization expense) related to any Equity Offering, Permitted Investment of the type described in clause (c), (d), (e), (h) or (i) of the definition thereof, acquisition or disposition of Vessels, Redemption of Debt, or the incurrence of Debt permitted to be incurred by this Agreement (including a refinancing thereof) (whether or not successful and including any such transaction consummated prior to the Effective Date); and

(h) any other adjustments to Consolidated Net Income included by the Parent Borrower in calculating EBITDA or adjusted EBITDA for such period of a type reported in the Parent Borrower’s Form 10-K for the fiscal year ended December 31, 2016 or the Parent Borrower’s Form 10-Q for the fiscal quarter ended March 31, 2017, in each case, on a consolidated basis and consistent with applicable SEC guidelines regarding non-GAAP financial measures.

“Consolidated Fixed Charge Coverage Ratio” means, with respect to any Person for any Test Period, the ratio of (a) the Consolidated EBITDA of such Person for such Test Period to (b) the sum of the Consolidated Interest Expense of such Person and the amount of cash dividends or distributions paid by the Parent Borrower with respect to any preferred Equity Interest that does not constitute Disqualified Stock or any Disqualified Stock that is permitted to be incurred under Section 9.02, in each case for such Test Period. For the avoidance of doubt, Consolidated Fixed Charge Coverage Ratio shall be determined for the relevant Test Period on a Pro Forma Basis.

“Consolidated Interest Expense” means, with respect to any Person for any period, the sum, without duplication, of (a) the consolidated interest expense of such Person and its Restricted Subsidiaries for such period, whether paid or accrued (including, without limitation, amortization of original issue discount, the interest component of any deferred payment obligations, the interest component of all payments associated with Capital Lease Obligations, commissions, discounts and other fees and charges incurred in respect of letter of credit or bankers’ acceptance financings, and net payments (if any) pursuant to Hedging Obligations but excluding (i) amortization of debt issuance costs and (ii) any nonrecurring charges relating to any premium or penalty paid, write off of deferred finance costs or original issue discount or other charges in connection with redeeming or otherwise retiring any Debt prior to its Stated Maturity, to the extent that any of such nonrecurring charges constitute interest expense) and (b) the consolidated interest expense of such Person and its Restricted Subsidiaries that was capitalized during such period; provided that (x) Consolidated Interest Expense shall exclude any interest that is paid-in-kind or is imputed non-cash interest expense in accordance with GAAP and (y) for purposes of the calculation of Consolidated Fixed Charge Coverage Ratio, in connection with the incurrence of any Debt pursuant to Section 9.02, (i) the Borrowers may elect, pursuant to an Officer’s Certificate, to treat all or any portion of the commitment (any such amount elected until revoked as described below, an “Elected Amount”) under any Debt which is to be incurred (or any commitment in respect thereof) as being incurred as of the Calculation Date and (A) any subsequent incurrence of Debt under such commitment (so long as the total amount under such Debt does not exceed the Elected Amount) shall not be deemed, for purposes of this calculation, to be an incurrence of additional Debt or an additional Lien at such subsequent time, (ii) the Borrowers may revoke an election of an Elected Amount pursuant to an Officer’s Certificate and (iii) for purposes of all subsequent calculations of the Consolidated Fixed Charge Coverage Ratio, the Elected Amount (if any) shall be deemed to be outstanding, whether or not such amount is actually outstanding, so long as the applicable commitment remains outstanding.

“Consolidated Net Income” means, with respect to any Person for any period, the aggregate of the Net Income of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, determined in accordance with GAAP, provided that (a) the Net Income (but not loss) of any Person that is not a Restricted Subsidiary or that is accounted for by the equity method of accounting shall be included only to the extent of the amount of dividends or distributions paid in cash to the referent Person or a Restricted Subsidiary thereof, (b) the Net Income of any Restricted Subsidiary shall be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that Net Income is not at the date of determination permitted without any prior governmental approval (that has not been obtained) or, directly or indirectly, by operation of the terms of its charter or any

agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders, (c) unrealized losses and gains under derivative instruments included in the determination of Consolidated Net Income, including, without limitation those resulting from the application of FASB ASC Topic No. 815, Derivatives and Hedging, shall be excluded, (d) the cumulative effect of a change in accounting principles shall be excluded and (e) any extraordinary, non-recurring, unusual or infrequent items shall be excluded. In addition, notwithstanding the preceding, there shall be excluded from Consolidated Net Income any nonrecurring charges relating to any premium or penalty paid, write off of deferred finance costs or original issue discount or other charges in connection with redeeming or otherwise retiring any Debt prior to its Stated Maturity.

“Consolidated Net Tangible Assets” means, with respect to any Person as of any date, the sum of the amounts that would appear on a consolidated balance sheet of such Person and its consolidated Restricted Subsidiaries as the total assets of such Person and its consolidated Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP and after deducting therefrom, (a) to the extent otherwise included, unamortized debt discount and expenses and other unamortized deferred charges, goodwill, patents, trademarks, service marks, trade names, copyrights, licenses, organization or development expenses and other intangible items and (b) the aggregate amount of liabilities of such Person and its Restricted Subsidiaries which may be properly classified as current liabilities (including tax accrued as estimated), determined on a consolidated basis in accordance with GAAP. Notwithstanding the foregoing, deferred drydocking expenses and the corporate headquarters and HOS Port leasehold improvements shall not be deducted under (a) above.

“Consolidated Subsidiaries” means each Subsidiary of the Parent Borrower (whether now existing or hereafter created or acquired) the financial statements of which shall be (or should have been) consolidated with the financial statements of the Parent Borrower in accordance with GAAP.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Convertible Indebtedness” means Debt of the Parent Borrower or a Restricted Subsidiary of the Parent Borrower (which may be guaranteed by the Guarantors) permitted to be incurred under the terms of this Agreement that is either (a) convertible or exchangeable into common stock of the Parent Borrower (and cash in lieu of fractional shares) and/or cash (in an amount determined by reference to the price of such common stock) or (b) sold as units with call options, warrants or rights to purchase (or substantially equivalent derivative transactions) that are exercisable for common stock of the Parent Borrower and/or cash (in an amount determined by reference to the price of such common stock).

“Credit Exposure” means, with respect to any Lender at any time, the sum of the outstanding principal amount of such Lender’s Loans.

“Credit Facility” means, one or more debt facilities, indentures or commercial paper facilities, in each case, with banks or other institutional lenders, accredited investors or institutional investors providing for revolving credit loans, term loans, term debt, notes, bonds or other debt securities, receivables financing (including through the sale of receivables to such lenders or to special purpose entities formed to borrow from such lenders against such receivables) or letters of credit, in each case, as amended, restated, supplemented, waived, replaced (whether or not upon termination, and whether with the original lenders or otherwise), restructured, repaid, refunded, refinanced or otherwise modified from time to time, including any agreement or indenture extending the maturity thereof, refinancing, replacing or otherwise restructuring all or any portion of the Debt under such agreement or agreements or indenture or indentures or any successor or replacement agreement or agreements or indenture or indentures or increasing the amount loaned or issued thereunder or altering the maturity thereof.

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

“Debt” means, with respect to any Person, any indebtedness of such Person, whether or not contingent, in respect of (i) borrowed money including, without limitation, any guarantee thereof, or (ii) evidenced by bonds, debentures, notes, term loans or similar instruments or letters of credit (or reimbursement agreements in respect thereof) or bankers’ acceptances or representing Capital Lease Obligations or the deferred and unpaid purchase price of any Property, or representing any Hedging Obligations, if and to the extent any of the foregoing indebtedness (other than letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet of such Person prepared in accordance with GAAP; provided, however, that any accrued expense or trade payable of such Person shall not constitute Debt. The amount of any Debt outstanding as of any date shall be (a) the accreted value thereof, in the case of any Debt that does not require current payments of interest, and (b) the principal amount thereof, in the case of any other Debt (with letters of credit being deemed to have a principal amount equal to the maximum potential liability of such Person and its Restricted Subsidiaries thereunder). Furthermore, notwithstanding the foregoing, the following shall not constitute or be deemed “Debt”: (i) any indebtedness which has been defeased in accordance with GAAP or defeased pursuant to the deposit of cash or Cash Equivalents (in an amount sufficient to satisfy all such indebtedness obligations at maturity or Redemption, as applicable, and all payments of interest and premium, if any) in a trust or account created or pledged for the sole benefit of the holders of such indebtedness, and subject to no other Liens, and the other applicable terms of the instrument governing such indebtedness; (ii) any obligations arising from agreements of a Person providing for indemnification, guarantees, adjustment of purchase price, holdbacks, contingent payment obligations based on a final financial statement or performance of acquired or disposed of assets or similar obligations (other than guarantees of Debt), in each case, incurred or assumed by such Person in connection with the acquisition or disposition of assets (including through mergers, consolidations or otherwise); (iii) obligations with respect to letters of credit in support of trade obligations or incurred in connection with public liability insurance, workers’ compensation,

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

“Debtor Relief Laws” means the Bankruptcy Code of the United States of America, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

“Declined Amount” has the meaning assigned such term in Section 3.04(c)(i).

“Default” means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“Defaulting Lender” means any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrowers in writing that such failure is the result of such Lender's good faith determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, (b) has notified the Borrowers or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrowers, to confirm in writing to the Administrative Agent and the Borrowers that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrowers), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide

such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender or (iii) become the subject of a Bail-in Action. If a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, such Lender shall be deemed to be a Defaulting Lender upon delivery of written notice of such determination to the Borrowers and each Lender.

“Disqualified Stock” means any Equity Interests that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, matures (excluding any maturity as a result of an optional Redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is 91 days after the Maturity Date; provided, however, that any Equity Interests that would constitute Disqualified Stock solely because the holders thereof (or of any security into which it is convertible or for which it is exchangeable) have the right to require the issuer to repurchase such Equity Interests (or such security into which it is convertible or for which it is exchangeable) upon the occurrence of any of the events constituting an Asset Sale or a Change in Control shall not constitute Disqualified Stock if such Equity Interests (and all such securities into which it is convertible or for which it is exchangeable) provide that the issuer thereof will not repurchase or redeem any such Equity Interests (or any such security into which it is convertible or for which it is exchangeable) pursuant to such provisions prior to compliance by the Parent Borrower with Section 3.04(c).

“dollars” or “\$” refers to lawful money of the United States of America.

“Domestic Subsidiary” means any Restricted Subsidiary that is organized under the laws of the United States of America or any state thereof or the District of Columbia.

“Dutch Auction” has the meaning assigned to such term in Section 12.04(g).

“EEA Financial Institution” shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of a Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein and Norway.

“Effective Date Cash” means cash, Cash Equivalents and similar investments held by the Parent Borrower or its Restricted Subsidiaries as of May 31, 2017.

“Elected Amount” has the meaning assigned to such term in the definition of “Consolidated Interest Expense”.

“Environmental Laws” means any law, statute, code, ordinance, order, determination, rule, regulation, judgment, decree, injunction, franchise, permit, certificate, license, authorization or other directive or requirement, whether now or hereafter in effect, pertaining in any way to health, safety, the environment or the preservation or reclamation of natural resources, in effect in any and all jurisdictions in which the Parent Borrower or any Subsidiary is conducting or at any time has conducted business, or where any Property of the Parent Borrower or any Subsidiary is located, including without limitation, the Oil Pollution Act of 1990 (“OPA”), as amended, the Clean Air Act, as amended, the Comprehensive Environmental, Response, Compensation, and Liability Act of 1980 (“CERCLA”), as amended, the Federal Water Pollution Control Act, as amended, the Occupational Safety and Health Act of 1970, as amended, the Resource Conservation and Recovery Act of 1976 (“RCRA”), as amended, the Safe Drinking Water Act, as amended, the Toxic Substances Control Act (“TSCA”), as amended, the Superfund Amendments and Reauthorization Act of 1986, as amended, the Hazardous Materials Transportation Act (“HMTA”), as amended, and other environmental conservation or protection Governmental Requirements. The term “oil” shall have the meaning specified in OPA, the terms “hazardous substance” and “release” (or “threatened release”) have the meanings specified in CERCLA, the terms “solid waste” and “disposal” (or “disposed”) have the meanings specified in RCRA; provided, however, that (a) in the event either OPA, CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment and (b) to the extent the laws of the state or other jurisdiction in which any Property of the Parent Borrower or any Subsidiary is located establish a meaning for “oil,” “hazardous substance,” “release,” “solid waste,” “disposal” or “oil and gas waste” which is broader than that specified in either OPA, CERCLA or RCRA, such broader meaning shall apply for such purpose.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such Equity Interest (but excluding any debt security that is convertible into or exchangeable for Equity Interests).

“Equity Offering” shall mean any public or private sale of common stock or preferred stock of the Parent Borrower (excluding Disqualified Stock), other than: (i) public offerings with respect to the Parent Borrower’s common stock registered on Form S-8, or (ii) issuances to any Subsidiary of the Parent Borrower.

“ERISA” means the Employee Retirement Income Security Act of 1974, and the rules and regulations thereunder as amended, and any successor statute.

“ERISA Affiliate” means each trade or business (whether or not incorporated) which together with the Parent Borrower or a Subsidiary would be deemed to be a “single employer” within the meaning of Section 4001(b)(1) of ERISA or subsections (b), (c), (m) or (o) of Section 414 of the Code.



“ERISA Event” means:

(a) any “reportable event,” as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan;

(b) the failure of a Plan to meet the minimum funding standards under Section 412 of the Code or Section 302 of ERISA (determined without regard to any waiver of the funding provisions therein or in Section 430 of the Code or Section 303 of ERISA);

(c) the filing pursuant to Section 412 of the Code or Section 303 of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan;

(d) the incurrence by the Parent Borrower, a Subsidiary or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan;

(e) the receipt by the Parent Borrower, a Subsidiary or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, but only to the extent such Plan is subject to Section 412 of the Code or Section 302 of ERISA;

(f) the incurrence by the Parent Borrower, a Subsidiary or any ERISA Affiliate of any liability under Section 4062(e) of ERISA or with respect to the withdrawal or partial withdrawal from any Plan (including as a “substantial employer,” as defined in Section 4001(a)(2) of ERISA) or Multiemployer Plan (including the incurrence by the Parent Borrower, a Subsidiary or any ERISA Affiliate of any Withdrawal Liability); or

(g) the receipt by the Parent Borrower, a Subsidiary or any ERISA Affiliate of any notice concerning the imposition of a Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, in endangered or critical status, within the meaning of Section 305 of ERISA, or insolvent or in reorganization, within the meaning of Title IV of ERISA.

“EU Bail-In Legislation Schedule” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

“Eurodollar”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

“Event of Default” has the meaning assigned such term in Section 10.01.

“Event of Loss” means any of the following events with respect to any Vessel Collateral: (a) the actual or constructive total loss of any Vessel Collateral or the agreed or compromised total loss of any Vessel Collateral; or (b) the capture, condemnation, confiscation, nationalization, requisition, purchase, seizure or forfeiture of, or any taking of title to, any Vessel Collateral. An Event of Loss shall be deemed to have occurred (i) in the event of an actual loss of the Vessel, at noon Greenwich Mean Time on the date of such loss or if that is not known on the date which such Vessel was last heard from; (ii) in the event of damage which results in a constructive or compromised or arranged total loss of a Vessel, at noon Greenwich Mean Time

on the date of the event giving rise to such damage; or (iii) in the case of an event referred to in clause (b) above, at noon Greenwich Mean Time on the date on which such event is expressed to take effect by the Person making the same.

“Excess Proceeds” means any Net Proceeds from an Asset Sale that have not been applied by the Parent Borrower or any of its Restricted Subsidiaries within 365 days after the receipt thereof to acquire Productive Assets; provided that progress payments under contracts of Loan Parties for the construction or conversion of Vessels shall be deemed to be payments for the purchase of Productive Assets; provided further, that Net Proceeds from an Asset Sale shall be deposited in a Collateral Proceeds Account with respect to which a perfected first priority Lien has been granted in favor of the Collateral Agent to secure the Indebtedness and shall remain therein until the earliest of (i) the reinvestment of such Net Proceeds in accordance with this definition, (ii) the application of such Net Proceeds in accordance with Section 3.04 and (iii) such Net Proceeds becoming Declined Amounts.

“Excess Proceeds Offer” has the meaning assigned such term in Section 3.04(c)(i).

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

“Exchanged Loans” has the meaning set forth in Section 2.02.

“Excluded Information” means any non-public information with respect to the Parent Borrower or its Subsidiaries or any of their respective securities to the extent such information could have a material effect upon, or otherwise be material to, an assigning Lender’s decision to assign Loans or a purchasing Lender’s decision to purchase Loans.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by any Borrower under Section 2.07) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 5.03, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with Section 5.03(g), and (d) any withholding Taxes imposed under FATCA.

“Existing Credit Agreement” means the Second Amended and Restated Credit Agreement dated as of February 6, 2015, by and among HOSI, as parent guarantor, HOS, as borrower, Wells Fargo, as administrative agent, and the other parties thereto, as amended by the First Amendment thereto dated as of July 29, 2016 by and among HOSI, as parent guarantor, HOS, as borrower, Wells Fargo, as administrative agent, and the other parties thereto.

“Existing Indebtedness” means the Debt existing on the Effective Date and set forth on Schedule 9.02.

“Existing Vessel” means any Vessel that is owned by the Parent Borrower or any of its Restricted Subsidiaries on the Effective Date, including, for the avoidance of doubt, all Vessel Collateral as of the Effective Date.

“Fair Market Value” means (a) with respect to Vessels, Specified Equity Interests or cash, its Specified Value; (b) subject to clause (c), with respect to any Property or Investment (other than Vessels, Specified Equity Interests or cash), the fair market value of such Property or Investment at the time of the event requiring such determination, as determined in good faith by management or the Board of Directors of the Parent Borrower, as applicable, or (c) with respect to any Property or Investment (other than Vessels, Specified Equity Interests or cash) in excess of \$35,000,000, the fair market thereof as determined by a reputable investment bank or accounting or appraisal firm that is, in the judgment of the disinterested members of such Board of Directors, qualified to perform the task for which such firm has been engaged and independent with respect to the Borrowers.

“FATCA” means the Foreign Account Tax Compliance Act as set forth in sections 1471 through 1474 of the Code, as of the Effective Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Code (or any amended or successor version described above), and any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to such intergovernmental agreement.

“FCPA” means the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

“Federal Funds Effective Rate” means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight federal funds transactions with members of the Federal Reserve System, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three (3) federal funds brokers of recognized standing selected by it.

“Fee Letters” means, collectively, (a) the letter agreement, dated as of June 15, 2017 between the Parent Borrower and the Administrative Agent and (b) the letter agreement dated as of the Effective Date between the Borrowers and the Initial Lenders.

“Fleet Mortgage” means a mortgage in substantially the form of Exhibit F, as the same may be amended, modified or supplemented from time to time.

“Foreign Lender” means any Lender that is not a U.S. Person.

“Foreign Subsidiary” means any Restricted Subsidiary that is not a Domestic Subsidiary.

“Foreign Subsidiary Holding Company” means (a) any Subsidiary that owns (directly or indirectly) no material assets other than Equity Interests (or Equity Interests and debt) of a Foreign Subsidiary and (b) any Subsidiary of a Foreign Subsidiary Holding Company.

“Foreign Vessel Reflagging Transaction” has the meaning assigned to such term in Section 8.11(b).

“Funded Debt” means all Debt of the Parent Borrower and its Restricted Subsidiaries for borrowed money that matures more than one year from the date of its creation or matures within one year from such date that is renewable or extendable, at the option of the Parent Borrower or any such Restricted Subsidiary, to a date more than one year from the date of its creation or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date (including all amounts of such Funded Debt required to be paid or prepaid within one year from the date of its creation), and, in the case of the Loan Parties, Indebtedness in respect of the Loans.

“GAAP” means generally accepted accounting principles in the United States of America as in effect from time to time subject to the terms and conditions set forth in Section 1.05.

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether foreign or domestic, federal, state or local, and any agency, authority, instrumentality, regulatory body, court, central bank, department, commissions, boards, officials and officers or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank) over the Parent Borrower, any Subsidiary, any of their Properties, the Administrative Agent or any Lender.

“Governmental Requirement” means any law, statute, code, ordinance, order, determination, rule, regulation, judgment, decree, injunction, franchise, permit, certificate, license, authorization or other directive or requirement, whether now or hereafter in effect, including, without limitation, Environmental Laws, and occupational, safety and health standards or controls, of any Governmental Authority.

“Guarantors” means (i) each Restricted Subsidiary of the Parent Borrower (other than the Co-Borrower) that is party to the Guaranty and Collateral Agreement on the Effective Date, and (ii) each Restricted Subsidiary of the Parent Borrower that becomes a party to the Guaranty and Collateral Agreement as a guarantor and lien grantor pursuant to Section 8.14, in each case until such time as any such Restricted Subsidiary of the Parent Borrower shall be released and relieved of its obligations pursuant to the provisions of this Agreement.

“Guaranty and Collateral Agreement” means an agreement executed by each Borrower, the Guarantors and the Collateral Agent in substantially the form of Exhibit E unconditionally guarantying on a joint and several basis, payment of the Indebtedness, as the same may be amended, modified or supplemented from time to time.

“Hazardous Materials” means:

(i) any “hazardous waste” as defined by RCRA;

(ii) any “hazardous substance” as defined by CERCLA;

(iii) any “toxic substance” as defined by TSCA;

(iv) any “hazardous material” as defined by HMTA;

(v) asbestos;

(vi) polychlorinated biphenyls;

(vii) any substance the presence of which on the Vessels is prohibited by any lawful Governmental Requirement from time to time in force and effect relating to the Vessels; and

(viii) any other substance which by any Governmental Requirement requires special handling in its collection, storage, treatment or disposal or defines or regulates as “hazardous,” “toxic” or words of similar import or effect.

“Hedging Obligations” means, with respect to any Person, the obligations of such Person under (a) interest rate swap agreements, interest rate cap agreements and interest rate collar agreements, (b) other agreements or arrangements designed to protect such Person against fluctuations in interest rates and (c) any foreign currency futures contract, option or similar agreement or arrangement designed to protect such Person against fluctuations in foreign currency rates, in each case to the extent such obligations are incurred in the ordinary course of business of such Person. For the avoidance of doubt, any Permitted Convertible Indebtedness Call Transaction will not constitute Hedging Obligations.

“High Spec Vessel” means, when referring to a new generation Vessel, a Vessel with cargo-carrying capacity greater than 2,500 deadweight tons (i.e., 240 class notations or higher), and dynamic-positioning systems with a DP-2 classification or higher. For the avoidance of doubt, any MPSV is a High Spec Vessel.

“Highest Lawful Rate” means, with respect to each Lender, the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the Loans or on other Indebtedness under laws applicable to such Lender which are presently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than applicable laws allow as of the date hereof.

“HOS” has the meaning specified in the recital of parties to this Agreement.

“HOSI” has the meaning specified in the recital of parties to this Agreement.

“Increase Effective Date” has the meaning assigned such term in Section 2.09(a).

“Increase Joinder” has the meaning assigned such term in Section 2.09(e).

“Increased Amounts” means all premiums, accrued interest and reasonable expenses incurred in connection with the incurrence of any Permitted Refinancing Indebtedness in respect of any Debt or Disqualified Stock.

“Incremental Amount” means, at any time, such amount of Incremental Term Loans such that the aggregate principal amount of all outstanding Loans after giving effect to such Incremental Term Loans does not exceed \$600,000,000.

“Incremental Request” has the meaning assigned such term in Section 2.09(a).

“Incremental Term Commitments” has the meaning assigned such term in Section 2.09(a).

“Incremental Term Loan Maturity Date” has the meaning assigned such term in Section 2.09(c)(iii).

“Incremental Term Loans” means, any loans made pursuant to any Incremental Term Commitments.

“Indebtedness” means any and all amounts owing or to be owing by the Borrowers or any of the Guarantors, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising, in each case to the Administrative Agent, the Collateral Agent or any Lender under any Loan Document.

“Indemnified Taxes” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrowers under any Loan Document and (b) to the extent not otherwise described in subsection (a) above, Other Taxes.

“Indemnatee” has the meaning assigned such term in Section 12.03(b).

“Information” has the meaning assigned such term in Section 12.11.

“Initial Lender” means (x) each Lender as of the Effective Date and (y) each Approved Lender that becomes a Lender prior to the date that is 90 days following the Effective Date.

“Intercreditor Agreement” means (i) any Revolver/Term Intercreditor Agreement and (ii) any Junior Lien Intercreditor Agreement, or any of them collectively, as the context may require.

“Interest Election Request” means a request by the Borrowers to convert or continue a Borrowing in accordance with Section 2.04.

“Interest Payment Date” means (a) with respect to any ABR Loan, the last day of each March, June, September and December and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months’ duration, each day prior to the last day of such Interest Period that occurs at intervals of three months’ duration after the first day of such Interest Period.

“Interest Period” means with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months thereafter, as the Borrowers may elect; provided that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day; (b) any Interest Period pertaining to a Eurodollar Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period; (c) no Interest Period for a Borrowing may end after the Maturity Date; and (d) the last Interest Period may be such shorter period as to end on the Maturity Date. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

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

“Investment Entity Vessels” has the meaning assigned such term in the definition of “Permitted Business Investments.”

“Joint Venture” means any Person that is not a direct or indirect Subsidiary of the Parent Borrower in which the Parent Borrower or any of its Restricted Subsidiaries owns an Equity Interest that constitutes a significant portion of the Equity Interests of such Person.

“Junior Lien” means a Lien on the Collateral junior in priority to the Liens securing the Indebtedness as provided in the Junior Lien Intercreditor Agreement, granted by the Borrowers or any Guarantor in favor of holders of Junior Lien Debt (or any collateral trustee or representative in connection therewith) at any time, upon any Property of the Borrowers or any Guarantor to secure such Junior Lien Debt.

“Junior Lien Collateral Agent” means the collateral trustee or other representative of lenders or holders of Junior Lien Debt designated pursuant to the terms of the Junior Lien Documents and the Junior Lien Intercreditor Agreement, together with its successors and assigns in such capacity.

“Junior Lien Debt” means any Debt (other than intercompany Debt owing to the Parent Borrower or its Restricted Subsidiaries) of the Borrowers or any Guarantor permitted to be incurred hereunder that is secured by a Junior Lien on the Collateral (and, in each case not by Liens on any assets that do not constitute Collateral); provided that, in the case of any Debt referred to in this definition:

(a) such Debt does not mature and does not have any mandatory or scheduled payments or sinking fund obligations prior to 91 days after the Maturity Date (except as a result of a customary change of control or asset sale repurchase offer provisions, subject to the prior making of any required payments on the Indebtedness hereunder); and

(b) on or before the date on which the first such Debt is incurred by the Borrowers or any Guarantor, (1) the Junior Lien Representative and Junior Lien Collateral Agent shall become a party to the Junior Lien Intercreditor Agreement and (2) any other requirements set forth in the Junior Lien Intercreditor Agreement shall have been satisfied.

“Junior Lien Documents” means, collectively, any indenture, credit agreement or other agreement or instrument pursuant to which Junior Lien Debt is incurred and the documents pursuant to which such Junior Liens are granted.

“Junior Lien Intercreditor Agreement” means a customary intercreditor agreement entered into by and among the Loan Parties, the Administrative Agent, the Collateral Agent, and the representative under the Junior Lien Documents, in form and substance reasonably acceptable to the Agents and the Initial Lenders (it being understood and agreed that in order to be reasonably acceptable to such parties such intercreditor agreement at minimum must have customary “silent” second-lien provisions acceptable to the Initial Lenders), as the same may be amended, supplemented, modified or restated in accordance with the terms thereof.

“Junior Lien Representative” means, in the case of any Series of Junior Lien Debt, the trustee, agent or representative of the holders of such Series of Junior Lien Debt who maintains the transfer register for such Series of Junior Lien Debt and is appointed as a representative of the Junior Lien Debt (for purposes related to the administration of the security documents) pursuant to the indenture, credit agreement or other agreement governing such Series of Junior Lien Debt.



“Latest Maturity Date” shall mean, at any date of determination, the latest Maturity Date applicable to any Loan or Commitment hereunder at such time.

“Lenders” means the lenders signatory hereto and any other Person that shall have become a party hereto pursuant to an Assignment or an Increase Joinder, other than any such Person that ceases to be a party hereto pursuant to an Assignment.

“Leveraged Vessel Acquisition Transaction” means any transaction or series of related transactions pursuant to which the Parent Borrower or any of its Restricted Subsidiaries acquires or constructs (i) any Vessel, (ii) Equity Interests of any Person that owns Vessels or (iii) equipment to be installed or intended for use in the ordinary course of business on any Vessel, in the case of clause (iii), with a Specified Value in excess of \$10,000,000 following the Effective Date, to the extent such transaction or transactions are financed, in whole or in part, with the proceeds of any Permitted Acquisition Indebtedness or any purchase money or similar Debt permitted hereunder that is intended to be secured by the Vessel, Equity Interests or equipment so acquired.

“LIBO Rate” means,

(a) for any interest rate calculation with respect to a Eurodollar Loan, the rate of interest per annum determined on the basis of the rate for deposits in dollars for a period equal to the applicable Interest Period which appears on Reuters Screen LIBOR01 Page (or any applicable successor page) at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of the applicable Interest Period (rounded upward, if necessary, to the nearest 1/100th of 1%). If, for any reason, such rate does not appear on Reuters Screen LIBOR01 Page (or any applicable successor page), then the “LIBO Rate” shall be determined by the Administrative Agent to be the arithmetic average of the rate per annum at which deposits in dollars in minimum amounts of at least \$5,000,000 would be offered by first class banks in the London interbank market to the Administrative Agent at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of the applicable Interest Period for a period equal to such Interest Period.

(b) for any interest rate calculation with respect to an ABR Loan, the rate of interest per annum determined on the basis of the rate a for deposits in dollars in minimum amounts of at least \$5,000,000 for a period equal to one month (commencing on the date of determination of such interest rate) which appears on the Reuters Screen LIBOR01 Page (or any applicable successor page) at approximately 11:00 a.m. (London time) on such date of determination, or, if such date is not a Business Day, then the immediately preceding Business Day (rounded upward, if necessary, to the nearest 1/100th of 1%). If, for any reason, such rate does not appear on Reuters Screen LIBOR01 Page (or any applicable successor page) then the “LIBO Rate” for such ABR Loan shall be determined by the Administrative Agent to be the arithmetic average of the rate per annum at which deposits in dollars in minimum amounts of at least \$5,000,000 would be offered by first class banks in the London interbank market to the Administrative Agent at approximately 11:00 a.m. (London time) on such date of determination for a period equal to one month commencing on such date of determination.

Each calculation by the Administrative Agent of the LIBO Rate shall be conclusive and binding for all purposes, absent manifest error.

Notwithstanding the foregoing, the LIBO Rate shall never be less than 1.00%.

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

“Limited Condition Acquisition” means any Permitted Acquisition, Permitted Investment in a Permitted Business or acquisition of Vessels, including by way of merger, amalgamation or consolidation, by the Parent Borrower or one or more of its Restricted Subsidiaries the consummation of which is not conditioned upon the availability of, or on obtaining, third party financing.

“Liquid Equity Securities” means equity securities that are publicly traded on the New York Stock Exchange, the Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market, the OTC Markets, the Oslo Stock Exchange or any other recognized national or international exchanges or markets and as to which (a) the holder is not subject to any restrictions on sale or transfer (including any volume restrictions under Rule 144 under the Securities Act or any other restrictions imposed by the Securities Act to the extent such restrictions would prevent the sale of such equity securities within 365 days following the applicable Asset Sale), (b) a registration statement under the Securities Act covering the resale thereof is in effect, or (c) the Parent Borrower or any of its Restricted Subsidiaries is entitled to registration rights under the Securities Act and has exercised such rights and such registration process is under way.

“Loan Documents” means this Agreement, any Increase Joinder, the Notes, Fee Letters and the Security Instruments.

“Loan Guarantees” means, collectively, the guarantees of the Indebtedness made by the Guarantors pursuant to the Guaranty and Collateral Agreement.

“Loan Parties” means the Borrowers and the Guarantors, and “Loan Party” means any one of them.

“Loans” means the loans made by the Lenders to the Borrowers pursuant to this Agreement, including for the avoidance of doubt, Loans made pursuant to Section 2.01 and the Incremental Term Loans.

“Material Adverse Effect” means a material adverse change in, or material adverse effect on (a) the business, Properties, condition (financial or otherwise) or results of operations of the Parent Borrower and its Subsidiaries taken as a whole, (b) the ability of the Borrowers and the Guarantors, taken as a whole, to perform any of their payment or other material obligations under the Loan Documents, (c) the validity or enforceability of any Loan Document or (d) the ability of the Administrative Agent or any Lender to enforce any of their respective material rights under the Loan Documents.

“Material Indebtedness” means (i) Funded Debt (other than the Loans) or Hedging Obligations, of any one or more of the Borrowers and the Guarantors in an aggregate principal amount exceeding \$25,000,000 and (ii) Debt outstanding under the 2019 Senior Credit Agreement. For purposes of determining Material Indebtedness, the “principal amount” of any Hedging Obligations shall be the Swap Termination Value.

“Maturity Date” means the sixth (6<sup>th</sup>) anniversary of the Effective Date; provided that the Maturity Date with respect to the Loans made pursuant to any Incremental Term Commitment shall mean the maturity date specified with respect thereto in the Increase Joinder.

“Minimum Fixed Charge Coverage Ratio Test” has the meaning assigned such term in Section 9.02.

“Minimum Liquidity Amount” means \$25,000,000.

“MPSV” means a multi-purpose support vessel.

“Multiemployer Plan” means a multiemployer plan as defined in Section 3(37) or 4001(a)(3) of ERISA.

“Net Income” means, with respect to any Person, the net income (or loss) of such Person, determined in accordance with GAAP and before any reduction in respect of preferred stock dividends, excluding, however, (a) any gain (but not loss), together with any related provision for taxes on such gain (but not loss), realized in connection with (i) any sale, lease, conveyance or other disposition of Property outside the ordinary course of business or (ii) the disposition of any securities by such Person or any of its Restricted Subsidiaries or the extinguishment of any Debt of such Person or any of its Restricted Subsidiaries and (b) any extraordinary or nonrecurring gain (but not loss), together with any related provision for taxes on such extraordinary or nonrecurring gain (but not loss). Time charters, bareboat charters and Vessel management or similar agreements shall not be included in (a)(i) above.

“Net Proceeds” means the aggregate cash proceeds received by the Parent Borrower or any of its Restricted Subsidiaries in respect of any Asset Sale (including, without limitation, any cash received upon the sale or other disposition of any non-cash consideration received in any Asset Sale) (including, for the avoidance of doubt, any insurance proceeds received in the event

of an Event of Loss), net of (without duplication) the following: (a) the direct costs relating to such Asset Sale (including, without limitation, legal, accounting and investment banking fees, sales commissions, recording fees, title transfer fees, title insurance premiums, appraiser fees and costs incurred in connection with preparing such asset for sale) and any relocation expenses incurred as a result thereof, (b) taxes paid or estimated to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), (c) amounts required to be applied to the repayment of Debt (other than under this Agreement and other than any Junior Lien Debt or any Debt under the Revolver Facility) secured by a Permitted Lien on the Vessel Collateral that was the subject of such Asset Sale (or otherwise to discharge Liens on such Vessel Collateral), and (c) any reserve established in accordance with GAAP or any amount placed in escrow, in either case for adjustment in respect of the sale price of such Properties, until such time as such reserve is reversed or such escrow arrangement is terminated, in which case Net Proceeds shall include only the amount of the reserve so reversed or the amount returned to the Parent Borrower or its Restricted Subsidiaries from such escrow arrangement, as the case may be.

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

“Note Purchase Agreements” means, collectively, those certain note purchase agreements each dated as of the Effective Date between the Parent Borrower, as purchaser, and the Note Sellers.

“Note Sellers” means the Persons identified as sellers under the Note Purchase Agreements.

“Notes” means the promissory notes of the Borrowers described in Section 2.03(b) and being substantially in the form of Exhibit A together with any and all supplements, restatements, renewals, refinances, modifications, amendments, extensions for any period, increases and/or rearrangements thereof.

“Notice of Prepayment” has the meaning assigned such term in Section 3.04(b).

“OFAC” means the United States Treasury Department’s Office of Foreign Asset Control.

“Officer’s Certificate” means a certificate signed on behalf of the Borrowers by a Responsible Officer of the Borrowers.

“OPA” has the meaning set forth in the definition of “Environmental Laws.”

“Organizational Documents” shall mean, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.07).

“Parent Borrower” has the meaning specified in the recital of parties to this Agreement.

“Participant” has the meaning assigned such term in Section 12.04(c)(i).

“Participant Register” has the meaning specified in Section 12.04(e).

“PBGC” means the Pension Benefit Guaranty Corporation, or any successor thereto.

“Permitted Acquisition” shall have the meaning provided in clause (c) of the definition of Permitted Investment.

“Permitted Acquisition Indebtedness” means Debt or Disqualified Stock (x) of the Parent Borrower or any of its Restricted Subsidiaries incurred, issued or assumed, or with respect to which any property is acquired, in each case (a) to finance, or (b) that is secured by the assets acquired pursuant to, a Permitted Acquisition of, or Permitted Investment in, a Permitted Business or an acquisition of one or more Vessels, whether incurred, issued or assumed concurrently with or subsequent to such Permitted Acquisition of, or Permitted Investment in, a Permitted Business or an acquisition of one or more Vessels, or (y) of Persons that are acquired by the Parent Borrower or any of its Restricted Subsidiaries or merged into, amalgamated with or consolidated with the Parent Borrower or any of its Restricted Subsidiaries in accordance with the terms of this Agreement if, in each case on the date such Debt or Disqualified Stock was

incurred, issued or assumed, whether concurrently with or subsequent to such Permitted Acquisition of, or Permitted Investment in, a Permitted Business or an acquisition of one or more Vessels, either (1) the Parent Borrower would be permitted to incur at least \$1.00 of additional Debt pursuant to the Minimum Fixed Charge Coverage Ratio Test or (2) the Consolidated Fixed Charge Coverage Ratio for the Parent Borrower and its Restricted Subsidiaries immediately after such incurrence, issuance or assumption would be greater than the Consolidated Fixed Charge Coverage Ratio for the Parent Borrower and its Restricted Subsidiaries immediately prior to such incurrence, issuance or assumption; provided that any such Debt or Disqualified Stock described in clause (x) or (y) shall not be secured by any assets or Persons other than those being acquired pursuant to, a Permitted Acquisition of, or Permitted Investment in, a Permitted Business or an acquisition of one or more Vessels (and, for the avoidance of doubt, shall not be secured by any Vessel Collateral or other Collateral).

“Permitted Asset Swap” shall mean the concurrent purchase and sale or exchange of assets (or a combination thereof) used or useful in a Permitted Business between the Parent Borrower or any of its Restricted Subsidiaries and another Person; provided, that if the assets disposed of by the Parent Borrower or any Restricted Subsidiary of the Parent Borrower in such transaction are Collateral, the assets received by the Parent Borrower or Restricted Subsidiary in such transaction shall become Collateral; provided further, that if such transaction involves the receipt by the Parent Borrower or any of its Restricted Subsidiaries of assets in the form of Vessels, for purposes of Section 9.08, the value of (and the consideration attributable to) the Vessel to be acquired by the Parent Borrower or any of its Restricted Subsidiaries shall be the Appraised Value thereof.

“Permitted Bond Hedge Transaction” means any call or capped call option (or substantively equivalent derivative transaction) on the Parent Borrower’s common stock purchased by the Parent Borrower in connection with the issuance of any Convertible Indebtedness; provided that the purchase price for such Permitted Bond Hedge Transaction, less the proceeds received by the Parent Borrower from the sale of any related Permitted Warrant Transaction, does not exceed the net proceeds received by the Parent Borrower from the sale of such Convertible Indebtedness issued in connection with the Permitted Bond Hedge Transaction.

“Permitted Business” means the business of providing marine transportation or marine logistics services or other businesses reasonably complementary or reasonably related thereto (as determined in good faith by the Parent Borrower’s Board of Directors).

“Permitted Business Investments” means Investments by the Parent Borrower or any of its Restricted Subsidiaries in any Restricted Subsidiary of the Parent Borrower that is not a Loan Party, in any Unrestricted Subsidiary of the Parent Borrower or in any Joint Venture, provided that:

(i) such Investment consists of transfers (pursuant to one or more transactions) of (1) the Vessels set forth on Schedule 1.01(a) and any After-Acquired Vessels to the extent acquired with the proceeds of Vessels that do not constitute Collateral (and all Property reasonably related thereto) (collectively, the “Investment Entity Vessels”; provided that Vessel Collateral shall not also constitute Investment Entity Vessels), (2) any Equity Interests in any Person that owns no Property other than Investment Entity Vessels, (3) Equity Interests (other than Disqualified Stock) of the Parent Borrower, or (4) any combination of the foregoing;

(ii) if any such non-Loan Party Restricted Subsidiary, Unrestricted Subsidiary or Joint Venture has outstanding Debt at the time of such Investment, either (a) all such Debt is Non-Recourse Debt or (b) any such Debt of such non-Loan Party Restricted Subsidiary, Unrestricted Subsidiary or Joint Venture that is recourse to the Parent Borrower or any of its Restricted Subsidiaries (which shall include, without limitation, all Debt of such non-Loan Party, Unrestricted Subsidiary or Joint Venture for which the Parent Borrower or any of its Restricted Subsidiaries may be directly or indirectly, contingently or otherwise, obligated to pay, whether pursuant to the terms of such Debt, by law or pursuant to any guarantee, including, without limitation, any “claw back,” “make-well” or “keep-well” arrangement) (x) could at the time such Investment is made, be incurred at that time by the Parent Borrower and its Restricted Subsidiaries under the Minimum Fixed Charge Coverage Ratio Test and (y) shall not be secured by any of the Collateral; and

(iii) any such non-Loan Party Restricted Subsidiary, Unrestricted Subsidiary or Joint Venture is principally engaged in a Permitted Business.

“Permitted Convertible Indebtedness Call Transaction” means any Permitted Bond Hedge Transaction and any Permitted Warrant Transaction.

“Permitted Investments” means

(a) any Investment in the Parent Borrower (including, without limitation, any acquisition of the Loans by the Borrowers in accordance with Section 12.04(g)) or in another Loan Party,

(b) any Investment in Cash Equivalents,

(c) any Investment by the Parent Borrower or any Restricted Subsidiary of the Parent Borrower in a Person if as a result of such Investment (i) such Person becomes a Loan Party or (ii) such Person is merged or consolidated with or into, or transfers or conveys all or substantially all of its properties or assets to, or is liquidated into, the Parent Borrower or another Loan Party (any such Investment, a “Permitted Acquisition”),

(d) any Investment (other than, in the case of clause (ii), Investments in the form of Specified Non-Cash Consideration) made as a result of the receipt of non-cash consideration from (i) a disposition of assets that does not constitute an Asset Sale or (ii) an Asset Sale; provided, that the aggregate Specified Value of Liquid Equity Securities permitted under this clause (d)(ii) shall be subject to the limitation set forth in clause (ii)(y) of Section 9.08,

(e) Permitted Business Investments,

(f) Investments in stock, obligations or securities received in settlement of any debts owing to the Parent Borrower or any Restricted Subsidiary of the Parent Borrower as a result of bankruptcy or insolvency proceedings or upon the foreclosure, perfection or

enforcement of any Lien in favor of the Parent Borrower or any Restricted Subsidiary of the Parent Borrower, in each case as to any debts owing to the Parent Borrower or any Restricted Subsidiary of the Parent Borrower that arose in the ordinary course of business of the Parent Borrower or any such Restricted Subsidiary,

(g) any Investment in a Person to the extent such Investment was made or entered into in exchange for the issuance of Equity Interests (other than Disqualified Stock) of the Parent Borrower,

(h) Investments in a Person that is not a Loan Party; provided that (A) if such Investment is made with (x) Vessel Collateral (or Specified Equity Interests if as a result of such Investment the Lien on the applicable Vessel Collateral would be required to be released pursuant to the Loan Documents) or (y)(i) Effective Date Cash or (ii) any proceeds (directly or indirectly) of any Loans, then (1) 100% of the Equity Interests in such non-Loan Party owned by the Parent Borrower and its Restricted Subsidiaries shall be made subject to a first-priority perfected Lien in favor of the Collateral Agent, for the benefit of the Secured Parties, or (2) to the extent the Parent Borrower and its Restricted Subsidiaries are prohibited from pledging their Equity Interests in such non-Loan Party at the time of such Investment or if the provision of such pledge is impractical (in the reasonable business judgment of the Parent Borrower), all of the Equity Interests in such non-Loan Party shall be held by one or more Wholly-Owned Restricted Subsidiaries of Parent Borrower each of which is a Guarantor, (X) 100% of the Equity Interests in which are subject to a first-priority perfected Lien in favor of the Collateral Agent, for the benefit of the Secured Parties and (Y) (i) which has granted a negative pledge in favor of the Secured Parties that prohibits other Liens on the Equity Interests owned by it in such non-Loan Party and (ii) which has agreed in favor of the Secured Parties not to incur any Debt (including any guarantee of any Debt) other than Debt incurred pursuant to Section 9.02(b)(i) (provided that any such Debt shall be payment subordinated to the Guarantee of the Indebtedness in form and substance acceptable to the Initial Lenders) and Section 9.02(b)(iv) (provided, that in the case of the preceding clause (A)(x), if substitute Vessel Collateral is provided in a Collateral Substitution Transaction as contemplated in Section 8.14(b), then (i) the requirements of the preceding clauses (1) and (2) shall be inapplicable and (ii) for purposes of calculating compliance with the basket set forth in clause (h)(B) below, the aggregate Investment in such non-Loan Party shall be reduced by an amount equal to the Specified Value of such substitute Vessel Collateral; provided that such reduction shall go into effect on the date that is 91 days after the date on which such substitute Vessel Collateral has been subject to a first priority perfected security interest in favor of the Collateral Agent in accordance with Section 8.14(b)), and (B) the aggregate amount of all outstanding Investments made pursuant to this clause (h) during the term of this Agreement (including, for the avoidance of doubt, any Investment of the type described in clause (b) of the definition of "Productive Assets") shall not exceed (i) \$250,000,000 minus (ii) the aggregate amount of repurchases of Equity Interests in the Parent Borrower made by the Parent Borrower or any of its Restricted Subsidiaries after the Effective Date in reliance on Section 9.01(b)(xiii); provided, that for purposes of the foregoing limitation, the amount of any Investment shall be the amount thereof at the time such Investment is originally made; provided further, that the Borrowers may make additional Investments of Vessel Collateral pursuant to this clause (h) (subject to the other requirements set forth in this clause (h)) in an aggregate amount not to exceed the aggregate amount of the Additional Vessel Collateral Value in effect at the applicable time (reduced by any prior usage thereof to make Investments of Vessel Collateral in accordance with this proviso),



(i) any Permitted Bond Hedge Transactions which constitute Investments, and

(j) intercompany loans, capital contributions and/or advances made to consummate a Foreign Vessel Reflagging Transaction.

Except as otherwise explicitly addressed in any exception to Section 9.01, for purposes of covenant compliance, the amount of any Investment at any time shall be (1) the amount actually invested (measured at the time made), without adjustment for subsequent increases or decreases in the value of such Investment minus (2) the amount of dividends or distributions received in connection with such Investment and any return of capital and any payment of principal received in respect of such Investment that in each case is received in cash or Cash Equivalents; provided, that if such Investment is made with Collateral or proceeds of Collateral, such cash or Cash Equivalents are received by a Loan Party in a deposit account or securities account, as applicable, that is subject to an Account Control Agreement.

“Permitted Leveraged Vessel Acquisition Transaction” mean any Leveraged Vessel Acquisition Transaction that meets the following conditions:

(i) no Vessel Collateral, Specified Equity Interests or proceeds of any of the foregoing is used, directly or indirectly, to finance any portion of the purchase price or other consideration payable by the Parent Borrower and its Restricted Subsidiaries for the applicable Vessel; and

(ii) if any Effective Date Cash or any proceeds of any Loans are used, directly or indirectly, to finance any portion of the purchase price or other consideration payable by the Parent Borrower and its Restricted Subsidiaries for the applicable Vessel, then:

(A) such Permitted Leveraged Vessel Acquisition Transaction shall be consummated by, and the applicable Vessel shall be owned by, a Wholly-Owned Restricted Subsidiary of the Parent Borrower that is (1) a Guarantor and that is not the Co-Borrower or (2) any entity that participates in such a transaction to the extent it constitutes an Investment permitted under clause (h) of the definition of “Permitted Investments” (such Wholly-Owned Restricted Subsidiary, the “Applicable Subsidiary”); and

(B) (1) 100% of the Equity Interests of the Applicable Subsidiary shall be subject to a first-priority perfected Lien in favor of the Collateral Agent, for the benefit of the Secured Parties, or (2) if the Applicable Subsidiary is a Foreign Subsidiary or Foreign Subsidiary Holding Company that is not also a Guarantor, (x) 65% of the Equity Interests in such Foreign Subsidiary or Foreign Subsidiary Holding Company shall be subject to a first-priority perfected Lien in favor of the Collateral Agent, for the benefit of the Secured Parties, (y) 100% of the Equity Interests of each Wholly-Owned Restricted Subsidiary of the Parent Borrower that directly owns the Equity Interests of such Foreign Subsidiary or Foreign Subsidiary Holding Company shall be subject to a first-priority perfected Lien in favor of the Collateral Agent, for the benefit of the Secured Parties and

(z) each Wholly-Owned Restricted Subsidiary of Parent Borrower that is a Guarantor and that has pledged its Equity Interests in such non-Loan Party pursuant to this clause (B)(2) shall grant a negative pledge in favor of the Secured Parties that prohibits other Liens on such Equity Interests owned by it.

“Permitted Liens” means

(a) Liens securing Debt incurred pursuant to Sections 9.02(b)(i), (ix) (provided, that such Liens shall not be (I) on any Vessel Collateral or (II) on any other Collateral other than on the acquired assets and the proceeds thereof) and (x) (but, in the case of clause (x), only to the extent (A) such Liens are solely on accounts receivable (and any cash, contracts and other assets incidental thereto) and the proceeds thereof that in each case constitute Collateral and (B) the Indebtedness is secured by a junior lien thereon),

(b) Liens existing on the Effective Date and set forth on Schedule 9.03,

(c) any interest or title of a lessor under an operating lease or precautionary liens on Property covered by leases,

(d) Liens on Property (other than on Vessel Collateral) of the Parent Borrower or any of its Restricted Subsidiaries to secure Debt incurred for the purpose of (i) financing all or any part of the purchase price of such Property incurred prior to, at the time of, or within 180 days after, completion of the acquisition of such Property or (ii) financing all or any part of the cost of construction, improvement or conversion of any such Property, provided that the amount of any such financing shall not exceed the amount expended in the acquisition of, or the construction, improvement or conversion of, such Property and such Liens shall not extend to any other Property of the Parent Borrower or a Restricted Subsidiary thereof (other than any accounts and contracts associated therewith, accessions thereto, and upgrades and proceeds thereof),

(e) Liens (other than on Vessel Collateral) securing the performance of tenders, bids, statutory obligations, surety, appeal, return-of-the-money or performance bonds, government contracts, insurance obligations or other obligations of a like nature incurred in the ordinary course of business,

(f) Liens securing Permitted Refinancing Indebtedness with respect to any Debt secured by Liens referred to in clauses (a), (b) and (d) above and in this clause (f); provided that:

- (i) in the case of clauses (a) and (f) (in each case to the extent relating to Section 9.02(b)(i)), such Debt could have originally been incurred in accordance with such Section, and
- (ii) in the case of clauses (a), to the extent not relating to Section 9.02(b)(i), (b) and (d) above and this clause (f) (to the extent relating to clause (a) (to the extent not relating to Section 9.02(b)(i)), (b) and (d) above), such Liens do not extend to any other Property of the Parent Borrower or a Restricted Subsidiary thereof (other than any accounts and contracts associated therewith, accessions thereto, and upgrades and proceeds thereof)),

(g) [reserved],

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

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

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

(k)(1) Liens for Taxes not yet due or which are being contested in good faith by appropriate action promptly initiated and diligently conducted, with such accruals as shall be required by GAAP having been made therefor, (2) "preferred maritime liens" as defined in 46 U.S. Code §31301 arising by law in the ordinary course of business for sums either not yet due or being contested in good faith by appropriate action promptly initiated and diligently conducted, with such accruals as shall be required by GAAP having been made therefor, and (3) shipyard Liens and other Liens arising by operation of law in the ordinary course of business in constructing, operating, maintaining and repairing the Vessels, for sums either not yet due or being contested in good faith by appropriate action promptly initiated and diligently conducted, with such accruals as shall be required by GAAP having been made therefor, provided that in each of case (1), (2) and (3), such contest will, more likely than not, not result in (i) the sale, forfeiture, confiscation, distraint, seizure, or loss of any Vessel Collateral or any interest therein in the course of any such proceedings, or as a result of any such Lien or (ii) any materially adverse effect on the interests of any mortgagee under the Fleet Mortgage or other such mortgage or security, and

(l) Liens created pursuant to the Loan Documents securing the Indebtedness.

"Permitted Refinancing Indebtedness" means any Debt of the Parent Borrower or any of its Restricted Subsidiaries issued in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund other Debt of the Parent Borrower or any of its Restricted Subsidiaries; provided, however, that (a) the principal amount of such Permitted Refinancing Indebtedness does not exceed the principal amount of, plus premium, if any, and accrued interest on, the Debt so extended, refinanced, renewed, replaced, defeased or refunded (plus the amount of reasonable expenses incurred in connection therewith), (b) such Permitted Refinancing Indebtedness has a final maturity date no earlier than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Debt being extended, refinanced, renewed, replaced, defeased or refunded, (c) if

the Debt being extended, refinanced, renewed, replaced, defeased or refunded is subordinated in right of payment to the Loans or the Loan Guarantees, as the case may be, such Permitted Refinancing Indebtedness is subordinated in right of payment to the Loans or the Loan Guarantees on terms at least as favorable, taken as a whole, to the Lenders as those contained in the documentation governing the Debt being extended, refinanced, renewed, replaced, defeased or refunded, (d) a Junior Lien Representative acting on behalf of the holders of any Junior Lien Debt shall have become party to or otherwise subject to the provisions of the Junior Lien Intercreditor Agreement and (e) such Debt is incurred either by the Parent Borrower or any of its Restricted Subsidiaries that is the obligor on the Debt being extended, refinanced, renewed, replaced, defeased or refunded; provided, however, that a Restricted Subsidiary of the Parent Borrower may guarantee Permitted Refinancing Indebtedness incurred by the Borrowers, but only to the extent such Restricted Subsidiary was an obligor or guarantor of the Debt being extended, refinanced, renewed, replaced, defeased or refunded; provided, further, however, that if such Permitted Refinancing Indebtedness is subordinated to the Loans, such guarantee shall be subordinated to such Restricted Subsidiary's Loan Guarantee to at least the same extent.

“Permitted Warrant Transaction” means any call option, warrant or right to purchase (or substantively equivalent derivative transaction) on the Parent Borrower's common stock sold by the Parent Borrower substantially concurrently with any purchase by the Parent Borrower of a related Permitted Bond Hedge Transaction.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, unincorporated organization, Governmental Authority or other entity.

“PIK Interest” means the interest that accrues and is added to the outstanding principal balance of the Loans in accordance with Section 3.02(f), which shall thereafter be deemed principal bearing interest in accordance with Section 3.02(a) or (b), as applicable, in each case subject to Section 3.02(c).

“Plan” means any employee pension benefit plan, as defined in Section 3(2) of ERISA (other than a Multiemployer Plan), which (a) is currently or hereafter sponsored, maintained or contributed to by the Parent Borrower, a Subsidiary or an ERISA Affiliate or (b) was at any time during the six calendar years preceding the date hereof, sponsored, maintained or contributed to by the Parent Borrower or a Subsidiary or an ERISA Affiliate.

“Platform” has the meaning assigned such term in Section 12.14(b).

“Prime Rate” means the rate of interest per annum publicly quoted from time to time by The Wall Street Journal as the “prime rate” (or, if The Wall Street Journal ceases quoting a prime rate, the highest per annum rate of interest published by the Federal Reserve Board in Federal Reserve statistical release H.15 (519) entitled “Selected Interest Rates” as the bank prime loan rate or its equivalent). Any change in such prime rate shall take effect at the opening of business on the day specified in the public announcement of such change.

“Pro Forma Basis,” “Pro Forma Compliance,” and “Pro Forma Effect” shall mean, with respect to compliance with any test, financial ratio, or covenant hereunder, including, without

limitation, Consolidated EBITDA, Consolidated Fixed Charge Coverage Ratio, Consolidated Interest Expense, Consolidated Net Income, Consolidated Net Tangible Assets, and Senior Secured Leverage Ratio that all Specified Transactions and the following transactions in connection therewith shall be deemed to have occurred as of the first day of the applicable Test Period of measurement in such test, financial ratio or covenant, without duplication: (a) income statement items (whether positive or negative) attributable to the property or Person subject to such Specified Transaction, (1) in the case of a sale, transfer, or other disposition of all or substantially all of the Equity Interests in any Subsidiary of Parent Borrower or any division, product line, or facility used for operations of Parent Borrower or any of its Subsidiaries made during the Test Period or subsequent to such Test Period and on or prior to the Calculation Date, shall be excluded, and (2) in the case of an acquisition of one or more Vessels or a Permitted Investment made during the Test Period or subsequent to such Test Period and on or prior to the Calculation Date, shall be included, (b) any incurrence, assumption, guarantee or Redemption of Debt by the Parent Borrower or any of its Restricted Subsidiaries in connection therewith (it being agreed that if such Debt has a floating or formula rate, such Indebtedness shall have an implied rate of interest for the applicable period for purposes of this definition determined by utilizing the rate that is or would be in effect with respect to such Indebtedness as at the relevant date of determination) subsequent to the commencement of the Test Period for which such test, financial ratio or covenant hereunder is being calculated but prior to the date on which the event occurred for which the calculation of such test, financial ratio or covenant hereunder is made (the "Calculation Date"); (c) any delivery to, or acquisition by, the Parent Borrower or any of its Restricted Subsidiaries or Joint Ventures of any newly constructed Vessel (or Vessels), whether constructed by the Parent Borrower or any of its Restricted Subsidiaries or Joint Ventures or otherwise or any reactivated Vessel that has been a Stacked Vessel for more than twelve (12) months (including, but not limited to, offshore supply vessels, offshore service vessels, multi-purpose support vessels, other construction vessels, crewboats, fast supply vessels, anchor handling and towing supply vessels, tankers, tugs and tank barges) usable in the normal course of business of the Parent Borrower or any of its Restricted Subsidiaries or Joint Ventures, that is (or are) subject to a Qualified Services Contract, (d) solely to the extent relating to or arising from a Permitted Acquisition or an acquisition of Vessels (or Equity Interests of a Person engaged in a Permitted Business), the amount of reasonably identifiable and factually supportable operating expense reductions and other expense synergies, including elimination of duplicative general and administrative expenses and the economic impact of the stacking of any acquired vessels, that are projected by the Borrowers in good faith to result from actions either taken or reasonably expected to be taken within 12 months of the determination to take such action, net of the amount of actual benefits realized prior to or during such period from such actions and (e) any other transaction that may be given pro forma effect in accordance with Article 11 of Regulation S-X under the Securities Act as in effect from time to time; provided, further, however, that (i) the Consolidated EBITDA attributable to discontinued operations and operations or businesses disposed of prior to the Calculation Date, shall be excluded and (ii) the Consolidated Interest Expense attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses disposed of prior to the Calculation Date, shall be excluded, but only to the extent that the obligations giving rise to such Consolidated Interest Expense will not be obligations of the referent Person or any of its Restricted Subsidiaries following the Calculation Date. For purposes of clause (c) of this definition, the amount of Consolidated EBITDA attributable to such Vessel (or Vessels) shall be calculated in good faith by a Responsible Officer

of the Borrowers and shall include in the calculation of the Consolidated Fixed Charge Coverage Ratio and the Senior Secured Leverage Ratio the revenues to be earned pursuant to the Qualified Services Contract relating to such Vessel (or Vessels), taking into account, where applicable, only contractual minimum amounts, and the estimated expenses related thereto. Such estimated expenses shall be based on the expenses previously incurred by any reactivated Stacked Vessel or, in the case of a new Vessel (or Vessels), expenses of the most nearly comparable Vessel in such Person's fleet or, if no such comparable Vessel exists, then on the industry average for expenses of comparable Vessels; provided, however, in determining the estimated expenses attributable to such new Vessel (or Vessels), the calculation shall give effect to the interest expense attributable to the incurrence, assumption or guarantee of any Debt relating to the construction, delivery, acquisition or reactivation of such Vessel (or Vessels) in accordance with clause (a) of this definition. Notwithstanding the foregoing, in any calculation of Consolidated Fixed Charge Coverage Ratio or Senior Secured Leverage Ratio based on the foregoing clause (c), the pro forma inclusion of Consolidated EBITDA attributable to such Qualified Services Contract for the Test Period shall be reduced by the actual Consolidated EBITDA from such Vessel (or Vessels) previously earned and accounted for in the actual results for the Test Period. Further, where such Qualified Services Contract is held by a Joint Venture, the pro forma inclusion of Consolidated EBITDA attributable to such Qualified Services Contract shall be reduced by a percentage equal to the percentage of such Joint Venture's Equity Interests that is not owned by the Parent Borrower or any of its Restricted Subsidiaries as further adjusted in the manner provided in the immediately preceding sentence and such Consolidated EBITDA shall be further reduced to the extent that there is any contractual or legal prohibition on its distributions to the Parent Borrower or any of its Restricted Subsidiaries.

"Productive Assets" means (a) Vessels or equipment installed or intended for use in the ordinary course of business on Vessels or Equity Interests of any Person that owns Vessels that is acquired in a Permitted Acquisition; provided that, in each case such Vessels (including any Vessels owned by a Person the Equity Interests of which are acquired in a Permitted Acquisition), equipment and/or Equity Interests shall be made subject to a Lien securing the Indebtedness with the priority and perfection required under Section 8.14 of this Agreement or the applicable Security Instruments (it being understood that such priority shall be first priority, except with respect to Permitted Liens under clauses (a) (other than by reference to Section 9.02(b)(i)), (d) and (k) of the definition thereof) or (b) interests in any Joint Venture or Unrestricted Subsidiary engaged in a Permitted Business so long as, in the case of this clause (b), the Investment in such interests is permitted under clause (h) of the definition of "Permitted Investments" and the other applicable conditions set forth in such clause (h) are satisfied.

"Projections" has the meaning assigned such term in Section 7.12.

"Property" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, including, without limitation, cash, securities, accounts and contract rights.

"Public Lender" has the meaning assigned such term in Section 12.14(c).

"Qualified Services Contract" means, with respect to any newly constructed, substantially converted or substantially reconstructed offshore supply vessel or offshore service vessel

(including, without limitation, any crew boat, fast supply vessel, multi-purpose support vessel (MPSV), other construction vessel and anchor-handling towing supply (AHTS) vessel, tug, double-hulled tank barge and double-hulled tanker or other complementary offshore marine vessel) delivered to the Parent Borrower or any of its Restricted Subsidiaries or Joint Ventures, or any such newly constructed, substantially converted or substantially reconstructed vessel constructed, converted or reconstructed for a third party and then acquired by the Parent Borrower or any of its Restricted Subsidiaries or Joint Ventures within 365 days of such vessel's original delivery date, or any reactivated Vessel (whether previously owned or recently acquired, constructed or converted) that has been a Stacked Vessel for a period of more than twelve (12) months, a contract that a Responsible Officer of the Borrowers acting in good faith, designates as a "Qualified Services Contract", which contract:

(a) provides for services to be performed by the Parent Borrower or one of its Restricted Subsidiaries or Joint Ventures involving the use of such vessel or a charter (bareboat or otherwise) of such vessel by the Parent Borrower or one of its Subsidiaries, in either case for a minimum period of at least 30 days; and

(b) provides for a fixed or minimum day rate or fixed or minimum volume or freight rates (including, if applicable, lay time and demurrage) for such vessel.

"Recipient" means (a) any Agent, and (b) any Lender, as applicable.

"Redemption" means with respect to any Debt, the refinancing, repurchase, redemption, prepayment, repayment, or defeasance or any other acquisition or retirement for value (or the segregation of funds with respect to any of the foregoing) of such Debt. "Redeem" has the correlative meaning thereto.

"Register" has the meaning assigned such term in Section 12.04(b).

"Regulation D" means Regulation D of the Board, as the same may be amended, supplemented or replaced from time to time.

"Rejection Notice" has the meaning assigned such term in Section 3.04(c)(i).

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the partners, directors, officers, employees, agents and advisors (including attorneys, accountants and experts) of such Person and such Person's Affiliates.

"Replacement Indenture" means any indenture or loan agreement that may be entered into as a restatement, renewal, refinance or rearrangement of any of the Unsecured Indentures.

"Required Lenders" means, at any time while no Loans are outstanding, Lenders having more than fifty percent (50%) of the total Commitments; and at any time while any Loans are outstanding, Lenders holding more than fifty percent (50%) of the sum of (i) outstanding aggregate principal amount of the Loans (without regard to any sale by a Lender of a participation in any Loan under Section 12.04(c)) and (ii) the total outstanding Commitments. The Commitment and Loans of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

“Resolution Authority” means any public administrative authority or any person entrusted with public administration authority having the authority to exercise any Write-down and Conversion Powers.

“Responsible Officer” means, as to any Person, the chief executive officer, the president, the chief financial officer, the principal accounting officer, the treasurer, the corporate finance director or the controller of such Person. Unless otherwise specified, all references to a Responsible Officer herein shall mean a Responsible Officer of the Borrowers.

“Restricted Investment” means an Investment other than a Permitted Investment.

“Restricted Payment” has the meaning set forth in Section 9.01.

“Restricted Payments Basket” has the meaning set forth in Section 9.01.

“Restricted Subsidiary” of a Person means any Subsidiary of such Person that is not an Unrestricted Subsidiary.

“Revolver Facility” means any customary revolving credit facility made available to the Parent Borrower and/or one or more of the Loan Parties on terms and conditions reasonably satisfactory to the Required Lenders, the availability under which is governed by a borrowing base that is based solely on accounts receivable and other assets incidental thereto.

“Revolver/Term Intercreditor Agreement” means a customary intercreditor agreement entered into by and among the Loan Parties, the Administrative Agent, the Collateral Agent, the Junior Lien Representative (if any) and a representative under the Revolver Facility, in form and substance reasonably acceptable to the Administrative Agent, the Collateral Agent and the Required Lenders (it being understood and agreed that in order to be acceptable to such parties the Secured Parties shall receive a second priority lien on the collateral under the Revolver Facility), as the same may be amended, supplemented, modified or restated in accordance with the terms thereof.

“Sanctioned Country” means, at any time, a country or territory which is the subject or target of any Sanctions.

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, or by the United Nations Security Council, Her Majesty’s Treasury of the United Kingdom, the European Union or any EU member state, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person controlled by, or owned 50 percent or more, directly or indirectly, by, any such Person or Persons.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State, or (b) the United Nations Security Council, the European Union or Her Majesty’s Treasury of the United Kingdom.



“SEC” means the Securities and Exchange Commission or any successor Governmental Authority.

“Secured Parties” means, collectively, the Agents, the Lenders and each sub-agent pursuant to Section 11.05 appointed by any Agent with respect to matters relating to the Loan Documents.

“Securities Act” means the Securities Act of 1933, as amended.

“Security Instruments” means the Guaranty and Collateral Agreement, each Fleet Mortgage, the Revolver/Term Intercreditor Agreement, each Junior Lien Intercreditor Agreement and any and all other agreements now or hereafter executed and delivered by the Borrowers or any other Person as security for the payment or performance of the Indebtedness, as such agreements securing the Indebtedness may be amended, modified, supplemented or restated from time to time.

“Senior Secured Leverage Ratio” means, with respect to any Test Period, the ratio of (a) Indebtedness as of the last day of such Test Period to (b) Consolidated EBITDA for such Test Period. For the avoidance of doubt, Senior Secured Leverage Ratio shall be determined for the relevant Test Period on a Pro Forma Basis.

“Series of Junior Lien Debt” means, severally, each issue or series of Junior Lien Debt for which a single transfer register is maintained.

“Specified Deposit Accounts” means, collectively, the Tranche A Unrestricted Account, the Tranche B-1 Blocked Account and the Tranche B-2 Blocked Account.

“Specified Equity Interests” has the meaning assigned such term in the definition of “Asset Sale”.

“Specified Foreign Subsidiary” has the meaning assigned such term in Section 8.14(a)(ii).

“Specified Non-Cash Consideration” has the meaning assigned such term in Section 9.08.

“Specified Qualified Appraisers” means (i) Dufour Laskay & Strouse, Inc., (ii) Fearnley Offshore, (iii) RS Platou, (iv) ODS-Petrodata, (v) Clarksons, (vi) Marcon International and (vii) each other Person that is an independent shipbroker and that is reasonably satisfactory to the Required Lenders.

“Specified Representations” shall mean the representations and warranties set forth in Sections 7.01(a), 7.02 (as related to the borrowing under, guaranteeing under, granting of security interests in the Collateral to, and performance of, the Loan Documents), 7.03(b)(ii) (as related to the borrowing under, guaranteeing under, granting of security interests in the Collateral to, and performance of, the Loan Documents), 7.08, 7.16 (other than clauses (c) and (d) thereof), 7.18, and 7.19.

“Specified Transaction” shall mean, with respect to any period, any Investment (including a Permitted Acquisition), any asset acquisition or sale, incurrence or Redemption of Debt, Restricted Payment, Subsidiary designation, or other event or action that in each case by the terms of this Agreement requires Pro Forma Compliance with a test or covenant hereunder or requires such test or covenant to be calculated on a Pro Forma Basis.

“Specified Value” means, subject in all cases to Section 1.06:

(a) with respect to any Existing Vessel, the Vessel Book Value thereof; provided, that (A) subject to the following clause (B), if the Vessel Book Value of any Existing Vessel is greater than \$25,000,000, the Specified Value of such Existing Vessel shall instead be the Appraised Value thereof and (B) if the sum of (i) the aggregate Vessel Book Value of all Existing Vessels subject to Asset Sales (other than Events of Loss) pursuant to Section 9.08 following the Effective Date plus (ii) the aggregate Vessel Book Value of all After-Acquired Vessels subject to Asset Sales (other than Events of Loss) pursuant to Section 9.08 following the Effective Date exceeds \$100,000,000 during any consecutive 36-month period, the Specified Value with respect to any Existing Vessel subject to any Asset Sale that occurs at any time on or following the date on which such \$100,000,000 threshold is exceeded and during such 36-month period shall instead be the Appraised Value thereof; provided, further, however that, in the cases of the preceding clauses (A) and (B), if the Parent Borrower or other applicable Loan Party receives consideration for such Asset Sale in an amount equal to at least 80% of the Vessel Book Value of such Existing Vessel, then no Appraisal Report shall be required (and in such case the Specified Value of such Existing Vessel shall be deemed to be (i) for purposes of Section 9.08, the consideration received in connection therewith or (ii) for all other purposes, the Vessel Book Value thereof);

(b) with respect to any After-Acquired Vessel, the Vessel Book Value thereof; provided, that (A) subject to the following clause (B) if the Vessel Book Value of any After-Acquired Vessel (other than any Vessel set forth on Schedule 8.17) is greater than \$25,000,000, the Specified Value of such After-Acquired Vessel shall instead be the Appraised Value thereof and (B) if the sum of (i) the aggregate Vessel Book Value of all After-Acquired Vessels subject to Asset Sales (other than Events of Loss) pursuant to Section 9.08 following the Effective Date plus (ii) the aggregate Vessel Book Value of all Existing Vessels subject to Asset Sales (other than Events of Loss) pursuant to Section 9.08 following the Effective Date exceeds \$100,000,000 during any consecutive 36-month period, the Specified Value with respect to any After-Acquired Vessel subject to any Asset Sale that occurs at any time on or following the date on which such \$100,000,000 threshold is exceeded and during such 36-month period shall instead be the Appraised Value thereof; provided, further, however that, in the cases of the preceding clauses (A) and (B), if the Parent Borrower or other applicable Loan Party receives consideration for such Asset Sale in an amount equal to at least 80% of the Vessel Book Value of such After-Acquired Vessel, then no Appraisal Report shall be required (and in such case the Specified Value of such After-Acquired Vessel shall be deemed to be (i) for purposes of Section 9.08, the consideration received in connection therewith or (ii) for all other purposes, the Vessel Book Value thereof);

(c) with respect to cash, the aggregate amount thereof;

(d) with respect to any Liquid Equity Securities, the market value thereof as determined by the average of the high and low trading prices on the applicable trading exchange on the relevant date of determination;

(e) except as provided in clause (f) below, with respect to any other Property or Investment, the fair market value of such Property or Investment at the time of the event requiring such determination, as determined in good faith by management or the Board of Directors of the Parent Borrower; and

(f) with respect to any Property or Investment, other than as covered in (a) through (e) above, in excess of \$35,000,000, the fair market thereof as determined by a reputable investment bank or accounting or appraisal firm that is, in the judgment of the disinterested members of the Board of Directors of the Parent Borrower, qualified to perform the task for which such firm has been engaged and independent with respect to the Borrowers;

provided, that in the case of Specified Equity Interests, the Specified Value thereof shall be determined in accordance with clause (a) or (b) above, as applicable, *mutatis mutandis*.

Notwithstanding anything to the contrary, when calculating the Specified Value of any Vessel at any time, the aggregate principal amount of any Debt secured by a Lien on such Vessel at such time (other than (i) the Indebtedness and (ii) any Junior Lien Debt or any Permitted Refinancing Indebtedness in respect thereof that is secured by a Junior Lien on such Vessel) shall be deducted, to the extent such Debt has not already been deducted in the applicable calculation (including, without limitation, in the determination of the Appraised Value thereof).

“Stacked Vessel” means a Vessel that has been removed from service in the exercise of the Parent Borrower’s reasonable judgment consistent with reasonable business practices in light of the facts known at the time the decision was made (including, without limitation, operating costs and available marketing opportunities) or in the case of any After-Acquired Vessel (whether by acquiring the Vessel or the entity that owns such Vessel) that was stacked at the time of its acquisition or thereafter (including any period immediately prior to the acquisition of such After-Acquired Vessel that such After-Acquired Vessel was continuously stacked by its previous owner).

“Stated Maturity” means, with respect to any mandatory sinking fund or other installment of interest or principal on any series of Debt, the date on which such payment of interest or principal was scheduled to be paid in the original documentation governing such Debt, and shall not include any contingent obligations to repay, Redeem or repurchase any such interest or principal prior to the date originally scheduled for the payment thereof, but shall include any rights of the holders to require the obligor to repurchase such Debt at any particular date.

“Statutory Reserve Rate” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“Subsidiary” means any Person of which at least a majority of the outstanding Equity Interests having by the terms thereof ordinary voting power to elect a majority of the board of directors, manager or other governing body of such Person (irrespective of whether or not at the time Equity Interests of any other class or classes of such Person shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by the Parent Borrower or one or more of its Subsidiaries. Unless otherwise indicated herein, each reference to the term “Subsidiary” shall mean a direct or indirect Subsidiary of the Parent Borrower.

“Successor Company” has the meaning assigned such term in Section 9.04(a).

“Swap Termination Value” means, in respect of any Hedging Obligation, after taking into account the effect of any legally enforceable netting agreement relating to such Hedging Obligations, (a) for any date on or after the date such Hedging Obligations have been closed out and termination value(s) determined in accordance therewith, such termination value(s) and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Hedging Obligations, as determined by the counterparties to such Hedging Obligations.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Test Period” shall mean, for any determination under this Agreement, the four consecutive fiscal quarters of the Parent Borrower most recently ended on or prior to such date of determination and for which financial statements are internally available at the time of such determination.

“Tranche A Unrestricted Account” means the Tranche A Unrestricted Account as defined, and used for the purposes set forth, in the 2019 Senior Credit Agreement as in effect on the Amendment No. 2 Effective Date.

“Tranche B-1 Blocked Account” means the Tranche B-1 Blocked Account as defined, and used for the purposes set forth, in the 2019 Senior Credit Agreement as in effect on the date Amendment No. 2 Effective Date.

“Tranche B-2 Blocked Account” means the Tranche B-2 Blocked Account as defined, and used for the purposes set forth, in the 2019 Senior Credit Agreement as in effect on the Amendment No. 2 Effective Date.

“Transaction Expenses” shall mean any fees, costs, or expenses incurred or paid by the Borrowers in connection with the Transactions, this Agreement, and the other Loan Documents, and the transactions contemplated hereby and thereby.

“Transactions” means, with respect to (a) the Borrowers, the execution, delivery and performance by the Borrowers of this Agreement, and each other Loan Document to which it is a party, the borrowing of Loans, the use of the proceeds thereof, and the granting of Liens by the Borrowers on Collateral pursuant to the Security Instruments and (b) each Guarantor, the execution, delivery and performance by such Guarantor of each Loan Document to which it is a party, the guaranteeing of the Indebtedness and the other obligations under the Guaranty and Collateral Agreement by such Guarantor, and the granting of Liens by such Guarantor on Collateral pursuant to the Security Instruments (for the avoidance of doubt, excluding Excluded Assets (as defined in the Guaranty and Collateral Agreement)).

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing is determined by reference to the Alternate Base Rate or the Adjusted LIBO Rate.

“UCC” has the meaning set forth in the definition of “Lien”.

“Unrestricted Subsidiary” means any Subsidiary of the Parent Borrower that is designated by the Board of Directors of the Parent Borrower as an Unrestricted Subsidiary pursuant to Section 8.16 and any Subsidiary of an Unrestricted Subsidiary.

“Unsecured Indentures” means the 2019 Convertible Senior Notes Indenture, the 2020 Senior Notes Indenture and the 2021 Senior Notes Indenture.

“USA PATRIOT Act” means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001 and as modified, amended, supplemented or restated from time to time)).

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning assigned to such term in Section 5.03(g)(ii)(B)(3).

“Vessel Book Value” means, with respect to any applicable Vessel, (i) if such Vessel is an Existing Vessel, the net book value thereof as included in the balance sheet of the Parent Borrower as of March 31, 2017 in accordance with GAAP and (ii) if such Vessel is an After-Acquired Vessel, the gross book value thereof that would be included in the balance sheet of the Parent Borrower as of the date such After-Acquired Vessel is acquired (or, in the case of any Vessel that is being constructed, as of the date such construction is completed and such Vessel is delivered) in accordance with GAAP.

“Vessel Collateral” means, collectively, any Vessels subject to Liens in favor of the Collateral Agent, for the benefit of the Secured Parties, securing obligations of the Loan Parties under the Loan Documents and guaranties thereof; provided that the Vessels under construction set forth on Schedule 8.17, Item 3 shall be deemed to constitute Vessel Collateral notwithstanding that as of the Effective Date they are not subject to such a Lien securing the Indebtedness in favor of the Collateral Agent, for the benefit of the Lenders.

“Vessels” means marine vessels, and “Vessel” shall mean any of such Vessels.

“Voting Stock” of any Person as of any date means the Equity Interest of such Person that is at the time entitled to vote in the election of the board of directors, managers or trustees of such Person.

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

“Wells Fargo” means Wells Fargo Bank, National Association.

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

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Title IV of ERISA.

“Withholding Agent” means the Parent Borrower and the Administrative Agent.

“Write-Down and Conversion Powers” means (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule; and (b) in relation to any other applicable Bail-In Legislation, (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and (ii) any similar or analogous powers under that Bail-In Legislation.

Section 1.03 Types of Loans and Borrowings. For purposes of this Agreement, Loans and Borrowings, respectively, may be classified and referred to by Type (e.g., a “Eurodollar Loan” or a “Eurodollar Borrowing”).

Section 1.04 Terms Generally; Rules of Construction. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise

(a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time supplemented, restated, renewed, refinanced, modified, amended, extended for any period, increased and/or otherwise rearranged (subject to any restrictions on such supplements, restatements, renewals, refinances, modifications, amendments, extensions, increases and/or rearrangements as set forth in the Loan Documents),

(b) any reference herein to any law shall be construed as referring to such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time,

(c) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to the restrictions contained in the Loan Documents),

(d) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof,

(e) with respect to the determination of any time period, the word “from” means “from and including” and the word “to” means “to and including” and

(f) any reference herein to Articles, Sections, Annexes, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Annexes, Exhibits and Schedules to, this Agreement.

No provision of this Agreement or any other Loan Document shall be interpreted or construed against any Person solely because such Person or its legal representative drafted such provision.

Section 1.05 Accounting Terms and Determinations; GAAP.

(a) Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all determinations with respect to accounting matters hereunder shall be made, and all financial statements and certificates and reports as to financial matters required to be furnished to the Administrative Agent or the Lenders hereunder shall be prepared, in accordance with GAAP, as in effect from time to time; provided that, if the Parent Borrower notifies the Administrative Agent in writing that the Parent Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Parent Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn, such provision amended in accordance herewith.

(b) When calculating the availability under any basket or ratio hereunder, in each case in connection with a Limited Condition Acquisition, the date of determination of such basket or ratio and of any Default or Event of Default shall, at the option of the Parent Borrower (which election shall be made, if at all, on the date the definitive agreements for such Limited Condition Acquisition are entered into), be the date the definitive agreements for such Limited Condition Acquisition are entered into and such baskets or ratios shall be calculated with such pro forma adjustments as are consistent with the pro forma adjustment provisions set forth in the definition of Pro Forma Basis after giving effect to such Limited Condition Acquisition and the other transactions to be entered into in connection therewith (including any incurrence of Debt and the use of proceeds thereof) as if they occurred at the beginning of the applicable period for purposes of determining the ability to consummate any such Limited Condition Acquisition, and, for the avoidance of doubt, (x) if any of such baskets or ratios are exceeded as a result of fluctuations in such basket or ratio (including due to fluctuations in Consolidated EBITDA or Consolidated Net Tangible Assets of the Parent Borrower or the target company for the applicable measurement period) subsequent to such date of determination and at or prior to the consummation of the relevant Limited Condition Acquisition, such baskets or ratios will not be deemed to have been exceeded as a result of such fluctuations solely for purposes of determining whether the Limited Condition Acquisition is permitted hereunder and (y) such baskets or ratios shall not be tested at the time of consummation of such Limited Condition Acquisition or related transactions; provided that if the Parent Borrower elects to have such determinations occur at the time of entry into such



definitive agreement, any such transactions (including any incurrence of Debt and the use of proceeds thereof) shall be deemed to have occurred on the date the definitive agreements are entered and to be outstanding thereafter for purposes of calculating any baskets or ratios hereunder after the date of such agreement and before the consummation of such Limited Condition Acquisition unless and until such Limited Condition Acquisition has been abandoned, as determined by the Parent Borrower, prior to the consummation thereof; provided, further that the foregoing shall be inapplicable to any determination under clause (h) of the definition of Permitted Investments.

#### Section 1.06 Valuation of Certain Investments and Restricted Payments.

Notwithstanding anything in this Agreement to the contrary, for purposes of determining the amount of an Investment made or acquired following the Effective Date or any Restricted Payment made following the Effective Date, (a) the amount of any Investment so made or acquired or Restricted Payment made using the direct or indirect proceeds from the sale, transfer or other disposition of Vessel Collateral or Specified Equity Interests or using Vessel Collateral or Specified Equity Interests shall be deemed to equal (1) the Vessel Book Value of such Vessels so sold, transferred or otherwise disposed (whether directly or through the sale, transfer or other disposition of such Specified Equity Interests) that generated such proceeds or that were so sold, transferred or otherwise disposed (whether directly or through the sale, transfer or other disposition of such Specified Equity Interests), without adjustment for subsequent increases or decreases in the value of such Investment minus (2) the amount of dividends or distributions received in connection with such Investment and any return of capital and any payment of principal received in respect of such Investment that in each case is received in cash or Cash Equivalents; provided, that if such Investment is made with Collateral or proceeds of Collateral, such cash or Cash Equivalents are received by a Loan Party in a deposit account or securities account, as applicable, that is subject to an Account Control Agreement by a Loan Party in a deposit account or securities account, as applicable, that is subject to an Account Control Agreement and (b) for purposes of any determination described in the preceding clause (a), proceeds shall be deemed applied to Investments or Restricted Payments first with the earliest proceeds received from any disposition of Vessel Collateral (or Specified Equity Interests in respect thereof), with the effect being that the first proceeds applied shall be deemed attributable to (and shall be based on the Vessel Book Value of) the Vessel (or Specified Equity Interests in respect thereof) first disposed, before being deemed attributable to any subsequently disposed Vessel (or Specified Equity Interests in respect thereof).

## **ARTICLE II** **The Commitments**

Section 2.01 Commitments. Subject to the terms and conditions set forth herein and, with respect to the Exchanged Loans, the Note Purchase Agreements, each Lender agrees to make Loans to the Borrowers (on a joint and several basis) on the Effective Date as provided in Section 2.02 below and no more than five (5) additional times during the Availability Period in an aggregate principal amount that will not result in (a) such Lender's Credit Exposure exceeding such Lender's Commitment or (b) the total Credit Exposures exceeding the total Commitments. Any amounts paid or prepaid in respect of the Loans may not be reborrowed.

The aggregate amount of the Commitments on the Effective Date is \$300,000,000. Notwithstanding anything to the contrary contained herein (and without affecting any other provisions hereof), the funded portion of each Loan to be made hereunder (other than the Exchanged Loans (as defined below), any amount of Loans for PIK Interest and Incremental Term Loans) shall be equal to 98.00% of the principal amount of such Loan (it being agreed that the full principal amount of each such Loan shall be the “initial” principal amount of such Loan and deemed outstanding on the Effective Date and the Borrowers shall be obligated, jointly and severally, to repay 100% of the principal amount of each such Loan as provided hereunder).

Notwithstanding the foregoing, the Borrowers shall request Borrowings of Loans (other than Exchanged Loans) in cumulative aggregate amounts, no later than each of the dates set forth below (and, with respect to any Borrowing after the Effective Date, no earlier than the date that the Borrowers have complied with items (1), (2), (4) and (5) set forth in Schedule 8.17), at least equal to the minimum amounts set forth opposite such date:

<u>Date</u>	<u>Amount</u>
On the Effective Date	\$ 1,000,000
No later than December 31, 2017	\$ 68,000,000
No later than December 31, 2018	\$136,000,000
No later than September 1, 2019	\$204,678,000

Section 2.02 Effective Date Mechanics. The Borrowers agree that each Lender’s obligation to make a Loan to the Borrowers as provided hereunder on the Effective Date, except as specifically provided in Section 2.01, shall be satisfied in part by the deemed delivery by such Lender of 100% of the proceeds of such Lender’s Loans to the Note Sellers as specified in the applicable Borrowing Request in satisfaction of payment of the purchase price owed to such Note Sellers under the Note Purchase Agreements (such Loans, the “Exchanged Loans”). The Borrowers hereby direct each Lender to so deliver the proceeds of the Exchanged Loans.

Section 2.03 Borrowings; Several Obligations. Each Loan made shall be made as part of a Borrowing consisting of Loans made by the Lenders ratably in accordance with their respective Commitments. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments are several and no Lender shall be responsible for any other Lender’s failure to make Loans as required.

(a) Types of Loans. Subject to Section 3.03, each Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrowers may request in accordance herewith. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrowers to repay such Loan in accordance with the terms of this Agreement and such domestic or foreign branch or Affiliate will be subject to the requirements under Section 5.03(g).

(b) Notes. Any Lender may request that the Loans made by it be evidenced by a promissory note. In such event, the Borrowers shall prepare, execute and deliver to such Lender a promissory note payable to such Lender or its registered assigns, substantially in the form of Exhibit A (with a copy to the Administrative Agent) dated (i) the Effective Date or (ii) the effective date of an Assignment pursuant to Section 12.04(b), in a principal amount equal to its Commitment as originally in effect and otherwise duly completed and such substitute Notes as required by Section 12.04(b); provided that promissory notes requested in amounts less than \$1,000,000 shall require the consent of the Parent Borrower, such consent not to be unreasonably withheld or delayed. The date, amount, Type, interest rate and Interest Period of each Loan made by each Lender and all payments made on account of the principal thereof, shall be recorded by such Lender on its books and maintained in accordance with its usual practice. Failure to make such recordation shall not affect any Lender's or the Borrowers' rights or obligations in respect of such Loans. In the event that one or more Notes shall be issued after the Effective Date, it shall not be necessary to tender or present any such Note to the Administrative Agent for any payment hereunder, including on the Maturity Date.

(c) Requests for Borrowings. To request a Borrowing, the Borrowers shall deliver to the Administrative Agent, for distribution to the Lenders, a written Borrowing Request in substantially the form of Exhibit B-1 and signed by the Borrowers (A) in the case of a Eurodollar Borrowing (other than Exchanged Loans), not later than 12:00 p.m., Eastern time, ten Business Days (or, in the case of the initial Borrowing hereunder on the Effective Date, two Business Days) before the date of the proposed Borrowing, (B) in the case of an ABR Borrowing (other than Exchanged Loans), not later than 12:00 p.m., Eastern time, ten Business Days (or, in the case of the initial Borrowing hereunder on the Effective Date, two Business Days) before the date of the proposed Borrowing or (C) in the case of a Borrowing of Exchanged Loans, not later than 12:00 p.m., Eastern time, on the Effective Date. Each such Borrowing Request shall specify the following information:

- (i) the aggregate amount of the requested Borrowing;
- (ii) the date of such Borrowing, which shall be a Business Day;
- (iii) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing;
- (iv) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period";
- (v) the wire instructions of the account to which funds are to be disbursed; and
- (vi) with respect to the Loans to be made on the Effective Date, the Note Sellers to whom the proceeds of the Loans will be deemed to be delivered (which, in the case of each Initial Lender, shall be the Note Sellers specified for such Lender on its signature page hereto).

Each Borrowing (other than Exchanged Loans) shall be in an aggregate amount that is an integral multiple of \$1,000,000 or such lesser amount equal to the remaining Commitment. If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be a Eurodollar Borrowing with an Interest Period of one month's duration. If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then the Borrowers shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section 2.03, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

Section 2.04 Interest Elections.

(a) Conversion and Continuance. Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrowers may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section 2.04. The Borrowers may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. Subject to clause (b) below, each conversion or continuation shall be made by giving the Administrative Agent (x) in the case of a conversion or continuation into a Eurodollar Loan, at least three Business Days' prior written notice, and (y) in the case of a conversion into Base Rate Loans, at least one Business Day's prior written notice.

(b) Interest Election Requests. To make an election pursuant to this Section 2.04, the Borrowers shall deliver an Interest Election Request in substantially the form of Exhibit C and signed by the Borrowers to the Administrative Agent at least three Business Days prior to such election.

(c) Information in Interest Election Requests. Each Interest Election Request shall specify the following information:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to Section 2.04(c)(iii) and (iv) shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period."

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrowers shall be deemed to have selected an Interest Period of one month's duration.

(d) Notice to Lenders by the Administrative Agent. Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) Effect of Failure to Deliver Timely Interest Election Request and Events of Default. If the Borrowers fail to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to a Eurodollar Borrowing with an Interest Period of one month's duration. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing: (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing (and any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective) and (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

#### Section 2.05 Funding of Borrowings.

(a) Funding by Lenders. Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 1:00 p.m., Eastern time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. The Administrative Agent will make such Loans available to the Borrowers by promptly crediting the amounts so received, in like funds, to an account designated by the Borrowers in the applicable Borrowing Request, which shall be an account of a Borrower. Nothing herein shall be deemed to obligate any Lender to obtain the funds for its Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for its Loan in any particular place or manner; provided, that without limiting the provisions of Section 12.19, the Parent Borrower hereby agrees and directs that all Loans funded hereunder shall be funded to the Co-Borrower to an account specified by the Co-Borrower.

(b) Presumption of Funding by the Lenders. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's Applicable Percentage of such Borrowing, the Administrative Agent may assume that such Lender has made such Applicable Percentage available on such date in accordance with Section 2.05(a) and may (but

shall have no obligation to), in reliance upon such assumption, make available to the Borrowers a corresponding amount. In such event, if such Lender has not in fact made its Applicable Percentage of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrowers severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrowers to but excluding the date of payment to the Administrative Agent, at (i) in the case of a payment to be made by such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation and (ii) in the case of a payment to be made by the Borrowers, the interest rate applicable to ABR Loans. If the Borrowers and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrowers the amount of such interest paid by the Borrowers for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrowers shall be without prejudice to any claim the Borrowers may have against a Lender that shall have failed to make such payment to the Administrative Agent.

Section 2.06 Termination and Reduction of Commitments.

(a) Scheduled Termination of Commitments. Upon the making of each Loan hereunder (including any Exchanged Loan), an equal amount of the Commitment shall terminate on the date of such Borrowing. Without limiting the foregoing, the Commitments shall be automatically reduced to \$136,000,000 on the tenth Business Day following December 31, 2017 and to \$68,000,000 on the tenth Business Day following December 31, 2018, in each case to the extent that the Commitments as of such date (after giving effect to any Loans made on such date) exceed such amount. Unless previously terminated in full, all unused Commitments shall terminate on the last Business Day of the Availability Period. Any Incremental Term Commitment shall terminate as set forth in the applicable Increase Joinder.

(b) Optional Termination and Reduction of Commitments.

(i) The Borrowers may at any time terminate, or from time to time reduce, the Commitments; provided that each reduction of the Commitments shall be in an amount that is an integral multiple of \$1,000,000.

(ii) The Parent Borrower shall notify the Administrative Agent in writing of any election to terminate or reduce the Commitments under Section 2.06(b)(i) at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Parent Borrower pursuant to this Section 2.06(b)(ii) shall be irrevocable; provided that a notice of termination of the Commitments delivered by the Parent Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities or the occurrence of a Change in Control, in which case such notice may be revoked by the Parent Borrower (by written notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or

reduction of the Commitments shall be permanent and may not be reinstated. Each reduction of the Commitments shall be made ratably among the Lenders in accordance with each Lender's Applicable Percentage; provided that if any Lender is a Defaulting Lender at such time as the Parent Borrower elects to terminate or reduce the Commitments hereunder, the Parent Borrower may (in its discretion) apply all or any portion of the Commitments to be reduced, to the Commitment of any one or more Defaulting Lenders specified by the Parent Borrower before applying any remaining reduction to all Lenders.

Section 2.07 Replacement of Lenders. The Parent Borrower shall be permitted to replace any Lender that (a) requests reimbursement for amounts owing pursuant to Section 5.01 or 5.03, (b) fails to vote in favor of any measure requiring the affirmative vote of one hundred percent (100%) of the Lenders or all affected Lenders (and such measure has otherwise received an affirmative vote by the Required Lenders) or (c) is a Defaulting Lender, with any Person that meets the requirements to be an assignee under Section 12.04; provided that

(i) such replacement does not conflict with any Governmental Requirement,

(ii) no Event of Default shall have occurred and be continuing at the time of such replacement that has not been waived in accordance with the terms hereof,

(iii) prior to any such replacement, such Lender shall have taken no action under Section 5.04 so as to eliminate the continued need for payment of amounts owing pursuant to Section 5.01 or 5.03(a),

(iv) the replacement financial institution shall purchase, at par, all Loans and other amounts owing to such replaced Lender on or prior to the date of replacement,

(v) the Borrowers shall be liable to such replaced Lender under Section 5.02 if any Eurodollar Loan owing to such replaced Lender shall be purchased other than on the last day of the Interest Period relating thereto,

(vi) the replaced Lender shall be obligated to make such replacement in accordance with the provisions of Section 12.04 (provided that the Borrowers shall be obligated to pay the registration and processing fee referred to therein),

(vii) until such time as such replacement shall be consummated, the Borrowers shall pay all additional amounts (if any) required pursuant to Section 5.01 or 5.03(a), as the case may be, and

(viii) any such replacement shall not be deemed to be a waiver of any rights that the Borrowers, the Administrative Agent or any other Lender shall have against the replaced Lender.

Section 2.08 Defaulting Lenders. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(a) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders.

(b) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article X or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 12.08 shall be applied by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder (including any legal fees and expenses); second, as the Parent Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement; third, if so determined by the Parent Borrower, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; fourth, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; fifth, so long as no Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by any Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and sixth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made at a time when the conditions set forth in Section 6.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Loans are held by the Lenders pro rata in accordance with the Commitments under the applicable facility. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(c) Certain Fees. No Defaulting Lender shall be entitled to receive any prepayment premium pursuant to Section 3.04(d) for any period during which that Lender is a Defaulting Lender (and the Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to the Defaulting Lender).

#### Section 2.09 Incremental Term Loans.

(a) The Borrowers may, by written notice (each, an "Incremental Request") to Administrative Agent from time to time (whereupon the Administrative Agent shall promptly make such notice available to each of the Lenders), request the establishment of one or more new term loan commitments (each, an "Incremental Term Commitment") in an amount not to exceed the Incremental Amount from Lenders or additional banks, financial institutions or other institutional lenders as provided below. Each such notice shall specify (i) the amount of



the Incremental Term Commitments being requested (which shall be in minimum increments of \$1,000,000 and a minimum amount of \$10,000,000 or such lesser amount equal to the remaining Incremental Amount), and (ii) the date (each, an “Increase Effective Date”) on which the Borrowers propose that the Incremental Term Commitments shall be effective, which shall be a date not less than 10 Business Days after the date on which such notice is delivered to Administrative Agent.

(b) The Incremental Term Commitments shall become effective as of the Increase Effective Date; provided that:

(i) no Lender shall be obligated to provide any Incremental Term Commitment unless it shall have separately agreed to do so, and the determination to provide such commitments shall be within the sole and absolute discretion of such Lender;

(ii) the creation or provision of any Incremental Term Commitment or Incremental Term Loan shall require the approval of each Initial Lender in its sole discretion (which approval shall be separate and distinct from such Lender’s discretionary right to agree to provide any portion of any Incremental Term Commitment and any such approval of the Borrowers’ incurrence of any Incremental Term Commitment shall not, in and of itself, require or imply that such Lender agrees to provide any portion of such Incremental Term Commitment);

(iii) (x) if the proceeds of such Incremental Term Loans are being used to finance a Limited Condition Acquisition permitted hereunder, no Event of Default under Section 10.01(a), 10.01(b), 10.01(h) or 10.01(i) shall have occurred and be continuing or would exist after giving effect to such Incremental Term Commitments or (y) if otherwise, no Event of Default shall have occurred and be continuing or would exist after giving effect to such Incremental Term Commitments; and

(iv) after giving effect to such Incremental Term Commitments, the representations and warranties of the Loan Parties set forth in this Agreement and the other Loan Documents shall be true and correct in all material respects (without duplication of materiality) on and as of the Increase Effective Date with the same effect as though such representations and warranties had been made on and as of such; provided that to the extent that a representation and warranty specifically refers to a given date or period, it shall be true and correct in all material respects as of such date or period, as the case may be; provided further, that, if the proceeds of any Incremental Term Commitments are being used to finance a Limited Condition Acquisition permitted hereunder, (x) the accuracy of the representations and warranties shall refer to the accuracy of the representations and warranties that would constitute Specified Representations and the representations and warranties in the relevant acquisition agreement the breach of which would permit the buyer to terminate its obligations thereunder or decline to consummate such Limited Condition Acquisition and (y) the reference to “Material Adverse Effect” in the Specified Representations shall be understood for this purpose to refer to “Material Adverse Effect” or similar definition as defined in the main transaction agreement governing such Limited Condition Acquisition.

(c) The terms and provisions of the Loans made pursuant to Incremental Term Commitments shall be as follows:

(i) terms and provisions of Incremental Term Loans shall be, except as otherwise set forth herein or in the Increase Joinder, identical to the Loans (it being understood that Incremental Term Loans may be a part of the Loans) except as to maturity and amortization (which shall be subject to the following clauses (ii) and (iii));

(ii) the Weighted Average Life to Maturity of any Incremental Term Loans shall be no shorter than the remaining Weighted Average Life to Maturity of the then existing Loans; and

(iii) the maturity date of Incremental Term Loans (the "Incremental Term Loan Maturity Date") shall not be earlier than the Latest Maturity Date then in effect.

(d) Incremental Term Commitments may be provided by any Lender or any other Person (such other Person, an "Additional Lender"); provided that, each Initial Lender (in its sole discretion) shall have consented to such Additional Lender's providing such Incremental Term Commitments; provided, that (subject to Section 2.09(b)(ii)) the opportunity to commit to provide all or a portion of any Incremental Term Commitments shall be offered by the Borrowers first to the then-existing Lenders on a pro rata basis and, to the extent any of such existing Lenders have not agreed or declined to provide any portion of such Incremental Term Commitments, after being provided a bona fide opportunity to do so, the other existing Lenders shall be provided an opportunity to provide all or any portion of such declined portion and to the extent any portion of the Incremental Term Commitments are not accepted by the then existing Lenders, the Borrowers may then offer such opportunity to Additional Lenders.

(e) The Incremental Term Commitments shall be effected by a joinder agreement (the "Increase Joinder") executed by the Borrowers, Administrative Agent, each Initial Lender (in its sole discretion), each increasing Lender and each Additional Lender, in form and substance reasonably satisfactory to each of them; provided that, in the event the Administrative Agent shall not have received a fully executed Increase Joinder on or before the date that is 20 Business Days after the date on which the associated Incremental Request was delivered to Administrative Agent then such Incremental Request shall be deemed to have been revoked. In addition, unless otherwise specifically provided herein, all references in Loan Documents to Loans shall be deemed, unless the context otherwise requires, to include references to Incremental Term Loans made pursuant to Incremental Term Commitments made pursuant to this Agreement.

(f) Unless otherwise agreed in the applicable Increase Joinder, on any Increase Effective Date on which new Commitments for Loans are effective, subject to the satisfaction of the foregoing terms and conditions, each Lender of such new Commitment shall make a Loan to the Borrowers in an amount equal to its new Commitment.

(g) The Loans and Commitments established pursuant to Section 2.09 shall constitute Loans and Commitments under, and shall be entitled to all the benefits afforded by, this Agreement and the other Loan Documents, and shall, without limiting the foregoing, benefit equally and ratably from the Guaranty and Collateral Agreement and the security interests created by the other Security Instruments, except that the new Loans may be subordinated in right of payment or the Liens securing the new Loans may be subordinated, in each case, to the extent set forth in the Increase Joinder. The Loan Parties shall take any actions reasonably required by the Lenders to ensure and/or demonstrate that the Lien and security interests granted hereby and by the other Security Instruments continue to be perfected under the Uniform Commercial Code or otherwise after giving effect to the establishment of any such class of Loans or any such new Commitments.

### **ARTICLE III Payments of Principal and Interest; Prepayments; Fees**

Section 3.01 Repayment of Loans. The Borrowers hereby unconditionally promise to pay to the Administrative Agent, for the account of each Lender, the then unpaid principal amount of each Loan on the Maturity Date.

Section 3.02 Interest.

(a) ABR Loans. The Loans comprising each ABR Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Margin, but in no event to exceed the Highest Lawful Rate.

(b) Eurodollar Loans. The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin, but in no event to exceed the Highest Lawful Rate.

(c) Post-Default. Notwithstanding the foregoing, if an Event of Default under Sections 10.01(a), (b), (h) or (i) has occurred and is continuing, then all Loans outstanding hereunder shall bear interest from and after the date of such Event of Default, after as well as before judgment, at a rate per annum equal to two percent (2%) plus the then applicable rate of interest accruing on such Loan as provided in Sections 3.02(a) and (b), but in no event to exceed the Highest Lawful Rate.

(d) Interest Payment Dates. Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and on the Maturity Date and, except as expressly set forth in Section 3.02(f) shall be payable entirely in cash; provided that (i) interest accrued pursuant to Section 3.02(c) shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than an optional prepayment of an ABR Loan prior to the Maturity Date), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment, and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) Interest Rate Computations. All interest hereunder shall be computed on the basis of a year of 360 days, unless such computation would exceed the Highest Lawful Rate, in which case interest shall be computed on the basis of a year of 365 days (or 366 days in a leap year), except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error, and be binding upon the parties hereto.

(f) Interest Paid in Kind.

(i) Except as expressly set forth in this Section 3.02(f), interest on each Loan shall be payable entirely in cash (such interest, "Cash Interest"). In lieu of paying Cash Interest, at the Parent Borrower's option and upon written notice to the Administrative Agent delivered to the Administrative Agent at least five (5) Business Days prior to the Interest Payment Date (which shall deliver such notice to each Lender), at least 300 basis points of the Applicable Margin with respect to such accrued interest shall be Cash Interest and the remaining accrued interest may instead be PIK Interest. Unless the context otherwise requires, for all purposes hereof, references to "principal amount" of Loans refers to the original face amount of the Loans, less where applicable any previous principal payments, plus any increase in the principal amount of the outstanding Loans as a result of payments of PIK Interest. The entire unpaid balance of principal resulting from all PIK Interest shall be immediately due and payable in full in immediately available funds on the Maturity Date.

(ii) Notwithstanding any other provision of this Agreement, on any Interest Payment Date on or after any accrual period that ends after the date that is five years after the Effective Date, the Borrowers shall also pay a minimum amount of accrued and unpaid interest on the Loan (including any PIK Interest) in cash as shall be necessary to ensure that the Loan shall not be considered "applicable high yield discount obligations" ("AHYDOs") within the meaning of Section 163(i) of the Code, or any successor provision. If definitive guidance is published by the Internal Revenue Service clarifying the application of the AHYDO rules in such a way that would require lesser payments than those described in the preceding paragraph, the amounts of the required payments shall be reduced or eliminated to the greatest extent that would permit the Loans to be exempt from treatment as AHYDOs under such guidance.

Section 3.03 Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Parent Borrower and the Lenders by telephone or telecopy as promptly as practicable thereafter and, until the Administrative Agent notifies the Parent Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective, and (ii) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing.

Section 3.04 Prepayments.

(a) Optional Prepayments. The Borrowers shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with Section 3.04(b), and subject to the premiums set forth in Section 3.04(d); provided, that the premiums set forth in Section 3.04(d) shall be inapplicable to prepayments made under this Section 3.04(a) that are described in clause (A), (C), (D) or (E) of the proviso to Section 9.01(a).

(b) Notice and Terms of Optional Prepayment. The Parent Borrower shall notify the Administrative Agent by delivery of a notice of prepayment in the form of Exhibit B-2 hereto ("Notice of Prepayment") executed by a Responsible Officer of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 1:00 p.m., Eastern time, three Business Days before the date of prepayment, or (ii) in the case of prepayment of an ABR Borrowing, not later than 1:00 p.m., Eastern time, two Business Days before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date, the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a Notice of Prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.06(b), then such Notice of Prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.06(b), but the Borrowers shall be responsible for any break funding payments pursuant to Section 5.02. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the applicable Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of a Borrowing of the same Type as provided in Section 2.03. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 3.02 and the prepayment premium required by Section 3.04(d). Each prepayment hereunder shall be in an amount that is an integral multiple of \$1,000,000 (or such lesser amount or integral to repay a Borrowing in full).

(c) Mandatory Prepayments.

(i) Excess Proceeds from Asset Sales. Not later than 10 Business Days following each date on which the aggregate amount of Excess Proceeds exceeds \$20,000,000, the Parent Borrower shall deliver an offer to the Administrative Agent (which shall furnish such offer pro rata (based on the amount of principal of the outstanding Loans) to each Lender) to repay the Loans of the Lenders in an aggregate

principal amount equal to the amount of such Excess Proceeds, which prepayment shall be made in cash at par plus accrued and unpaid interest (if any) (which prepayment, for the avoidance of doubt, shall be made without any premium or call protection) to the date of such prepayment (each such offer, an “Excess Proceeds Offer”). Each Lender may decline all but not less than all of its pro rata share of any Excess Proceeds Offer (any such amounts not accepted, the “Declined Amounts”) by providing written notice (a “Rejection Notice”) to the Administrative Agent and the Parent Borrower no later than 5:00 p.m., Eastern time, ten Business Days after the date of delivery of such Excess Proceeds Offer. If a Lender fails to deliver a Rejection Notice to the Administrative Agent within the time period specified above, such Lender shall be deemed to have accepted such Excess Proceeds Offer. The Borrowers shall prepay all Loans required to be prepaid by it under this Section 3.04(c)(i) no later than five Business Days after expiration of the time period specified above. Any Declined Amounts shall no longer be subject to this Section 3.04(c)(i) and may be used by the Parent Borrower or any of its Restricted Subsidiaries in any manner not prohibited by this Agreement. If the aggregate principal amount of Loans requested to be repaid exceeds the aggregate amount to be repaid by the Borrowers pursuant to this Section 3.04(c)(i) the Administrative Agent shall apply the amounts to be repaid by the Borrowers to the Loans requested to be repaid on a pro rata basis based on the principal amount of such Loans.

(ii) Change in Control; Mandatory Commitment Reduction. Within 30 days following any Change in Control, the Parent Borrower shall deliver to the Administrative Agent an offer to each Lender (each such offer, a “Change in Control Offer”) to prepay all of such Lender’s Loans then outstanding, which offer the Administrative Agent shall furnish to all of the Lenders, at an offer price in cash at par plus accrued and unpaid interest (if any) (which prepayment, for the avoidance of doubt, shall be made without any premium or call protection) to the date of such prepayment. Each Lender may decline all but not less than all of its pro rata share of any Change in Control Offer by providing a Rejection Notice to the Administrative Agent and the Parent Borrower no later than 5:00 p.m., Eastern time, ten Business Days after the date of delivery of the Change in Control Offer. If a Lender fails to deliver a Rejection Notice to the Administrative Agent within the time period specified above, such Lender will be deemed to have accepted such Change in Control Offer. The Commitment of any Lender that does not deliver a Rejection Notice within the time period specified above shall be automatically reduced to \$0. The Borrowers shall prepay all Loans required to be prepaid by it under this Section 3.04(c)(ii) no later than 15 days after expiration of the time period specified above for acceptance by the Lenders of the Change in Control Offer (such date, the “Change in Control Payment Date”).

(d) Prepayment Premium. In the event all or any portion of the Loans are prepaid, repaid, repriced or effectively refinanced through any amendment of the Loans or accelerated for any reason prior to the second anniversary of the Effective Date but other than mandatory prepayments pursuant to Section 3.04(c) or prepayments made under Section 3.04(a) that are described in clauses (A), (C), (D) or (E) in the proviso to Section 9.01 (a), such prepayments, repayments, repricings or acceleration will be made at (i) 102.0% of the amount repaid, repriced or accelerated if such repayment, repricing or acceleration occurs on or prior to the

first anniversary of the Effective Date, and (ii) 101.0% of the amount prepaid, repaid, repriced or accelerated if such prepayment, repayment, repricing or acceleration occurs after the first anniversary of the Effective Date but on or prior to the second anniversary of the Effective Date.

Section 3.05 Fees.

(a) Administrative Agent Fees. The Borrowers agree to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrowers and the Administrative Agent in the applicable Fee Letter.

(b) Other Fees. The Borrowers agree to pay to the Lenders as of the Effective Date (or such other Lenders as set forth in the applicable Fee Letter), fees payable in the amounts and at the times separately agreed upon between the Borrowers and such Lenders in the applicable Fee Letter.

**ARTICLE IV**

**Payments; Pro Rata Treatment; Sharing Set-offs**

Section 4.01 Pro Rata Treatment; Sharing of Set-offs.

(a) Payments by the Borrowers. The Borrowers shall make each payment required to be made by them hereunder (whether of principal, interest, fees or reimbursement of amounts payable under Section 5.01, Section 5.02, Section 5.03 or otherwise) prior to 12:00 p.m., Eastern time, on the date when due, in immediately available funds, without defense, deduction, recoupment, set-off or counterclaim. Fees, once paid, shall be fully earned and shall not be refundable under any circumstances. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices specified in Section 12.01, except that payments pursuant to Section 5.01, Section 5.02, Section 5.03 and Section 12.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate Recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in U.S. dollars.

(b) Application of Insufficient Payments. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal then due hereunder (plus any fees and expenses owed to the Administrative Agent), pro rata among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other obligations hereunder resulting in such Lender receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other such obligations (other than pursuant to Sections 5.01, 5.02, 5.03 or 12.03) greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (i) notify the Administrative Agent of such fact, and (ii) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; provided that

(A) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and

(B) the provisions of this Section 4.01(c) shall not be construed to apply to (1) any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement or (2) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Parent Borrower or any of its Subsidiaries (except if such assignment is pursuant to Section 12.04(g), as to which the provisions of this Section 4.01(c) shall not apply). The Borrowers consent to the foregoing and agree, to the extent they may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrowers rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of each Loan Party in the amount of such participation.

Section 4.02 Presumption of Payment by the Borrowers. Unless the Administrative Agent shall have received notice from the Borrowers prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may (but shall have no obligation to), in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

Section 4.03 Certain Deductions by the Administrative Agent. If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.05(a) or Section 4.02 then the Administrative Agent may (notwithstanding any contrary provision hereof) apply any



amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid. If at any time prior to the acceleration or maturity of the Loans, the Administrative Agent shall receive any payment in respect of principal of a Loan while one or more Defaulting Lenders shall be party to this Agreement, the Administrative Agent shall apply such payment first to the Borrowing(s) for which such Defaulting Lender(s) shall have failed to fund its pro rata share until such time as such Borrowing(s) are paid in full or each Lender (including each Defaulting Lender) is owed its Applicable Percentage of all Loans then outstanding. After acceleration or maturity of the Loans, all principal will be paid ratably as provided in Section 10.02(c).

**ARTICLE V**  
**Increased Costs; Break Funding Payments; Taxes; Illegality**

Section 5.01 Increased Costs.

(a) Changes in Law. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate);

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, converting to, continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender, or to reduce the amount of any sum received or receivable by such Lender or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or other Recipient in accordance with Section 5.01(c), the Borrowers will pay to such Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement the Commitments of such Lender or the Loans made by such

Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time upon request of such Lender in accordance with Section 5.01(c), the Borrowers will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in Section 5.01(a) or (b) together with reasonable supporting documentation shall be delivered to the Borrowers and shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Effect of Failure or Delay in Requesting Compensation. Failure or delay on the part of any Lenders to demand compensation pursuant to this Section 5.01 shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrowers shall not be required to compensate a Lender pursuant to this Section 5.01 for any increased costs incurred or reductions suffered more than 180 days prior to the date that such Lender notifies the Borrowers of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 5.02 Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan into an ABR Loan other than on the last day of the Interest Period applicable thereto, or (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto, then, in any such event, the Borrowers shall compensate each Lender requesting a reimbursement for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market.

A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section 5.02 shall be delivered to the Borrowers and shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

Section 5.03 Taxes.

(a) For purposes of this Section 5.03, the term “applicable law” includes FATCA.

(b) Payments Free of Taxes. The Borrowers shall cause any and all payments by or on account of any obligation of any Loan Party under any Loan Document to be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) Payment of Other Taxes. The Borrowers shall, and shall cause the other Loan Parties to, pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) Indemnification. The Borrowers shall, and shall cause the other Loan Parties to, jointly and severally indemnify each Recipient, within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 5.03) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate of the Recipient as to the amount of such payment or liability under this Section 5.03 shall be delivered to the Borrowers and shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrowers to do so), (ii) any Taxes attributable to such Lender’s failure to comply with the provisions of Section 12.04(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 5.03, such Loan Party shall (or the Borrowers shall cause such Loan Party to) deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing any payment of Indemnified Taxes by such Loan Party to a Governmental Authority, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(g) Status of Lenders.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrowers and the Administrative Agent, at the time or times reasonably requested by the Borrowers or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrowers or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrowers or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrowers or the Administrative Agent as will enable the Borrowers or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 5.03(g)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing:

(A) any Lender that is a U.S. Person shall deliver to the Borrowers and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrowers or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrowers and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrowers or the Administrative Agent), whichever of the following is applicable:

- (1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party
- (x) with respect to payments of interest under any Loan Document, executed originals of IRS

Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(2) executed originals of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit H-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrowers within the meaning of Section 881(c) (3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed originals of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit H-2 or Exhibit H-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit H-4 on behalf of each such direct and indirect partner.

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrowers and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrowers or the Administrative Agent), executed originals of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrowers or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrowers and the Administrative

Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrowers or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrowers or the Administrative Agent as may be necessary for the Borrowers and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the Effective Date.

(iii) The Administrative Agent (and any assignee or successor) will deliver, to the Borrowers, on or prior to the Effective Date (or, assignment or succession, if applicable), either (i) (A) two (2) executed copies of IRS Form W-8ECI with respect to any amounts payable to the Administrative Agent for its own account and (B) two (2) duly completed copies of IRS Form W-8IMY (certifying that it is either a "qualified intermediary" or a "U.S. branch") for the amounts the Administrative Agent receives for the account of others, or (ii) two (2) executed copies of IRS Form W-9, whichever is applicable, and in each case of (i) and (ii), with the effect that the Borrowers can make payments to the Administrative Agent without deduction or withholding of any taxes imposed by the United States.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrowers and the Administrative Agent in writing of its legal inability to do so.

(h) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Indemnified Taxes as to which it has been indemnified pursuant to this Section 5.03 (including by the payment of additional amounts pursuant to this Section 5.03), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Indemnified Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) Survival. Each party's obligations under this Section 5.03 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

Section 5.04 Mitigation Obligations. If any Lender requests compensation under Section 5.01, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.03, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 5.01 or Section 5.03, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

Section 5.05 Illegality. Notwithstanding any other provision of this Agreement, in the event that it becomes unlawful for any Lender or its applicable lending office to honor its obligation to make or maintain Eurodollar Loans either generally or having a particular Interest Period hereunder, then (a) such Lender shall promptly notify the Borrowers and the Administrative Agent thereof and such Lender's obligation to make such Eurodollar Loans shall be suspended (the "Affected Loans") until such time as such Lender may again make and maintain such Eurodollar Loans and (b) all Affected Loans which would otherwise be made by such Lender shall be made instead as ABR Loans (and, if such Lender so requests by notice to the Borrowers and the Administrative Agent, all Affected Loans of such Lender then outstanding shall be automatically converted into ABR Loans on the date specified by such Lender in such notice) and, to the extent that Affected Loans are so made as (or converted into) ABR Loans, all payments of principal which would otherwise be applied to such Lender's Affected Loans shall be applied instead to its ABR Loans.

## **ARTICLE VI**

### **Conditions Precedent**

Section 6.01 Effective Date. The obligations of the Lenders to make Loans shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 12.02 or the last paragraph of this Section 6.01):

(a) The Administrative Agent and the Lenders shall have received all commitment, facility and agency fees and all other fees, expenses and amounts due and payable on or prior to the Effective Date (including legal fees and expenses), including, to the extent invoiced, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Borrowers hereunder.

(b) The Administrative Agent and the Initial Lenders shall have received a certificate of the secretary or an assistant secretary of each Borrower and each Guarantor setting forth (i) resolutions of its board of directors, members or partners with respect to the authorization of such Borrower or such Guarantor to execute and deliver the Loan Documents to which it is a party and to enter into the transactions contemplated in those documents, (ii) the officers of such Borrower or such Guarantor (y) who are authorized to sign the Loan Documents to which such Borrower or such Guarantor is a party and (z) who will, until replaced by another officer or officers duly authorized for that purpose, act as its representative for the purposes of signing documents and giving notices and other communications in connection with this Agreement and the transactions contemplated hereby, (iii) specimen signatures of such authorized officers, and (iv) the Organizational Documents of such Borrower and such Guarantor, certified as being true and complete. The Administrative Agent and the Lenders may conclusively rely on such certificate until the Administrative Agent receives notice in writing from the Parent Borrower to the contrary.

(c) The Administrative Agent and the Initial Lenders shall have received certificates of the appropriate state agencies with respect to the existence, qualification and good standing of each Borrower and each Guarantor from their jurisdiction of organization.

(d) The Administrative Agent and the Initial Lenders shall have received a closing certificate which shall be substantially in the form of Exhibit D, duly and properly executed by a Responsible Officer and dated as of the Effective Date.

(e) The Administrative Agent and the Initial Lenders shall have received from each party hereto counterparts (in such number as may be requested by the Administrative Agent) of this Agreement signed on behalf of such party.

(f) The Administrative Agent and the Initial Lenders shall have received copies of duly executed Notes payable to each Initial Lender that has requested a Note in a principal amount equal to its respective Commitment dated as of the date hereof.

(g) The Administrative Agent and the Initial Lenders shall have received from each party thereto duly executed counterparts (in such number as may be requested by the Administrative Agent) of the Security Instruments. In connection with the execution and delivery of the Security Instruments, the Initial Lenders shall be satisfied that the Security Instruments create first priority, perfected Liens, subject only to Permitted Liens.

(h) The Administrative Agent and the Initial Lenders shall have received (i) an opinion of Latham & Watkins LLP, special counsel to the Borrowers and the Guarantors and (ii) an opinion of Winstead PC, special collateral counsel to the Borrowers and the Guarantors, each in form and substance reasonably satisfactory to the Administrative Agent and the Initial Lenders.

(i) The Administrative Agent and the Initial Lenders shall have received a certificate of insurance coverage of the Parent Borrower evidencing that the Parent Borrower and the Subsidiaries are carrying insurance in accordance with Section 7.13.



(j) The Administrative Agent and the Initial Lenders shall have received appropriate UCC search results, vessel title abstracts from the National Vessel Documentation Center or other relevant search certificates reflecting no prior Liens (other than in favor of the Collateral Agent or the trustee/mortgagee, as the case may be) encumbering the Vessel Collateral in each of the jurisdictions or offices in which UCC financing statements and the National Vessel Documentation Center should be made to evidence perfected security interests in all Vessel Collateral, other than those being released prior to the Effective Date or Liens permitted by Section 9.03.

(k) Arrangements satisfactory to the Initial Lenders shall have been made to have the Fleet Mortgage duly submitted for recordation to the National Vessel Documentation Center on or promptly following the Effective Date.

(l) The Administrative Agent and the Initial Lenders shall have received a certificate of a Responsible Officer of the Borrowers certifying that the Borrowers have received all consents and approvals required by Section 7.03.

(m) The Administrative Agent and the Initial Lenders shall have received a solvency certificate from a Responsible Officer of the Parent Borrower, in form and substance reasonably satisfactory to the Administrative Agent, confirming the solvency of the Parent Borrower, the Co-Borrower and the Guarantors, taken as a whole, after giving effect to those aspects of the Transactions applicable at the Effective Date.

(n) The Borrowers shall have (i) sent funds to the Administrative Agent and (ii) provided a direction letter to the Administrative Agent, both relating to certain payments due to the Initial Lenders on the Effective Date. Upon receipt of both (i) and (ii), the Administrative Agent shall make the disbursements outlined in the direction letter.

(o) (x) Each of the Note Purchase Agreements from each of the Lenders party to this Agreement shall have become effective and (y) the Administrative Agent and the Lenders shall have received a certificate from a Responsible Officer of the Parent Borrower certifying that the conditions precedent set forth in Section 5 of each Note Purchase Agreement have been satisfied.

(p) The Administrative Agent and the Initial Lenders shall have received evidence that the Existing Credit Agreement has been or concurrently with the Effective Date is being terminated and all Liens securing obligations under the Existing Credit Agreement have been or concurrently with the Effective Date are being released.

(q) The Administrative Agent shall have received all documentation and other information about the Borrowers and the Guarantors required under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act that has been requested by the Administrative Agent in writing at least three (3) Business Days prior to the Effective Date.

Notwithstanding the foregoing, the obligations of the Lenders to make Loans hereunder shall not become effective unless all of the foregoing conditions are satisfied (or waived pursuant

to Section 12.02 or deemed waived and, in the event such conditions are not so satisfied or waived, the Commitments shall terminate at such time); provided that upon the funding of the initial Loans hereunder, the foregoing conditions in this Section 6.01 shall be deemed satisfied.

Section 6.02 Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing (including the initial funding, but excluding any conversion or continuation pursuant to Section 2.04), is subject to the satisfaction of the following conditions:

(a) At the time of and immediately after giving effect to such Borrowing, no Default shall have occurred and be continuing.

(b) The representations and warranties of the Borrowers and the Guarantors set forth in this Agreement and in the other Loan Documents shall be true and correct on and as of the date of such Borrowing, except to the extent any such representations and warranties are expressly limited to an earlier date (in which case such representations and warranties shall be true and correct on and as of such earlier date); provided, that with respect to any Borrowings following the Effective Date, such representations and warranties shall be limited to (i) the Specified Representations (other than Section 7.19) and (ii) the representations and warranties set forth in Sections 7.03(c) and 7.03(d).

(c) Immediately after giving effect to such Borrowing, Available Liquidity as of the last day of the most recently ended fiscal quarter shall not be less than the Minimum Liquidity Amount.

(d) The receipt by the Administrative Agent of a Borrowing Request in accordance with Section 2.03.

Each Borrowing Request shall be deemed to constitute a representation and warranty by the Borrowers on the date thereof as to the matters specified in Section 6.02(a), (b) and (c).

## **ARTICLE VII Representations and Warranties**

Each Borrower represents and warrants to the Administrative Agent and each Lender that:

Section 7.01 Organization; Powers. Each Loan Party (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite corporate or limited liability company power and authority, and has all material governmental licenses, authorizations, consents and approvals necessary, to own its Property and to carry on its business as now conducted, and (b) is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except where failure to have such power, authority, licenses, authorizations, consents, approvals and qualifications could not reasonably be expected to have a Material Adverse Effect.

Section 7.02 Authority; Enforceability. The Transactions are within each Borrower's and each Guarantor's limited liability company, corporate or partnership powers and have been

duly authorized by all necessary limited liability company or corporate and, if required, member, or shareholder action. Each Loan Document to which such Borrower or a Guarantor is a party has been duly executed and delivered by such Borrower or such Guarantor and constitutes a legal, valid and binding obligation of such Borrower and such Guarantor, as applicable, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

Section 7.03 Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority or any other third Person (including members, partners or shareholders of the Borrowers, the Guarantors or any other Person), nor is any such consent, approval, registration, filing or other action necessary for the validity or enforceability of any Loan Document or the consummation of the transactions contemplated thereby, except such as have been obtained or made and are in full force and effect other than the recording and filing of the Security Instruments as required thereby or by this Agreement, (b) will not violate (i) any applicable law or regulation, (ii) the Organizational Documents of the Borrowers, the Guarantors or any Restricted Subsidiary of the Parent Borrower or (iii) any order of any Governmental Authority, (c) will not violate or result in a default under any indenture, agreement or other instrument evidencing Material Indebtedness binding upon the Borrowers or any Restricted Subsidiary of the Parent Borrower or their Properties, or give rise to a right thereunder to require any material payment to be made by the Borrowers or such Restricted Subsidiary of the Parent Borrower and (d) will not result in the creation or imposition of any Lien on any Property of the Borrowers or any Restricted Subsidiary of the Parent Borrower (other than the Liens created by the Loan Documents).

Section 7.04 Financial Statements; No Material Adverse Change.

(a) The Parent Borrower has heretofore made publicly available its consolidated balance sheet and statements of income, stockholders equity and cash flows (i) as of and for the fiscal year ended December 31, 2016, reported on by Ernst & Young LLP, independent public accountants, and (ii) as of and for the fiscal quarter and the portion of the fiscal year ended March 31, 2017, certified by a Responsible Officer. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Parent Borrower and its Consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of certain footnotes in the case of the unaudited quarterly financial statements.

(b) Since December 31, 2016, there has been no event, development or circumstance that has had or could reasonably be expected to have a Material Adverse Effect.

(c) None of the Parent Borrower or any of its Restricted Subsidiaries has any material Funded Debt or any contingent liabilities, off-balance sheet liabilities or partnerships, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments, except for those arising with respect to the Transactions, those arising under the Unsecured Indentures and those included or otherwise disclosed in the financial statements or other written materials delivered to the Administrative Agent or otherwise made publicly available (including pursuant to filings with the SEC).

Section 7.05 Litigation.

(a) Except as set forth on Schedule 7.05, there are no actions, suits, investigations or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Parent Borrower, threatened against or affecting the Parent Borrower or any of its Restricted Subsidiaries or any of their Properties (i) as to which there is a reasonable possibility of an adverse determination that could reasonably be expected to have a Material Adverse Effect, or (ii) that involve any Loan Document or the Transactions.

(b) Since the Effective Date, there has been no change in the status of the matters disclosed in Schedule 7.05 that has resulted in, or could reasonably be expected to have, Material Adverse Effect.

Section 7.06 Environmental Matters. Except as could not be reasonably expected to have a Material Adverse Effect (or with respect to (c), (d) and (e) below, where the failure to take such actions could not be reasonably expected to have a Material Adverse Effect):

(a) Neither any Property of the Parent Borrower or any of its Restricted Subsidiaries nor any operations conducted by the Parent Borrower or any of its Restricted Subsidiaries violate or has violated any Environmental Laws.

(b) Neither any Property of the Parent Borrower or any of its Restricted Subsidiaries nor the operations conducted thereon or, to the knowledge of the Parent Borrower, any prior owner or operator of such Property or operation, are subject to any existing, pending or threatened action, suit, investigation, inquiry or proceeding by or before any court or Governmental Authority or to any remedial obligations or other liabilities under Environmental Laws.

(c) All notices, permits, licenses, exemptions, approvals or similar authorizations, if any, required to be obtained or filed in connection with the operation or use of any and all Property of the Parent Borrower and each of its Restricted Subsidiaries, including, without limitation, past or present treatment, storage, disposal or release of a Hazardous Material into the environment, have been duly obtained or filed, and the Parent Borrower and each of its Restricted Subsidiaries are in compliance with the terms and conditions of all such notices, permits, licenses and similar authorizations.

(d) All Hazardous Material, if any, generated by the Parent Borrower or any of its Restricted Subsidiaries or by any other Person at any and all Property of the Parent Borrower or any of its Restricted Subsidiaries, has been transported, treated and disposed of in accordance with Environmental Laws and so as not to pose an imminent and substantial endangerment to public health or welfare or the environment, and, to the knowledge of the Parent Borrower, all such transport carriers and treatment and disposal facilities have been and are operating in compliance with Environmental Laws and so as not to pose an imminent and substantial endangerment to public health or welfare or the environment, and are not the subject of any existing, pending or threatened action, investigation or inquiry by any Governmental Authority pursuant to any Environmental Laws.

(e) The Parent Borrower has no knowledge that any Hazardous Materials are now located on or in the Vessels, or that any other Person has ever caused or permitted any Hazardous Materials to be placed, held, located or disposed of on, the Vessels or any part thereof, except for such Hazardous Materials that may have been placed, held, or located on the Vessels in accordance with and otherwise not in violation of or in a manner reasonably likely to give rise to liability under Environmental Laws.

(f) To the extent applicable under OPA, all Property of the Parent Borrower and each of its Restricted Subsidiaries currently satisfies all requirements imposed by OPA and, except as set forth on Schedule 7.06(f), the Parent Borrower does not have any reason to believe that such Property, to the extent subject to OPA, will not be able to maintain compliance with OPA requirements during the term of this Agreement.

(g) To the knowledge of the Parent Borrower, there has been no exposure of any Person or Property to any Hazardous Materials in connection with any Property or operation of the Parent Borrower or any Subsidiary that could reasonably be expected to form the basis of a claim for damages or compensation.

Section 7.07 Compliance with the Laws and Agreements; No Defaults.

(a) The Parent Borrower and each of its Restricted Subsidiaries is in compliance with all Governmental Requirements applicable to it or its Property and all agreements and other instruments binding upon it or its Property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, and possesses all licenses, permits, franchises, exemptions, approvals and other governmental authorizations necessary for the ownership of its Property and the conduct of its business, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

(b) Neither the Parent Borrower nor any of its Restricted Subsidiaries is in default nor has any event or circumstance occurred which, but for the expiration of any applicable grace period or the giving of notice, or both, would constitute a default under, or would require the Parent Borrower or any of its Restricted Subsidiaries to Redeem or make any offer to Redeem under any indenture, note, credit agreement or instrument pursuant to which any Material Indebtedness is outstanding or by which the Parent Borrower or any such Restricted Subsidiary or any of their Properties is bound.

(c) No Default has occurred and is continuing.

Section 7.08 Investment Company Act. Neither the Parent Borrower nor any of its Restricted Subsidiaries is an "investment company" or a company "controlled" by an "investment company," within the meaning of, or subject to regulation under, the Investment Company Act of 1940, as amended.

Section 7.09 Anti-Terrorism Laws and Sanctions.

(a) No Loan Party nor any Subsidiary of any Loan Party nor, to the knowledge of the Parent Borrower, any director, officer, agent or employee of any Loan Party or any Subsidiary of any Loan Party is in violation of any Anti-Terrorism Law or Sanctions or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law or Sanctions.

(b) No Loan Party nor any Subsidiary of any Loan Party nor, to the knowledge of the Parent Borrower, any director, officer, agent or employee of any Loan Party or any Subsidiary of any Loan Party acting or benefiting in any capacity in connection with the Loans, the Transactions or the other transactions hereunder, is a Sanctioned Person.

(c) No Loan Party nor any Subsidiary of any Loan Party nor, to the knowledge of the Parent Borrower, any director, officer, agent or employee of any Loan Party conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Sanctioned Person.

(d) The Parent Borrower has implemented and maintains in effect policies and procedures designed to promote and achieve compliance by the Parent Borrower and its Subsidiaries and their respective directors, officers, agents and employees with Sanctions and Anti-Terrorism Laws in all respects.

Section 7.10 Taxes. Each of the Parent Borrower and its Restricted Subsidiaries has timely filed (including any available extension) or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which the Parent Borrower or such Restricted Subsidiary, as applicable, has set aside on its books adequate accruals in accordance with GAAP (to the extent such accrual may be set up under GAAP) or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect. The charges and accruals on the books of the Parent Borrower and its Restricted Subsidiaries in respect of Taxes and other governmental charges are, in the reasonable opinion of the Parent Borrower, adequate.

Section 7.11 ERISA.

(a) The Parent Borrower, its Restricted Subsidiaries and each ERISA Affiliate have complied in all material respects with ERISA and, where applicable, the Code regarding each Plan.

(b) Each Plan is, and has been, maintained in substantial compliance with ERISA and, where applicable, the Code.

(c) No act, omission or transaction has occurred which could result in imposition on the Parent Borrower, any of its Restricted Subsidiaries or any ERISA Affiliate (whether directly or indirectly) of (i) either a material civil penalty assessed pursuant to subsections (c), (i), (l) or (m) of Section 502 of ERISA or a tax imposed pursuant to Chapter 43 of Subtitle D of the Code or (ii) material breach of fiduciary duty liability damages under Section 409 of ERISA.

(d) No Plan (other than a defined contribution plan) or any trust created under any such Plan has been terminated since September 2, 1974. No liability to the PBGC (other than for the payment of current premiums which are not past due) by the Parent Borrower, any of its Restricted Subsidiaries or any ERISA Affiliate has been or is expected by the Parent Borrower, any such Restricted Subsidiary or any ERISA Affiliate to be incurred with respect to any Plan. No ERISA Event has occurred or is reasonably expected to occur.

(e) Full payment when due has been made of all material amounts which the Parent Borrower, its Restricted Subsidiaries or any ERISA Affiliate is required under the terms of each Plan or applicable law to have been paid as contributions to such Plan, and no waived funding deficiency (as defined in Section 302 of ERISA and Section 412 of the Code), which could reasonably be expected to have a Material Adverse Effect, exists with respect to any Plan. The actuarial present value of the benefit liabilities under each Plan which is subject to Title IV of ERISA does not, as of the end of the Parent Borrower's most recently ended fiscal year, exceed the current value of the assets (computed on a plan termination basis in accordance with Title IV of ERISA) of such Plan allocable to such benefit liabilities by a material amount, and the sum of such excesses for all such Plans is not material. The term "actuarial present value of the benefit liabilities" shall have the meaning specified in Section 4041 of ERISA.

(f) None of the Parent Borrower, its Restricted Subsidiaries or any ERISA Affiliate sponsors, maintains, or contributes to an employee welfare benefit plan, as defined in Section 3(1) of ERISA, including, without limitation, any such plan maintained to provide benefits to former employees of such entities, that may not be terminated by the Parent Borrower, any of its Restricted Subsidiaries or any ERISA Affiliate in its sole discretion at any time without any material liability.

(g) None of the Parent Borrower, its Restricted Subsidiaries or any ERISA Affiliate is required to contribute to, or has any other absolute or contingent liability in respect of, any Multiemployer Plan that, when taken together with all other such contribution obligations and liabilities, has resulted in, or could reasonably be expected to have, a Material Adverse Effect.

Section 7.12 Disclosure; No Material Misstatements. None of the written reports, financial statements, certificates or other written information (other than the Projections, as defined below, other forward-looking information and information of a general economic or industry specific nature) furnished or otherwise made available by the Borrowers or any Restricted Subsidiary of the Parent Borrower to the Administrative Agent or any of its Affiliates in connection with the negotiation or performance of this Agreement or any other Loan Document (as modified or supplemented by other information so furnished or made available) when considered as a whole contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading as of the date such information is furnished or made available. All financial projections concerning the Parent Borrower and its Restricted Subsidiaries, that have been furnished or otherwise made available by or on behalf of the Parent

Borrower to the Administrative Agent or any of its Affiliates in connection with the negotiation or performance of this Agreement or any other Loan Document (the "Projections") have been prepared in good faith based upon assumptions believed by the Parent Borrower to be reasonable at the time made available to such Persons, it being understood that actual results may vary materially from the Projections. For the avoidance of doubt, it is understood that the Administrative Agent shall have no duty to examine or investigate any written reports, financial statements, certificates or other written information delivered by the Parent Borrower pursuant to this Article VII.

Section 7.13 Insurance. The Parent Borrower has, and has caused its Restricted Subsidiaries to have, (a) all insurance policies sufficient for the compliance by each of them with all material Governmental Requirements, all material agreements and all other Loan Documents (including, but not limited to, the Fleet Mortgage) and (b) insurance coverage in at least amounts and against such risk (including, without limitation, public liability) that are reasonably consistent with other companies in the industry performing the same or a similar business for the assets and operations of the Parent Borrower and its Restricted Subsidiaries. The Administrative Agent or the Collateral Agent, as the case may be, and the Lenders have been named in a manner such that they are afforded the stature of additional insureds in respect of such liability insurance policies and the Administrative Agent has been named as loss payee with respect to Vessel Collateral loss insurance.

Section 7.14 Subsidiaries. As of the Effective Date, except as set forth on Schedule 7.14, the Parent Borrower has no Subsidiaries. The owner and percentage of ownership of each Subsidiary as of the Effective Date is set forth on such schedule.

Section 7.15 Location of Business and Offices. As of the Effective Date, the Parent Borrower's and each Subsidiary's jurisdiction of organization, name as listed in the public records of its jurisdiction of organization, organizational identification number in its jurisdiction of organization, and the location of its principal place of business and chief executive office is stated on Schedule 7.15.

Section 7.16 Properties; Titles, Etc.

(a) The relevant Loan Parties have good title to all of the Vessel Collateral, free and clear of all Liens except (i) Liens pursuant to the Loan Documents and the Junior Lien Documents (if any), (ii) Permitted Liens of the type permitted under clauses (a), (d) and (k) of the definition thereof and (iii) Liens being released on the Effective Date. Set forth on Schedule 8.14 hereto is a complete and accurate list of all Vessel Collateral owned by each Loan Party as of the Effective Date and to be subject to the Fleet Mortgage on the Effective Date; as of the Effective Date all Vessel Collateral is duly documented in the name of the applicable Loan Party as shipowner under the laws and flag of the United States and, except as set forth on Schedule 7.16, eligible to operate in the coastwise trade of the United States. Each Loan Party that owns Vessel Collateral is (i) if such Vessel Collateral is one or more Vessels registered under the laws and flag of the United States, a citizen of the United States within the meaning of Section 2(c) of the Shipping Act, 1916, as amended (46 U.S.C. § 50501), eligible to own and operate vessels in the coastwise trade of the United States, or (ii) eligible to own and operate vessels in whatever jurisdiction and trade the Vessel Collateral is qualified, as applicable.



(b) Except as otherwise permitted under the Loan Documents including the last sentence of this Section 7.16(b), all filings and other actions on behalf of the Parent Borrower or, as applicable, any Restricted Subsidiary of the Parent Borrower necessary or desirable to perfect and protect the security interest in the Vessel Collateral created under the Security Instruments have been duly made or taken (or arrangements reasonably satisfactory to the Initial Lenders with respect thereto have been made) and such security interests are in full force and effect, and the Security Instruments create in favor of the Collateral Agent or trustee/mortgagee, as the case may be, for the benefit of the Secured Parties a valid and, together with such filings, recordations and other actions, when effected, perfected first priority security interest in the Vessel Collateral, securing the payment of the Indebtedness. To the extent that the Vessel Collateral is registered under the laws and flag of the United States, the Fleet Mortgage, executed and delivered, creates in favor of the Collateral Agent, as trustee/mortgagee, a legal, valid, and enforceable first preferred mortgage lien over the whole of the Vessel Collateral therein named and when duly recorded shall constitute a perfected first “preferred mortgage” within the meaning of Section 31301(6)(B) of Title 46 of the United States Code, entitled to the benefits accorded a first preferred mortgage on a vessel registered under the laws and flag of the United States.

(c) All of the material Properties of the Parent Borrower and its Restricted Subsidiaries which are reasonably necessary for the operation of their businesses (other than Stacked Vessels) are in good working condition, ordinary wear and tear excepted, and are maintained in accordance with reasonable commercial business standards, except (i) as set forth in Schedule 7.16 or (ii) where the failure to be in such condition or maintain such Property could not reasonably be expected to have a Material Adverse Effect.

(d) The Parent Borrower and each of its Restricted Subsidiaries owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual Property material to its business, and the use thereof by the Parent Borrower and such Restricted Subsidiaries does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. The Parent Borrower and its Restricted Subsidiaries either own or have valid licenses or other rights to use all databases, and other technical information used in their businesses as presently conducted, subject to the limitations contained in the agreements governing the use of the same, which limitations are customary for companies engaged in its line of business, with such exceptions as could not reasonably be expected to have a Material Adverse Effect.

Section 7.17 Hedging Obligations. As of the Effective Date, Schedule 7.17 sets forth a true and complete list of all Hedging Obligations of the Parent Borrower and each of its Restricted Subsidiaries, the material terms thereof (including the type, term, effective date, termination date and notional amounts or volumes), the net mark to market value thereof, all credit support agreements relating thereto (including any margin required or supplied) and the counterparty to each such agreement.

Section 7.18 Use of Proceeds. The proceeds of the Loans shall be used for working capital and general corporate purposes of the Parent Borrower and each of its Restricted Subsidiaries, including the refinancing of the Existing Credit Agreement, Redemption of part or all of the 2019 Convertible Notes remaining outstanding, Redemptions of other Debt, and capital expenditures (including vessel construction or conversions and acquisitions). The Parent Borrower and each of its Restricted Subsidiaries is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying margin stock (within the meaning of Regulation T, U or X of the Board). No part of the proceeds of the Loans will be used for any purpose which violates the provisions of Regulations T, U or X of the Board.

Section 7.19 Solvency. After giving effect to the Transactions contemplated hereby that had been effected through the date of determination, (a) the aggregate assets (after giving effect to amounts that could reasonably be received by reason of indemnity, offset, insurance or any similar arrangement), at a fair valuation, of the Parent Borrower, the Co-Borrower and the Guarantors, taken as a whole, will exceed the aggregate Debt of the Parent Borrower, the Co-Borrower and the Guarantors on a consolidated basis, as the Debt becomes absolute and matures, (b) each of the Parent Borrower, the Co-Borrower and the Guarantors will not have incurred or intended to incur, and will not believe that it will incur, Debt beyond its ability to pay such Debt (after taking into account the timing and amounts of cash to be received by each of the Parent Borrower, the Co-Borrower and the Guarantors and the amounts to be payable on or in respect of its liabilities, and giving effect to amounts that could reasonably be received by reason of indemnity, offset, insurance or any similar arrangement) as such Debt becomes absolute and matures and (c) each of the Parent Borrower, the Co-Borrower and the Guarantors will not have (and will have no reason to believe that it will have thereafter) unreasonably small capital for the conduct of its business.

Section 7.20 Anti-Corruption Laws. No Loan Party nor any Subsidiary of any Loan Party nor, to the knowledge of the Parent Borrower, any director, officer, agent or employee of any Loan Party or any Subsidiary of any Loan Party is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the FCPA or any other applicable anti-corruption laws of any jurisdiction, domestic or foreign, including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization or approval of the payment of any money, or other property, gift, promise to give or authorization of the giving of anything of value, directly or indirectly, to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office in contravention of the FCPA or any other applicable anti-corruption laws. Each Loan Party and its Subsidiaries has conducted their businesses in compliance with applicable anti-corruption laws and the FCPA in all material respects and will maintain policies and procedures designed to promote and achieve compliance with such laws and with the representation and warranty contained herein. No Borrowing, use of proceeds or other transaction contemplated by this Agreement will violate the FCPA or any other applicable anti-corruption laws or applicable Sanctions.

**ARTICLE VIII**  
**Affirmative Covenants**

Until the Commitments have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder and all other amounts payable under the Loan Documents shall have been paid in full, the Borrowers covenant and agree with the Administrative Agent and the Lenders on behalf of the Loan Parties that:

Section 8.01 Financial Statements. The Parent Borrower will furnish or cause to be furnished to the Administrative Agent, for distribution to each Lender, each of the following:

(a) Annual and Quarterly Reports –

(i) for so long as any Lender has any Commitment hereunder,

(A) as soon as available and in any event within 15 days following the required SEC filing date for the Form 10-K (or, if such filing is not required, within 105 days following the last day of the applicable fiscal year), (x) the annual report on Form 10-K, if applicable, or (y) another report, containing, in either case, the audited consolidated balance sheet of the Parent Borrower as of the end of such year, the audited consolidated statement of income of the Parent Borrower for such year, the audited consolidated statement of stockholders' equity of the Parent Borrower for such year, and the audited consolidated statement of cash flows of the Parent Borrower for such year (along with data for each business segment for such periods), setting forth in each case in comparative form the corresponding figures for the preceding fiscal year, accompanied by the unqualified audit opinions of Ernst & Young LLP or another independent certified public accountant acceptable to the Required Lenders, together with, to the extent the Parent Borrower is not required to file a 10-K, a management's discussion and analysis of financial condition and the results of operations substantially similar in scope to the information that would be required in a 10-K filing were the Parent Borrower subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act; and

(B) as soon as available and in any event within 15 days following the required SEC filing date for the Form 10-Q (or, if such filing is not required, within 60 days following the last day of the applicable fiscal quarter), (x) the quarterly report on Form 10-Q, if applicable, or (y) another report, containing, in either case, the consolidated balance sheet of the Parent Borrower as of the end of such quarter, the consolidated statements of income of the Parent Borrower for such quarter and for the period from the beginning of the fiscal year through such quarter, and the consolidated statements of cash flows of the Parent Borrower for the period from the beginning of the fiscal year through such quarter (along with data for each business segment for such periods, if applicable), setting forth in

each case in comparative form the corresponding figures for the corresponding period of the preceding fiscal year, certified by the chief financial officer of the Parent Borrower as presenting fairly in all material respects the financial condition, results of operations and changes in cash flows of the Parent Borrower in accordance with GAAP (subject only to normal year-end audit adjustments and the absence of footnotes), together with, to the extent the Parent Borrower is not required to file a 10-Q, a management's discussion and analysis of financial condition and the results of operations substantially similar in scope to the information that would be required in a 10-Q filing were the Parent Borrower subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act with respect to such fiscal quarter and, in the case of the second and third fiscal quarters, the period from the beginning of such fiscal year to the end of such fiscal quarter

(ii) if no Lender has any Commitment hereunder, whether or not the Parent Borrower is required to do so by the rules and regulations of the SEC, so long as any Indebtedness remains outstanding, the Parent Borrower will file with the SEC within the time periods specified in the SEC's rules or regulations (unless the SEC will not accept such a filing) and, within 15 days of filing, or attempting to file, the same with the SEC, (i) all quarterly and annual financial and other information with respect to the Parent Borrower and its Subsidiaries that would be required to be contained in a filing with the SEC on Forms 10-Q and 10-K if the Parent Borrower were required to file such forms, including a "Management's Discussion and Analysis of Financial Condition and Results of Operations" and, with respect to the annual information only, a report thereon by the Parent Borrower's certified independent accountants, and, with respect to the quarterly information only, such financial information shall be certified by the chief financial officer of the Parent Borrower as presenting fairly in all material respects the financial condition, results of operations and changes in cash flows of the Parent Borrower in accordance with GAAP (subject only to normal year-end audit adjustments and the absence of footnotes), and (ii) all current reports that would be required to be filed with the SEC on Form 8-K if the Parent Borrower were required to file such reports.

(b) [~~reserved~~].

(c) Unrestricted Subsidiaries – if the Parent Borrower has designated any of its Subsidiaries as Unrestricted Subsidiaries, then, upon request of the Required Lenders, the Parent Borrower shall deliver, together with each delivery of financial statements under Section 8.01(a), the related unaudited consolidating financial information reflecting adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries from such consolidated financial statements.

(d) Vessel Collateral – the Parent Borrower shall deliver, together with each delivery of financial statements under Section 8.01(a), upon request of the Required Lenders, a report setting forth (x) as of the end of the applicable fiscal period, a list of all Vessels included in the Vessel Collateral (including, with respect to each Vessel, the name of the owner thereof, the flag of such Vessel, and in the case of any Additional Vessel, the class of such Vessel) and (y) all Vessels added to or removed from the Vessel Collateral during such fiscal period.

(e) Appraisal Reports – prior to the consummation of any transaction hereunder that requires the determination of the Appraised Value of any Vessel, the Parent Borrower shall deliver the required Appraisal Report(s).

All financial information contained in the information referred to above (other than in clauses (d) and (e)) shall conform to GAAP applied on a consistent basis, except only for such changes in accounting principles or practice with which the independent certified public accountants concur. The information required to be delivered pursuant to Section 8.01(a) above shall be deemed to have been delivered if such information, or one or more annual or quarterly reports containing such information, shall be available on the website of the SEC at [www.sec.gov](http://www.sec.gov) or on the Parent Borrower's website at [www.hornbeckoffshore.com](http://www.hornbeckoffshore.com). Delivery of such reports, information and documents to the Administrative Agent is for informational purposes only and the Administrative Agent's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Parent Borrower's compliance with any of its covenants hereunder.

Section 8.02 Certificates of Compliance; Etc.. Within 15 days following the required SEC filing date in respect of the Parent Borrower's financial statements (or if the Parent Borrower is not required to make such filings, within 105 days following the last day of each fiscal year and within 60 days following the last day of each of the first three fiscal quarters), the Parent Borrower will furnish to Administrative Agent a certificate of a Responsible Officer (i) stating that there is no Default or Event of Default at such time, (ii) containing the calculations necessary for determining compliance with Section 9.05 and (iii) solely in the case of a certificate delivered in connection with the delivery of financial statements under Section 8.01(a)(i)(A), containing a then-current list of all Commodities Accounts, Deposit Accounts and Securities Accounts (each as defined in the UCC) of the Parent Borrower and its Restricted Subsidiaries (which list shall indicate which accounts are Excluded Accounts under and as defined in the Guaranty and Collateral Agreement and shall include the balance of such accounts as of the end of such fiscal year). Within 30 days after any Loan Party (i) creating any account that is used or intended to be used for the purpose described in clause (iv) of the definition of "Excluded Accounts" in the Guaranty and Collateral Agreement or (ii) utilizing an existing account that had not previously been used for the purpose described in the preceding clause (i), the Parent Borrower shall notify the Collateral Agent thereof and provide the Collateral Agent with a description of such account in the same level as detail as the description of accounts provided in the Perfection Certificate (as defined in the Guaranty and Collateral Agreement).

Section 8.03 Taxes and Other Liens. The Parent Borrower, the Co-Borrower and the Guarantors will pay and discharge promptly when due all Taxes imposed upon the Parent Borrower, the Co-Borrower or any Guarantor or upon its income or upon any of its Property as well as all claims of any kind (including claims for labor, materials, supplies and rent) which, if unpaid, might become a Lien (other than Permitted Liens) upon any or all of its Property; provided that the Parent Borrower, the Co-Borrower and the Guarantors shall not be required to pay any such Tax if the amount, applicability or validity thereof shall concurrently be contested in good faith by appropriate proceedings diligently conducted and if the contesting party shall have set up accruals therefor adequate under GAAP.

Section 8.04 Existence; Compliance. Except as permitted by Section 9.04 and except to the extent any change therein is not otherwise prohibited hereunder, the Parent Borrower, the Co-Borrower and each Guarantor will maintain its limited liability company or corporate existence and rights. The Parent Borrower, the Co-Borrower and the Guarantors will observe and comply with all valid laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, certificates, franchises, permits, licenses, authorizations, directions and requirements of Governmental Authority, including Governmental Requirements and Environmental Laws, unless any such failure to observe and comply would not reasonably be expected to have a Material Adverse Effect.

Section 8.05 Further Assurances. The Parent Borrower, the Co-Borrower and the Guarantors will promptly (and in no event later than thirty (30) days after written notice from the Administrative Agent is received) cure or cause to be cured any defects in the creation, execution and delivery of any of the Loan Documents. The Parent Borrower, the Co-Borrower and the Guarantors will, at their expense, promptly (and in no event later than thirty (30) days after written notice from the Administrative Agent is received) execute and deliver, or cause to be executed and delivered, to the Administrative Agent and/or the Collateral Agent upon request all such other and further documents, agreements and instruments (including without limitation further security agreements, financing statements, continuation statements, and assignments of accounts and contract rights, except for Excluded Contracts (as defined in the Guaranty and Collateral Agreement)) in compliance with or accomplishment of the covenants and agreements of the Parent Borrower, the Co-Borrower and the Guarantors in the Loan Documents or to further evidence and more fully describe the Vessel Collateral, including any renewals, additions, substitutions, replacements or accessions to the Vessel Collateral, or to correct any omissions in the Security Instruments, or more fully state the security obligations set out herein or in any of the Security Instruments, or to perfect, protect or preserve any Liens created pursuant to any of the Security Instruments, or to make any recordings, to file any notices, or obtain any consents as may be necessary or appropriate in connection with the transactions contemplated by this Agreement. It is understood that any requests made by the Administrative Agent and/or the Collateral Agent pursuant to this Section 8.05 shall be upon written direction from the Required Lenders.

Section 8.06 Performance of Obligations. The Borrowers will repay the Loans in accordance with this Agreement. The Borrowers and the Guarantors will do and perform every act required of the Borrowers and the Guarantors, by the Loan Documents at the time or times and in the manner specified.

Section 8.07 Use of Proceeds. The Borrowers shall use the proceeds of the Loans only for the purposes specified in Section 7.18. In addition, the Borrowers will not request any Borrowing and the Borrowers shall not use, and shall procure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Borrowing (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of the FCPA or any other

applicable anti-corruption law, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country or (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

Section 8.08 Insurance. (a) Each Loan Party that owns Vessel Collateral shall maintain with financially sound and reputable insurance companies not Affiliates of the Parent Borrower insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or a similar business of such types and in such amounts (after giving effect to any self-insurance compatible with the following standards) as are customarily carried under similar circumstances by such other Persons, and as required to be maintained under the terms of the Fleet Mortgage, and the Loan Parties shall cause the Collateral Agent to be named as loss payee, for the ratable benefit of the Secured Parties, as to the Vessel Collateral, including, as trustee/mortgagee, and the Collateral Agent, as agent for the Secured Parties, to be named as an additional insured, with a waiver of rights of subrogation, under a marine and war-risk insurance policy, and the Collateral Agent, as agent for the Secured Parties, to be named as an additional insured, with a waiver of rights of subrogation, under the comprehensive general liability insurance, statutory workers' compensation insurance and longshoreman and harbor workers' act coverage policies. Such policies of insurance must also contain a provision prohibiting cancellation or the alteration of such insurance without at least thirty (30) days' prior written notice to the Collateral Agent of such intended cancellation or alteration.

(b) The Borrowers and the Guarantors agree to notify the Administrative Agent in writing within fifteen (15) days of any Event of Loss involving Vessel Collateral, whether or not such Event of Loss is covered by insurance. The Borrowers further agree to promptly notify its insurance company and to submit an appropriate claim and proof of claim to the insurance company in respect of any Event of Loss. As to the Vessel Collateral, the Borrowers and the Guarantors hereby irrevocably appoint the Collateral Agent as its agent and attorney-in-fact, each such agency being coupled with an interest, to make, settle and adjust claims under such policy or policies of insurance (regardless of whether a settlement or adjustment of a claim is an Event of Default) and to endorse the name of the Borrowers and the Guarantors on any check or other item of payment for the proceeds thereof; provided, however, that the Collateral Agent agrees that it will not exercise any rights under the power of attorney provided in this Section 8.08(b) unless one or more Events of Default exist under this Agreement.

Section 8.09 Accounts and Records. The Borrowers and the Guarantors will keep books of record and accounts in which true and correct entries will be made as to all material matters of all dealings or transactions in relation to the respective business and activities, sufficient to permit reporting in accordance with GAAP, consistently applied.

Section 8.10 Right of Inspection. The Borrowers and the Guarantors will permit any officer, employee or agent of the Collateral Agent (acting upon written direction from the Required Lenders) or any Lender to visit and inspect the Vessel Collateral subject to applicable safety rules and procedures, at such reasonable times and on reasonable notice and without hindrance or delay and as often as the Administrative Agent (acting upon the written direction

from the Required Lenders) may reasonably desire. Notwithstanding the foregoing, except following an Event of Default that has occurred and is continuing, the Collateral Agent (acting upon written direction from the Required Lenders) shall not visit or inspect the Vessel Collateral more frequently than twice a year, individually or as a group, and then at their own expense, except that the Borrowers will be responsible for such expense following the occurrence and during the continuance of an Event of Default; provided that any such visits or inspections shall occur when the applicable Vessel is shoreside at a location involved in the ordinary course of providing its services under its then applicable charter or other vessel service contract.

Section 8.11 Maintenance of Properties.

(a) The Borrowers and the Guarantors shall maintain and preserve all of their respective Properties (and any Property leased by or consigned to any of them or held under title retention or conditional sales contracts) that are used or useful in the conduct of their respective business in the ordinary course (other than Stacked Vessels) in good working order and condition at all times, ordinary wear and tear excepted, and make all repairs, replacements, additions, betterments and improvements to their respective Properties to the extent necessary so that any failure will not reasonably be expected to have a Material Adverse Effect. Except with respect to Stacked Vessels, without limiting the generality of the foregoing, the Borrowers and the Guarantors shall at all times maintain the Vessel Collateral in compliance with the requirements of the American Bureau of Shipping or any other classification society acceptable to the Required Lenders, free of all recommendations and notations of such classification society affecting class.

(b) (i) Each Loan Party that owns or operates, or will own or operate, Vessel Collateral will not transfer or change the flag or documentation of such Vessel Collateral without (x) notifying the Collateral Agent no fewer than 15 Business Days (or such shorter period as the Required Lenders shall agree in their reasonable discretion) before the proposed date of such transfer or change and (y) promptly executing and delivering (or causing to be executed and delivered) all such documents, agreements or other instruments and/or taking (or causing to be taken) all such actions (including the making of any recordings or filings) as are necessary or desirable to perfect, protect and preserve the security interest in favor of the Collateral Agent or trustee/mortgagee, as the case may be, for the benefit of the Secured Parties in such Vessel Collateral granted pursuant to the Fleet Mortgage (or provide an alternative security interest or other collateral reasonably acceptable to the Collateral Agent and the Initial Lenders (including in respect of the jurisdiction under which such collateral is being given); it being understood and agreed that, without limiting the foregoing, in order for such alternative security interest to be reasonably acceptable to the Collateral Agent and the Initial Lenders, the Collateral Agent and the Initial Lenders shall have received an opinion of counsel in the appropriate jurisdiction in form and substance reasonably satisfactory to the Collateral Agent and the Initial Lenders as to the creation, validity and perfection of such alternative security interest).

(ii) Notwithstanding anything in the Loan Documents to the contrary, in the event of a change of the flag or documentation of Vessel Collateral permitted under this Section 8.11(b) and Section 9.09, the Investment made in connection with such a transaction may be structured



as a Foreign Vessel Reflagging Transaction. A “Foreign Vessel Reflagging Transaction” is defined as one or more Investments by the Parent Borrower or a Restricted Subsidiary of Effective Date Cash, any proceeds (directly or indirectly) of any Loans or other cash to one or more Subsidiaries, the proceeds of which will be used by a Restricted Subsidiary to purchase Vessel Collateral from a Loan Party, the net effect of which is that (x) the Vessel Collateral subject to such Foreign Vessel Reflagging Transaction shall continue to be Vessel Collateral (and the requirements under Section 8.11(b)(i), shall apply to such Vessel Collateral and Foreign Vessel Reflagging Transaction) and (y) such Effective Date Cash and any proceeds (directly or indirectly) of any Loans are substantially contemporaneously returned to the Parent Borrower or the Restricted Subsidiary making the initial Investment (and any such amounts that constitute Effective Date Cash or proceeds of Loans shall continue to constitute Effective Date Cash or proceeds of Loans, as applicable), in each case, in order to facilitate a change to the flag or documentation of any Vessel Collateral (so long as such Investments constitute Permitted Investments or Investments not restricted by Section 9.01). After giving full effect to any Foreign Vessel Reflagging Transaction where the transaction steps occur substantially simultaneously, a receipt by any Subsidiary of such Effective Date Cash or proceeds of Loans and the existence of any intercompany loan receivable created by the further loaning of such funds by such Subsidiary to another Subsidiary shall not in itself trigger a requirement to provide additional Collateral or to enter into any additional Loan Documents.

**Section 8.12 Notice of Certain Events.** (a) The Parent Borrower shall promptly notify the Administrative Agent in writing if the Parent Borrower learns of the occurrence of any event which constitutes a Default, together with a detailed statement by a Responsible Officer of the Parent Borrower as to the nature of the Default and the steps being taken to cure the effect of such Default.

(b) The Parent Borrower shall promptly notify the Administrative Agent in writing of any change in organizational jurisdiction, location of the principal place of business or the office where records concerning accounts and contract rights are kept, or any change in the federal taxpayer identification number or organizational identification number of the Parent Borrower or any other Loan Party.

**Section 8.13 ERISA Information and Compliance.** The Parent Borrower will furnish to the Administrative Agent (i) as soon as is administratively practicable following a request from the Required Lenders copies of each annual or other report filed with the United States Secretary of Labor or the PBGC, copies of each annual and other report with respect to any Plan sponsored or maintained by the Parent Borrower, any of its Restricted Subsidiaries, or any ERISA Affiliate and (ii) as soon as is administratively practicable upon becoming aware of the occurrence of any (A) ERISA Event or (B) “prohibited transaction,” as such term is defined in Section 4975 of the Code, in connection with any Plan sponsored or maintained by the Parent Borrower, any of its Restricted Subsidiaries or any ERISA Affiliate that could reasonably be expected to have a Material Adverse Effect, a written notice signed by a Responsible Officer of the Parent Borrower specifying the nature thereof, what action the Parent Borrower is taking or proposes to take with respect thereto, and, when known, any action taken by the Internal Revenue Service with respect thereto. The Parent Borrower will comply with all of the applicable funding and other requirements of ERISA as such requirements relate to the Plans of the Parent Borrower or any of its Restricted Subsidiaries.

Section 8.14 Security.

(a) The Indebtedness shall be secured by the following:

(i) the Vessels listed on Schedule 8.14 and any Vessels (if any) described in Section 8.14(a)(iii), and any Property and rights of the Co-Borrower or the other Loan Parties related to the foregoing or otherwise described in the Guaranty and Collateral Agreement and excepting, as provided in the Guaranty and Collateral Agreement, Excluded Assets, unless such Vessels have been released in accordance with Section 11.11 in connection with transactions permitted under the Loan Documents and/or substituted as provided in Section 8.14(b) below;

(ii) not later than thirty days (or such longer period as the Required Lenders shall agree in their reasonable discretion) following the formation, acquisition or designation of any Restricted Subsidiary of the Parent Borrower which results in Parent Borrower having Restricted Subsidiaries (other than the Co-Borrower and the then existing Guarantors) with assets of \$50,000,000 or more in the aggregate, then such Restricted Subsidiary or Restricted Subsidiaries as are satisfactory to the Initial Lenders in their sole discretion (such that such Restricted Subsidiaries not guarantying the Indebtedness have assets of less than \$50,000,000 in the aggregate) shall (x) guaranty the payment and performance of the Indebtedness by executing and delivering in favor of the Agents, for the ratable benefit of the Secured Parties, a joinder to the Guaranty and Collateral Agreement or a guaranty agreement comparable to the Guaranty and Collateral Agreement but in form and substance satisfactory to the Agents and the Required Lenders and (y) secure such guaranty by executing and delivering in favor of the Agents, for the ratable benefit of the Secured Parties, a joinder to the Guaranty and Collateral Agreement or a personal property agreement comparable to the Guaranty and Collateral Agreement but in form and substance reasonably satisfactory to the Agents and the Required Lenders. Notwithstanding the foregoing, in the event that, but for this sentence, a Foreign Subsidiary or Foreign Subsidiary Holding Company would be required to execute and deliver a guaranty, then in lieu of such guaranty the Parent Borrower or applicable Restricted Subsidiary of Parent Borrower that owns such Foreign Subsidiary or Foreign Subsidiary Holding Company shall promptly pledge to the Administrative Agent, for the ratable benefit of the Lenders, (x) the lesser of (1) all of the equity in such Foreign Subsidiary or Foreign Subsidiary Holding Company that it owns and (2) sixty-five percent (65%) of the equity issued and outstanding in such Foreign Subsidiary or Foreign Subsidiary Holding Company (any such Foreign Subsidiary or Foreign Subsidiary Holding Company described in this sentence, a "Specified Foreign Subsidiary") and (y) one hundred percent (100%) of the Equity Interests of the entity or entities that are the immediate parent or parents of such Specified Foreign Subsidiary as security for the Indebtedness (and if the pledgor is not a Guarantor, such pledgor shall guaranty the Indebtedness and become a Guarantor), all pursuant to documentation as necessary and appropriate. For the avoidance of doubt, in the event a Specified Foreign

Subsidiary is owned by more than one Restricted Subsidiary, the obligation to pledge sixty-five percent (65%) of the equity of such Specified Foreign Subsidiary can be satisfied by one or more of the entities that are the immediate parent or parents such Specified Foreign Subsidiary pledging Equity Interests totaling sixty-five percent (65%) of the equity thereof. Furthermore, if a Restricted Subsidiary of the Parent Borrower guarantees the Debt of others, it shall also guaranty the Indebtedness on at least a *pari passu* basis with such other guarantee;

(iii) substantially contemporaneously with the acquisition (including by way of construction or through a Permitted Asset Swap but excluding any Foreign Vessel Reflagging Transaction covered by Section 8.11(b)) by the Parent Borrower or any of its Restricted Subsidiaries of any Vessels using (1) Effective Date Cash, (2) Vessel Collateral or (3) any proceeds (directly or indirectly) of (A) any Loans or (B) any sale, transfer or other disposition of Vessel Collateral, (x) the Parent Borrower or such Restricted Subsidiary shall mortgage, substantially on terms and conditions set forth in the Fleet Mortgage, such Vessel so as to grant to the Collateral Agent, for the ratable benefit of the Secured Parties, Fleet Mortgage Liens (or the foreign equivalent) thereon and first priority (subject to Permitted Liens of the type described in clause (k) of the definition thereof) security interests (or the foreign equivalent) in all related Property; provided that the foregoing shall be inapplicable (I) with respect to any Vessel that is acquired pursuant to a Permitted Leveraged Vessel Acquisition Transaction, for so long as such Vessel is subject to a Lien securing the applicable Debt incurred to finance such Vessel and (II) with respect to any acquired Vessel that (x) is not an MPSV or High Spec Vessel and (y) has a Specified Value not in excess of \$2,500,000; provided, further, that the aggregate Specified Values attributable to such excluded Vessels under the preceding clauses (II)(x) and (II)(y) shall not exceed \$25,000,000; provided, further, that notwithstanding anything to the contrary in Section 8.14(a)(ii), if the Restricted Subsidiary that has acquired any such Vessel that is required to become Collateral is not already a Guarantor, such Restricted Subsidiary of the Parent Borrower shall become a Guarantor; and

(iv) substantially contemporaneously with the acquisition (including through a Permitted Asset Swap) by the Parent Borrower or any of its Restricted Subsidiaries of any Property that is not a Vessel using (1) Effective Date Cash, (2) Vessel Collateral or (3) any proceeds (directly or indirectly) of (A) any Loans or (B) any sale, transfer or other disposition of Vessel Collateral, (x) to the extent the security interest in such Property does not automatically attach upon the acquisition thereof pursuant to the Guaranty and Collateral Agreement with the priority of perfection required thereunder, the Parent Borrower shall execute and deliver, or cause its applicable Restricted Subsidiary to execute and deliver, to the Administrative Agent and/or the Collateral Agent all such further documents, agreements and instruments (including without limitation further security agreements, mortgages, financing statements, continuation statements, and assignments of accounts and contract rights) necessary or desirable to cause such assets or property to be subject to a security interest in favor of the Collateral Agent with the priority and perfection required thereunder and (y) notwithstanding anything to the contrary in Section 8.14(a)(ii), if the Restricted Subsidiary that has acquired such Property is not already a Guarantor, such Restricted Subsidiary shall become a Guarantor.

(b) If either (I) except as otherwise permitted by clause (D) or (E) of the proviso to Section 9.01(a), Vessel Collateral or Specified Equity Interests are to be transferred in connection with a Permitted Investment or a Restricted Payment or an Asset Sale permitted under this Agreement the result of which would be the release of the Liens on Vessel Collateral securing the Indebtedness in accordance with the terms hereof (but, in the case of an Asset Sale, only if and to the extent the Parent Borrower reinvests the Net Proceeds in respect thereof in Vessels or in Equity Interests in one or more entities owning Vessels in accordance with this Agreement) or (II) any Borrower or any other Loan Party, in its sole discretion, desires to mortgage an Additional Eligible Vessel, such Borrower or other Loan Party, as the case may be, will, substantially simultaneously with such transfer, as consideration for the release of Liens on such existing Vessel Collateral (in the case of the preceding clause (I)) and in the case of both the preceding clauses (I) and (II), (i) mortgage, substantially on the terms and conditions set forth in the Fleet Mortgage, one or more additional Vessels (such Vessels mortgaged pursuant to this Section 8.14(b), including for the avoidance of doubt any Additional Eligible Vessels that are mortgaged pursuant to this Section 8.14(b), the “Additional Vessels” and each an “Additional Vessel”) in each case, which are not otherwise subject to a Lien (other than a Permitted Lien of the type described in clause (k) of the definition thereof) and which, in the case of the preceding clause (I), have an aggregate Specified Value equal to or greater than the remainder (if positive) of (A) the Specified Value of the transferred Vessel Collateral less (B) any prepayment (whether optional or mandatory) of the Loans made in connection with such Permitted Investment or Asset Sale and/or (ii) supplement and amend the applicable Security Instrument, or enter into additional collateral documents, pursuant to documentation as necessary and appropriate, so as to grant to the Collateral Agent, for the ratable benefit of the Secured Parties, Fleet Mortgage Liens (or the foreign equivalent) thereon and first priority security interests (or the foreign equivalent) in all related Property (the transactions described in clauses (i) and (ii) with respect to a transfer of Vessel Collateral or Specified Equity Interests in connection with a Permitted Investment or as otherwise expressly contemplated by this Agreement, collectively, a “Collateral Substitution Transaction”); provided that, for the avoidance of doubt, to the extent the amount in clause (B) above is equal to or greater than the amount in clause (A) above, the Borrowers shall be under no obligation to provide additional Vessel Collateral hereunder with respect to such transaction; provided further, that notwithstanding the foregoing or anything to the contrary herein, no such Permitted Investment and related Collateral Substitution Transaction shall be permitted hereunder if (x) the Parent Borrower would not have Available Liquidity after giving effect thereto of at least \$65,000,000 or (y) the aggregate Specified Value of all Vessels so transferred pursuant to a Permitted Investment and pursuant to clause (D) or (E) of the proviso to Section 9.01(a) in any consecutive 91-day period would exceed \$115,000,000. Each Loan Party that owns an Additional Vessel shall, concomitantly with its acquisition of each such Additional Vessel, to the extent that such Additional Vessel is registered under the laws and flag of the United States, execute, deliver and cause to be duly recorded with the National Vessel Documentation Center a first preferred ship mortgage, in form and substance equivalent to the Fleet Mortgage (or, with respect to any other Additional Vessel, take such other actions as are required under Applicable Law to provide a commensurate security interest or

alternative security interest reasonably acceptable to the Required Lenders), and shall otherwise comply with the provisions of Section 8.14 hereof. The parties hereby acknowledge that any Additional Vessel made subject to a mortgage lien in connection with a Collateral Substitution Transaction is in fact, and is intended by the parties to this Agreement and the other Loan Parties to be, a transfer that is a contemporaneous exchange for new value to the applicable Loan Party, as contemplated by 11. U.S.C. 547(c)(1).

Section 8.15 Sanctions, Anti-Corruption Laws and Anti-Terrorism Laws. The Parent Borrower shall maintain in effect the policies and procedures with respect to Sanctions and Anti-Terrorism Laws specified in Section 7.09(d) and the anti-corruption laws specified in Section 7.20.

Section 8.16 Future Designation of Unrestricted Subsidiaries.

(a) The Board of Directors of the Parent Borrower may designate any Subsidiary (other than the Co-Borrower) to be an Unrestricted Subsidiary. No Subsidiary may be designated as an Unrestricted Subsidiary unless (i) both at the time of such designation and immediately after giving effect thereto, no Default shall have occurred and be continuing, (ii) such Subsidiary (A) has no Debt other than Non-Recourse Debt, and (B) is a Person with respect to which neither the Parent Borrower nor any of its Restricted Subsidiaries has any direct or indirect obligation (1) to subscribe for additional Equity Interests or (2) to maintain or preserve such Person's financial condition or to cause such Person to achieve any specified levels of operating results, and (iii) all outstanding Investments by the Parent Borrower and its Restricted Subsidiaries (except to the extent repaid in cash) in the Subsidiary so designated are permitted pursuant to Section 9.01 (it being understood that such Investments shall be deemed Restricted Payments made at the time of such designation (except to the extent they qualify as Permitted Investments) in an amount equal to the greater of (y) the net book value of such Investments at the time of such designation and (z) the Specified Value of such Investments at the time of such designation, but in each case subject to the last sentence of the definition of "Investment"). If, at any time, any Unrestricted Subsidiary would fail to meet the foregoing requirements of (ii)(A), (ii)(B) or (iii), above, as an Unrestricted Subsidiary, it shall thereafter cease to be an Unrestricted Subsidiary for purposes of this Agreement and any Debt of such Subsidiary shall be deemed to be incurred by a Restricted Subsidiary of the Parent Borrower as of such date. Schedule 7.14 sets forth a list of all Unrestricted Subsidiaries as of the Effective Date.

(b) Any designation of a Subsidiary shall be evidenced to the Administrative Agent by delivery to the Administrative Agent of a resolution of the Board of Directors giving effect to such action and evidencing the valuation of any Investment relating thereto (as determined in good faith by the Board of Directors) and an Officer's Certificate certifying that such action complied with this Section 8.16.

Section 8.17 Post-Closing Undertakings. Within the time periods specified on Schedule 8.17 (or such later date to which the Required Lenders (with written notice to the Administrative Agent) consent), comply with the provisions set forth in Schedule 8.17.

Section 8.18 Collateral Proceeds Account. The Borrowers and each Guarantor shall cause (x) the Net Proceeds (to the extent in the form of cash, Cash Equivalents, securities or like instruments) from any Asset Sale and (y) the net cash proceeds realized from the sale or assignment of any construction contract related to the Vessels described in Schedule 8.17 or any other Vessel under construction as to which progress payments are being made in accordance with the definition of “Excess Proceeds”, or monies of whatsoever nature paid to the Parent Borrower or any of its Restricted Subsidiaries in respect of such contracts or such Vessels described in Section 8.17 or any other Vessel under construction as to which progress payments are being made in accordance with the definition of “Excess Proceeds”, including, without limitation, the Vessel purchase price (or any refund thereof), commissions, insurances, bonds, damages, awards or judgments, to be deposited in a Collateral Proceeds Account substantially contemporaneously with the receipt thereof (except to the extent constituting securities or other instruments that have otherwise been pledged as Collateral to secure the Indebtedness by physical delivery thereof, if physical certificates exist, or otherwise pursuant to arrangements reasonably satisfactory to the Initial Lenders), and shall cause all such Net Proceeds to remain therein until the earliest of (i) the reinvestment of such Net Proceeds in accordance with the definition of “Excess Proceeds”, (ii) the application of such Net Proceeds in accordance with Section 3.04 and (iii) such Net Proceeds becoming Declined Amounts. For the avoidance of doubt, nothing in this Section 8.18 shall limit in any way the Parent Borrower’s obligations under Section 3.04 or Section 8.14.

## **ARTICLE IX**

### **Negative Covenants**

Until the Commitments have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder and all other amounts payable under the Loan Documents shall have been paid in full, the Borrowers covenant and agree with the Administrative Agent and the Lenders on behalf of the Loan Parties that:

Section 9.01 Restricted Payments. (a) The Parent Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, (i) declare or pay any dividend or make any other payment or distribution on account of the Parent Borrower’s or any of its Restricted Subsidiaries’ Equity Interests (including, without limitation, any such payment in connection with any merger or consolidation involving Parent Borrower) or to the direct or indirect holders of Parent Borrower’s Equity Interests in their capacity as such (other than dividends or distributions payable in Equity Interests (other than Disqualified Stock) of Parent Borrower); (ii) Redeem (including, without limitation, in connection with any merger or consolidation involving the Borrower) any Equity Interests of the Parent Borrower or any direct or indirect parent of the Parent Borrower (other than any such Equity Interests owned by the Parent Borrower or any Restricted Subsidiary of the Parent Borrower); (iii) Redeem (x) the 2019 Convertible Senior Notes, the 2020 Senior Notes, the 2021 Senior Notes or any Debt incurred under a Replacement Indenture in respect thereof, (y) Junior Lien Debt, or (z) any Debt that is subordinated in right of payment to the Indebtedness or the Loan Guarantees, as the case may be, except a payment of interest or a payment of principal at Stated Maturity; or (iv) make any Restricted Investment (all such payments and other actions set forth in clauses (i) through (iv) above being collectively referred to as “Restricted Payments”) unless at the time of and after giving effect to such Restricted Payment:

(A) no Default or Event of Default shall have occurred and be continuing or would occur as a consequence thereof;

(B) the Parent Borrower would, at the time of such Restricted Payment and after giving Pro Forma Effect thereto as if such Restricted Payment had been made at the beginning of the Test Period, have been permitted to incur at least \$1.00 of additional Debt pursuant to the Minimum Fixed Charge Coverage Ratio Test; and

(C) such Restricted Payment, together with the aggregate amount of all other Restricted Payments made by the Parent Borrower and its Restricted Subsidiaries after the 2004 Issue Date (excluding Restricted Payments permitted by Section 9.01(b)(ii), (iii), (iv), (vi), (vii), (viii), (ix), (x), (xi), (xiii), (xiv) and (xv) but including Restricted Payments permitted by Section 9.01(b)(i), (v) and (xii), is less than the sum of the following (the "Restricted Payments Basket"): (I) 50% of the cumulative Consolidated Net Income of the Borrower for the period (taken as one accounting period) from January 1, 2004 to the end of the Parent Borrower's most recently ended fiscal quarter for which internal financial statements are available at the time of such Restricted Payment (or, if such Consolidated Net Income for such period is a deficit, less 100% of such deficit), plus (II) subject to Section 9.01(b)(ii), 100% of the aggregate net cash proceeds, and the Fair Market Value of any property other than cash, received by the Parent Borrower since January 1, 2004 from the issue or sale of Equity Interests of the Borrower (other than Disqualified Stock) (other than any Permitted Warrant Transaction) or of Disqualified Stock or debt securities of the Parent Borrower that have been converted into, or exchanged for, such Equity Interests (other than any such Equity Interests, Disqualified Stock or convertible debt securities sold to a Restricted Subsidiary of the Parent Borrower and other than Disqualified Stock or convertible debt securities that have been converted into, or exchanged for, Disqualified Stock), plus (III) to the extent that any Restricted Investment that was made after the 2004 Issue Date is sold for cash or otherwise liquidated or repaid for cash, the lesser of (1) cash return of capital with respect to such Restricted Investment (less the cost of disposition, if any) and (2) the initial amount of such Restricted Investment, plus (IV) [reserved], plus (V) \$25,000,000);

provided that, notwithstanding anything herein to the contrary, this Section 9.01(a) shall not permit (A) any Redemption of Debt by the Parent Borrower or any of its Restricted Subsidiaries unless (i) the Parent Borrower would, at the time of such Redemption of Debt and after giving Pro Forma Effect thereto as if such Redemption of Debt had been made at the beginning of the Test Period, have a Senior Secured Leverage Ratio not in excess of 2:00 to 1:00 and (ii) substantially simultaneously therewith the Borrowers shall make an optional prepayment of the Loans in accordance with Section 3.04(a) in an amount at least equal to the amount of such

Redemption of Debt, (B) the payment of any dividend or distribution using Vessel Collateral or Specified Equity Interests or the proceeds thereof, (C) the payment of any dividend or distribution using any other Property unless (i) the Parent Borrower would, at the time of such dividend or distribution and after giving Pro Forma Effect thereto as if such dividend or distribution had been made at the beginning of the Test Period, have a Senior Secured Leverage Ratio not in excess of 2.00:1.00, (ii) the Parent Borrower has Available Liquidity of at least \$65,000,000 as determined on a Pro Forma Basis for such dividend or distribution as of the last day of the most recently ended fiscal quarter for which internal financial statements are available at the time of such dividend or distribution and (iii) substantially simultaneously therewith the Borrowers shall make an optional prepayment of the Loans in accordance with Section 3.04(a) in an amount at least equal to the amount of such dividend or distribution, (D) any Restricted Investment of Vessel Collateral or Specified Equity Interests or the proceeds thereof in Persons that are not Loan Parties unless (i) the Parent Borrower would, at the time of such Investment and after giving Pro Forma Effect thereto as if such Investment had been made at the beginning of the Test Period, have a Senior Secured Leverage Ratio not in excess of 2.00:1.00 and (ii) substantially simultaneously therewith the Borrowers shall make an optional prepayment of the Loans in accordance with Section 3.04(a) in an amount at least equal to the amount of such Investment or (E) any other Restricted Investments not described in the preceding clause (D) unless (i) the Parent Borrower would, at the time of such Investment and after giving Pro Forma Effect thereto as if such Restricted Investment had been made at the beginning of the Test Period, have a Senior Secured Leverage Ratio not in excess of 2.00:1.00 and (ii) substantially simultaneously therewith the Borrowers shall make an optional prepayment of the Loans in accordance with Section 3.04(a) in an amount at least equal to the amount of such Investment.

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

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

(ii) the Redemption of any Debt of the Borrowers or any Guarantor (including the 2019 Convertible Senior Notes, the 2020 Senior Notes, the 2021 Senior Notes or any Debt incurred under a Replacement Indenture in respect thereof) or any Equity Interests of the Parent Borrower or any of its Restricted Subsidiaries in exchange for, or out of the net cash proceeds of the substantially concurrent sale (other than to a Restricted Subsidiary of the Parent Borrower) of, other Equity Interests of the Parent Borrower (other than any Disqualified Stock), provided that the amount of any such net cash proceeds that are utilized for any such Redemption shall be excluded from Section 9.01(a)(C)(II);

(iii) the Redemption of Debt of Borrowers or any Guarantor (including the 2019 Convertible Senior Notes, the 2020 Senior Notes, the 2021 Senior Notes or any Debt incurred under a Replacement Indenture in respect thereof) with the net cash proceeds from an incurrence of, or in exchange for, Permitted Refinancing Indebtedness;

(iv) the payment of any dividend or distribution (other than with Vessel Collateral or Specified Equity Interests or the proceeds thereof) by a Restricted



Subsidiary of the Parent Borrower to the Parent Borrower or any of its other Restricted Subsidiaries, and if such Restricted Subsidiary is not a Wholly-Owned Restricted Subsidiary, to minority holders of the Equity Interests of such Restricted Subsidiary so long as the Parent Borrower or another Restricted Subsidiary receives at least its pro rata share of such dividend or distribution;

(v) so long as no Default or Event of Default has occurred and is continuing, the Redemption of any Equity Interests (other than with Vessel Collateral or Specified Equity Interests or the proceeds thereof) of the Parent Borrower held by any employee, director or consultant of the Parent Borrower or any of its Restricted Subsidiaries pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or other agreement or arrangement, provided that the aggregate price paid for all such Redeemed Equity Interests shall not exceed \$500,000 in any calendar year (with unused amounts in any fiscal year being carried over to succeeding fiscal years);

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

(vii) in connection with an acquisition by the Parent Borrower or by any of its Restricted Subsidiaries, the return to the Parent Borrower or any of its Restricted Subsidiaries of Equity Interests of the Parent Borrower or any of its Restricted Subsidiaries constituting a portion of the purchase price consideration in settlement of indemnification claims;

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

(ix) the making of cash payments in connection with any conversion of Convertible Indebtedness in an aggregate amount since the Effective Date not to exceed the sum of (a) the principal amount of such Convertible Indebtedness plus (b) payments received by the Parent Borrower or any of its Restricted Subsidiaries pursuant to the exercise, settlement or termination of any related Permitted Bond Hedge Transaction if the Parent Borrower has Available Liquidity as of the last day of the most recently ended fiscal quarter for which internal financial statements are available at the time of such Redemption of at least \$65,000,000 as determined on a Pro Forma Basis for such Redemption;

(x) (a) any cash payments in connection with a Permitted Bond Hedge Transaction and (b) the settlement of any related Permitted Warrant Transaction (i) by delivery of shares of the Parent Borrower's common stock upon settlement thereof or (ii) by (A) set-off against the related Permitted Bond Hedge Transaction or (B) payment of an early termination amount thereof in common stock upon any early termination thereof;

(xi) the Redemption of Debt (other than with Vessel Collateral or Specified Equity Interests or the proceeds thereof) of the Borrowers or any Guarantor (including the 2019 Convertible Senior Notes, the 2020 Senior Notes, the 2021 Senior Notes or any Debt incurred under a Replacement Indenture in respect thereof) if the Parent Borrower has Available Liquidity as of the last day of the most recently ended fiscal quarter for which internal financial statements are available at the time of such Redemption of at least \$65,000,000 as determined on a Pro Forma Basis for such Redemption;

(xii) the payment of any cash dividend or distribution by the Parent Borrower with respect to any preferred Equity Interest that does not constitute Disqualified Stock or any Disqualified Stock that is permitted to be incurred under Section 9.02 in an aggregate amount not to exceed \$25,000,000 per annum; so long as (A) such cash dividend or distribution does not exceed a percentage reasonably acceptable to the Initial Lenders, (B) the proceeds of the issuance of such preferred Equity Interests or permitted Disqualified Stock were or are being used to finance a Permitted Acquisition of, or Permitted Investment in, a Permitted Business or an acquisition of one or more Vessels, (C) in each case on the date of such Permitted Acquisition, Permitted Investment or the date such Vessel(s) or person was acquired or merged, consolidated or amalgamated with or into the Parent Borrower or a Restricted Subsidiary of the Parent Borrower, as applicable, after giving Pro Forma Effect thereto as if such transaction had been made at the beginning of the Test Period, the Consolidated Fixed Charge Coverage Ratio for the Parent Borrower and its Restricted Subsidiaries immediately after the date of such Permitted Acquisition, Permitted Investment or acquisition of one or more Vessels, as applicable, would be no worse than the Consolidated Fixed Charge Coverage Ratio for the Parent Borrower and its Restricted Subsidiaries immediately prior to such issuance and (D) the Parent Borrower has Available Liquidity as determined on a Pro Forma Basis as of the last day of the most recently ended fiscal quarter for which internal financial statements are available at the time of the payment of any such cash dividend or distribution, of at least \$65,000,000;

(xiii) Restricted Payments (other than with Vessel Collateral or Specified Equity Interests or the proceeds thereof), including repurchases of Equity Interests in the Parent Borrower, in an aggregate amount not to exceed the lesser of (a) \$25,000,000 (but only to the extent there is capacity to make Permitted Investments in reliance on clause (h) of the definition thereof) and (b) the amount available at such time for Permitted Investments made in reliance on clause (h) of the definition thereof so long as, after giving Pro Forma Effect to any such Restricted Payment, the Parent Borrower has Available Liquidity as of the last day of the most recently ended fiscal quarter for which internal financial statements are available at the time of such prepayment of at least \$65,000,000;

(xiv) redemption of any rights under the Parent Borrower's Rights Agreement dated July 1, 2013; and

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

The amount of all Restricted Payments (other than cash) shall be (A) in the case of Vessel Collateral or the proceeds thereof or Specified Equity Interests or the proceeds thereof, the amount determined in accordance with Section 1.06 and (B) otherwise, the Fair Market Value on the date that asset(s) or securities are proposed to be paid, transferred or issued by the Parent Borrower or such Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment, except that the Fair Market Value (or, if applicable the amount determined in accordance with Section 1.06) of any non-cash dividend made within 60 days after the date of declaration shall be determined as of such declaration date. The Fair Market Value of any non-cash Restricted Payment shall be determined in the manner contemplated by the definition of the term "Fair Market Value," and the results of such determination shall be evidenced by an Officer's Certificate delivered to the Administrative Agent. Not later than the date of making any Restricted Payment (other than a Restricted Payment permitted by Sections 9.01(b)(ii), (iii), (iv), (vi), (vii), (viii), (ix), (x), (xi), (xiii), (xiv) and (xv)), the Parent Borrower shall deliver to the Administrative Agent an Officer's Certificate stating that such Restricted Payment is permitted and setting forth the basis upon which the calculations required by this Section 9.01 were computed.

Section 9.02 Incurrence of Debt and Issuance of Disqualified Stock.

(a) The Parent Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, "incur" or an "incurrence") any Debt and the Parent Borrower shall not issue any Disqualified Stock and shall not permit any of its Restricted Subsidiaries to issue any Disqualified Stock; provided, however, that the Parent Borrower and its Restricted Subsidiaries may incur Debt, and the Parent Borrower may issue Disqualified Stock, in each case if the Consolidated Fixed Charge Coverage Ratio for the Test Period preceding the date on which such additional Debt is incurred or such Disqualified Stock is issued would have been at least 2.0 to 1.0 (the "Minimum Fixed Charge Coverage Ratio Test") at the time such additional Debt is incurred or such Disqualified Stock is issued, in each case as determined on a Pro Forma Basis (including a pro forma application of the net proceeds therefrom), as if the additional Debt or Disqualified Stock had been issued or incurred, as the case may be, at the beginning of such Test Period.

(b) The foregoing provisions shall not apply to the incurrence by the Parent Borrower or any of its Restricted Subsidiaries of any of the following:

(i) Junior Lien Debt or unsecured Debt of the Borrowers or any Guarantor (provided that such unsecured Debt satisfies the conditions set forth in clause (a) of the definition of "Junior Lien Debt") under Credit Facilities, in an aggregate principal amount at any one time outstanding not to exceed, together with any outstanding Permitted Refinancing Indebtedness in respect thereof (but excluding any Increased Amount) the greater of (1) \$600,000,000 and (2) 25% of the Parent Borrower's Consolidated Net Tangible Assets determined as of the end of the Parent Borrower's most recently completed fiscal quarter for which internal financial statements are available;

(ii) Existing Indebtedness;

(iii) Hedging Obligations;

(iv) Debt under this Agreement and the other Loan Documents;

(v) intercompany Debt between or among the Parent Borrower and any of its Restricted Subsidiaries; provided that (1) if a Borrower is the obligor on such Debt and the obligee is not the other Borrower or a Guarantor, such Debt must be expressly subordinated to the prior payment in full in cash of all obligations with respect to the Loans and (2) if a Guarantor is the obligor on such Debt and the obligee is neither a Borrower nor a Guarantor, such Debt must be expressly subordinated to the prior payment in full in cash of all obligations of such Guarantor with respect to its Loan Guarantee and (3)(i) any subsequent issuance or transfer of Equity Interests that results in any such Debt being held by a Person other than the Parent Borrower or a Restricted Subsidiary of the Parent Borrower, or (ii) any sale or other transfer of any such Debt to a Person that is neither the Parent Borrower nor a Restricted Subsidiary of the Parent Borrower, shall be deemed, in each case, to constitute an incurrence of such Debt by the Parent Borrower or such Restricted Subsidiary, as the case may be, as of the date of such issuance, sale or other transfer that is not permitted by this clause (v);

(vi) Debt in respect of bid, performance or surety bonds issued for the account of the Parent Borrower or any Restricted Subsidiary thereof, including guarantees or obligations of the Parent Borrower or any Restricted Subsidiary thereof with respect to letters of credit or letters of credit supporting such bid, performance or surety obligations (in each case other than for an obligation for money borrowed) or other forms of security or credit enhancement supporting performance obligations under service contracts, in each case, in the ordinary course of business;

(vii) the guarantee (A) by the Parent Borrower of Debt of any of its Restricted Subsidiaries that was permitted to be incurred by another provision of this Section 9.02 or (B) by any Restricted Subsidiary of the Parent Borrower of Debt of the Parent Borrower or another Restricted Subsidiary of the Parent Borrower that was permitted to be incurred by another provision of this Section 9.02; provided, that this clause (vii) shall not permit the guarantee by any Restricted Subsidiary of the Parent Borrower that is not a Loan Party of any Indebtedness incurred under Section 9.02(b)(i) (or any Permitted Refinancing Indebtedness in respect thereof) or Section 9.02(b)(x);

(viii) Permitted Refinancing Indebtedness incurred in exchange for, or the net proceeds of which are used to extend, refinance, renew, replace, defease or refund Debt incurred pursuant to Section 9.02(a), 9.02(b)(i), 9.02(b)(ii), this clause (viii) or Section 9.02(b)(xi);

(ix) Permitted Acquisition Indebtedness and any Permitted Refinancing Indebtedness in respect thereof (including any subsequent Permitted Refinancing Indebtedness in respect of any Debt previously incurred under this Section 9.02(b)(ix));

(x) Debt of the Borrowers (and any Guarantee thereof by a Guarantor) under the Revolver Facility in an aggregate principal amount at any time outstanding not to

exceed the lesser of (1) \$100,000,000 and (2) 85% of the Loan Parties' eligible accounts receivable so long as on or before the date on which the such Debt is incurred under the Revolver Facility, (y) the Administrative Agent, the Collateral Agent and the representative with respect to the Revolver Facility shall become a party to the Revolver/Term Intercreditor Agreement and (z) any other requirements set forth in the Revolver/Term Intercreditor Agreement shall have been satisfied; and

(xi) other Debt and/or Disqualified Stock in an aggregate principal amount and/or liquidation preference, as applicable, that, when taken together with the aggregate principal amount and/or liquidation preference, as applicable, of all other Debt and/or Disqualified Stock incurred pursuant to this clause (xi) and then outstanding will not exceed, together with any outstanding Permitted Refinancing Indebtedness in respect thereof (but excluding any Increased Amount) the greater of (1) \$75,000,000 (provided that, until the earlier of (y) the date that is 90 days after the Amendment No. 2 Effective Date and (z) the date on which the Field Examination Condition (as defined in the 2019 Senior Credit Agreement as in effect on the date hereof) has been satisfied, the amount in this clause (1) shall equal \$100,000,000) and (2) 2.5% of the Parent Borrower's Consolidated Net Tangible Assets determined as of the end of the Parent Borrower's most recently completed fiscal quarter for which internal financial statements are available; provided that (i) any such Debt or Disqualified Stock shall not be secured by any assets that are Collateral and (ii) any such Debt or Disqualified Stock of a Loan Party referred to in this clause (xi) does not mature and does not have any mandatory or scheduled principal payments or sinking fund obligations prior to 91 days after the Maturity Date (except as a result of a customary change of control or asset sale repurchase offer provisions, subject to the prior making of any required payments on the Indebtedness hereunder).

(c) The Borrowers shall not, and shall not permit any Guarantor to, directly or indirectly, incur any Debt which by its terms (or by the terms of any agreement governing such Debt) is subordinated to any other Debt of the Parent Borrower, the Co-Borrower or of such Guarantor, as the case may be, unless such Debt is also by its terms (or by the terms of any agreement governing such Debt) made expressly subordinate to the Loans or the Loan Guarantee of such Guarantor, as the case may be, to the same extent and in the same manner as such Debt is subordinated pursuant to subordination provisions that are most favorable to the holders of any other Debt of the Parent Borrower, the Co-Borrower or of such Guarantor, as the case may be; provided, however, that no Debt shall be deemed to be contractually subordinated in right of payment to any other Debt solely by virtue of being unsecured.

(d) For purposes of determining compliance with this Section 9.02, in the event that an item of proposed Debt meets the criteria of more than one of the categories of Debt described in Section 9.02(b)(i) through (xi), or is entitled to be incurred pursuant to Section 9.02(a), the Parent Borrower shall be permitted to divide or classify such item of Debt on the date of its incurrence, or later divide or reclassify all or a portion of such item of Debt, in any manner that complies with this Section 9.02, and such item of Debt will be treated as having been incurred pursuant to one or more of such categories; provided that all Debt under this Agreement and the other Loan Documents shall at all times be deemed outstanding under

Section 9.02(b)(iv), all Junior Lien Debt under Credit Facilities shall at all times be deemed outstanding under Section 9.02(b)(i) and Debt under the Revolver Facility shall at all times be deemed outstanding under Section 9.02(b)(x). Accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of original issue discount and the payment of interest or dividends in the form of additional Debt or Disqualified Stock will not be deemed to be an incurrence of Debt or Disqualified Stock for purposes of this covenant.

Section 9.03 Liens. The Parent Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create, incur or assume any Lien on any Collateral, except Permitted Liens.

Section 9.04 Merger or Consolidation.

(a) No Borrower shall consolidate or merge with or into (whether or not such Borrower is the surviving corporation), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to, another Person unless (i) such Borrower is the survivor or the Person formed by or surviving any such consolidation or merger (if other than such Borrower) or to which such sale, assignment, transfer, lease, conveyance or other disposition shall have been made (the "Successor Company") is a corporation, partnership or limited liability company organized or existing under the laws of the United States, any state thereof or the District of Columbia, (ii) the Successor Company (if other than such Borrower) assumes all the obligations of such Borrower under this Agreement pursuant to a customary assumption agreement, (iii) immediately after such transaction no Default or Event of Default exists, (iv) except in the case of a merger of the Parent Borrower or the Co-Borrower with or into a Wholly-Owned Restricted Subsidiary of the Parent Borrower that is a Loan Party, immediately after giving Pro Forma Effect to the transaction as if the same had occurred at the beginning of the applicable Test Period, either (1) the Successor Company may incur at least \$1.00 of additional Debt pursuant to the Minimum Fixed Charge Coverage Ratio Test, or (2) the Consolidated Fixed Charge Coverage Ratio of the Successor Company is no less than the Consolidated Fixed Charge Coverage Ratio of the Parent Borrower immediately before such transaction, and (v) if such Borrower is not the Successor Company in such transaction, each Guarantor (unless it is the Successor Company, in which case clause (ii) above will apply) confirms in a customary writing that its Loan Guarantee and the Liens granted by it pursuant to the Security Interests will apply to the Successor Company's obligations in respect of this Agreement and that its Loan Guarantee and such Liens will continue to be in effect.

(b) Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the properties or assets of a Borrower in accordance with Section 9.04(a) hereof, the Successor Company formed by such consolidation or into or with which such Borrower is merged or to which such sale, assignment, transfer, lease, conveyance or other disposition is made shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, assignment, transfer, lease, conveyance or other disposition, the provisions of this Agreement referring to the "Parent Borrower" or the "Co-Borrower", as applicable, shall refer instead to the Successor Company and not to the Parent Borrower or the Co-Borrower, as applicable), and may exercise

every right and power of the Parent Borrower or the Co-Borrower, as applicable, under this Agreement with the same effect as if such successor corporation had been named as the Parent Borrower or the Co-Borrower, as applicable, herein; provided, however, that the predecessor Borrower shall not be relieved from its obligations under this Agreement in the case of any such lease. For the purposes of this Section 9.04, a time charter, bareboat charter or Vessel management or similar agreement involving providing Vessels and related services to customers in the ordinary course of business shall not be deemed a lease.

Section 9.05 Minimum Available Liquidity. The Parent Borrower will not, as of the last day of any fiscal quarter, permit Available Liquidity to be less than the Minimum Liquidity Amount as of such date.

Section 9.06 Transactions with Affiliates. The Parent Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its Property to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate (each of the foregoing, an "Affiliate Transaction"), unless (a) such Affiliate Transaction is on terms that are no less favorable to the Parent Borrower or its relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Parent Borrower or such Restricted Subsidiary with an unrelated Person or, if there is no such comparable transaction, on terms that are fair and reasonable to the Parent Borrower or such Restricted Subsidiary, and (b) the Parent Borrower delivers to the Administrative Agent (i) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$20,000,000, a resolution of the Board of Directors of the Parent Borrower set forth in a certificate of a Responsible Officer certifying that such Affiliate Transaction complies with clause (a) above and that such Affiliate Transaction has been approved by a majority of the disinterested members of the Board of Directors and (ii) with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$50,000,000, an opinion as to the fairness to the Parent Borrower or the relevant Subsidiary of such Affiliate Transaction from a financial point of view issued by an accounting, appraisal or investment banking firm that is, in the judgment of the Board of Directors, qualified to render such opinion and is independent with respect to the Parent Borrower, provided that such opinion will not be required with respect to any Affiliate Transaction or series of related Affiliate Transactions involving either (i) shipyard contracts that are awarded following a competitive bidding process and approved by a majority of the disinterested members of the Board of Directors or (ii) an Affiliate in which an unrelated third person owns Voting Stock in excess of that owned by the Parent Borrower or any of its Restricted Subsidiaries; provided, however, that the following shall be deemed not to be Affiliate Transactions:

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

(B) transactions between or among the Loan Parties;

(C) Permitted Investments and Restricted Payments that are permitted by the provisions of Section 9.01 of this Agreement;

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

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

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

(G) registration rights or similar agreements with officers, directors or significant shareholders of the Parent Borrower or any of its Restricted Subsidiaries;

(H) issuance of Equity Interests (other than Disqualified Stock) by the Parent Borrower;

(I) the payment of reasonable and customary regular fees to directors of the Parent Borrower or any of its Restricted Subsidiaries who are not employees of the Borrower or any Affiliate;

(J) transaction with a Person that is an Affiliate of the Parent Borrower or any of its Restricted Subsidiaries solely because the Parent Borrower or any of its Restricted Subsidiaries owns an Equity Interest in such Person;

(K) time charter, bareboat charter or management agreements related to Vessels between the Parent Borrower or any of its Restricted Subsidiaries and a Joint Venture or Unrestricted Subsidiary or a Restricted Subsidiary that is not a Loan Party made on terms generally consistent with terms available in an arms-length transaction with an unrelated third party; and

(L) (i) any other transaction with an Affiliate reported in any Form 10-K, Form 10-Q or proxy statement filed by the Parent Borrower with the SEC since December 31, 2011 that was approved by the Board of Directors of the Parent Borrower and (ii) any other transaction with an Affiliate reported in any Form 10-K, Form 10-Q or proxy statement filed by the Parent Borrower with the SEC following the Effective Date that (x) is approved by the Board of Directors and (y) is substantially similar to any transaction described in clause (i) above.

Section 9.07 Burdensome Restrictions. The Parent Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any encumbrance or restriction on the ability of any Restricted Subsidiary of the Parent Borrower to do any of the following: (a)(i) pay dividends or make any



other distributions to the Parent Borrower or any of its Restricted Subsidiaries on its Equity Interests or (ii) pay any Debt owed to the Parent Borrower or any of its Restricted Subsidiaries (it being understood that the priority of any preferred stock in receiving dividends or liquidating distributions prior to dividends or liquidating distributions being paid on common stock shall not be deemed a restriction on the ability to pay dividends or make any other distributions on Equity Interests); (b) make loans or advances to the Parent Borrower or any of its Restricted Subsidiaries or (c) transfer any of its properties or assets to the Parent Borrower or any of its Restricted Subsidiaries, except for such encumbrances or restrictions existing under or by reason of

(1) the Existing Indebtedness,

(2) this Agreement and the Guaranty and Collateral Agreement,

(3) applicable law,

(4) any instrument governing (x) Debt or Equity Interests of a Person acquired by the Parent Borrower or any of its Restricted Subsidiaries as in effect at the time of such acquisition (except to the extent such Debt was incurred in connection with or in contemplation of such acquisition), which encumbrance or restriction is not applicable to any Person or the assets of any Person, other than the Person, or the assets of the Person, so acquired, provided that, in the case of Debt, such Debt was permitted by the terms of this Agreement to be incurred and (y) Permitted Acquisition Indebtedness to the extent applicable only to the acquired assets or to assets subject to such Debt,

(5) by reason of customary non-assignment provisions in leases entered into in the ordinary course of business and consistent with past practices,

(6) by reason of customary provisions restricting the transfer of copyrighted or patented materials consistent with industry practice,

(7) purchase money obligations for property acquired in the ordinary course of business that impose restrictions of the nature described in clause (c) above on the property so acquired,

(8) customary provisions in any agreement (x) creating any Hedging Obligations permitted under this Agreement or (y) governing any Junior Lien Debt or Revolver Facility,

(9) Permitted Refinancing Indebtedness with respect to any Debt referred to in clauses (1), (2), (4) and (8)(y) above, provided that the restrictions referred to in this Section 9.07 that are contained in the agreements governing such Permitted Refinancing Indebtedness are not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced,

(10) provisions with respect to the disposition or distribution of assets in joint venture agreements, asset sale agreements, stock sale agreements and other similar agreements, or

(11) those contracts, agreements or understandings that will govern Permitted Investments.

Section 9.08 Asset Sales. The Parent Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, consummate an Asset Sale (excluding for all purposes of this Section 9.08 any Event of Loss) unless (i) the Parent Borrower or such Restricted Subsidiary, as the case may be, receives consideration at the time of such Asset Sale at least equal to the Specified Value (the calculation of which shall be set forth in an Officer's Certificate delivered to the Administrative Agent) of the Collateral subject to such Asset Sale; and (ii) except in the case of a Permitted Asset Swap, (A) at least 75% of the aggregate consideration received by the Parent Borrower and its Restricted Subsidiaries from such Asset Sale and all other Asset Sales since the Effective Date on a cumulative basis is in the form of cash or Cash Equivalents; provided, however, that the amount of (w) any liabilities that are secured by Permitted Liens on the Collateral under clauses (a), (d), (e) and (k) of the definition thereof and that are assumed by the transferee of any such Property, rights or Equity Interests pursuant to a customary novation agreement that releases the Parent Borrower or such Restricted Subsidiary from further liability, (x) Liquid Equity Securities having an aggregate Specified Value in an amount not to exceed \$25,000,000 in the aggregate for all such Liquid Equity Securities received following the Effective Date and then held by the Parent Borrower and its Restricted Subsidiaries; provided, however, that the amount of any Liquid Equity Securities at any time shall be (1) the amount actually invested (measured at the time made), without adjustment for subsequent increases or decreases in the value of such Investment minus (2) the amount of dividends or distributions received in connection with such Investment and any return of capital and any payment of principal received in respect of such Investment that in each case is received in cash or Cash Equivalents by a Loan Party in a deposit account or securities account, as applicable, that is subject to an Account Control Agreement, (y) any securities, notes or other obligations received by the Parent Borrower or such Restricted Subsidiary from such transferee that are converted within 180 days by the Parent Borrower or such Restricted Subsidiary into cash (to the extent of the cash received in that conversion) and (z) Vessels and related Property installed or intended for use in the ordinary course of business on such Vessels (provided that Section 8.14(a)(iii) and Section 8.14(a)(iv) are complied with) shall each be deemed to be Cash Equivalents for purposes of this Section 9.08; or (B) such consideration is comprised entirely of cash, Cash Equivalents and/or Equity Interests (other than Liquid Equity Securities) of an entity engaged in a Permitted Business (such Equity Interests referred to in this clause (B), "Specified Non-Cash Consideration") so long as, in the case of Specified Non-Cash Consideration, the Investment in such Specified Non-Cash Consideration is permitted under clause (h) of the definition of "Permitted Investments" and the other applicable conditions set forth in such clause (h) are satisfied; provided, that the receipt of Liquid Equity Securities and Specified Non-Cash Consideration and Vessels and related Property installed or intended for use in the ordinary course of business on such Vessels shall be deemed to constitute Cash Equivalents only if and to the extent such Liquid Equity Securities, Specified Non-Cash Consideration and Vessels and related Property installed or intended for use in the ordinary course of business on such Vessels (a) are acquired and held by a Loan Party and (b)(i) in the case of Equity Securities and other personal property so acquired, are pledged (or, in the case of Liquid Equity Securities, the Securities Account which they are held is pledged) to the Collateral Agent, for the ratable benefit of the Lenders, pursuant to the Guaranty and Collateral Agreement and (ii) in the case of Vessels

and related Property installed or intended for use in the ordinary course of business on such Vessels, the Collateral Agent, for the ratable benefit of the Secured Parties, is granted a Fleet Mortgage Lien (or the foreign equivalent) thereon and first priority (subject to Permitted Liens of the type described in clause (k) of the definition thereof, as applicable) security interests (or the foreign equivalent) in all related Property installed or intended for use in the ordinary course of business on such Vessels.

Section 9.09 Composition of Vessel Collateral. Notwithstanding anything herein, the Parent Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, consummate any Permitted Investment, Restricted Investment, Asset Sale or Restricted Payment or any other transaction or take any other action (or fail to take any action) (including (i) making a change to the flag or documentation of any existing Vessel Collateral or (ii) the consummation of any Collateral Substitution Transaction where the Additional Vessel in respect of such Collateral Substitution Transaction has a different flag or documentation than the Vessel Collateral so transferred), in each case involving Vessel Collateral, if immediately after giving effect thereto, the aggregate Specified Value of all Vessel Collateral that is qualified to operate in coastwise trade of the United States (excluding, for the avoidance of doubt, any Vessel Collateral that is not subject to a first priority Lien in favor of the Collateral Agent, for the ratable benefit of the Secured Parties, and is otherwise subject only to Permitted Liens of the type described in clause (k) of the definition thereof) would be less than 62% of the amount of the aggregate Vessel Book Value of all Vessel Collateral as of the Effective Date (including, for purposes of this Section 9.09, the vessels described in Schedule 8.17 using the greater of (x) their estimated gross book value upon delivery and adjusted to their actual gross book value once delivered and (y) 90% of the expected net book value with respect to such vessel communicated to the Initial Lenders on May 5, 2017).

Section 9.10 Restrictions on Leveraged Vessel Acquisition Transactions. The Parent Borrower will not, and will not permit any Restricted Subsidiary of the Parent Borrower to, consummate any Leveraged Vessel Acquisition Transaction that is not a Permitted Leveraged Vessel Acquisition Transaction.

Section 9.11 Restrictions on Deposit Accounts. The Parent Borrower will not, and will not permit any Subsidiary of the Parent Borrower to, (i) use any Specified Deposit Account for purposes other than those set forth in the 2019 Senior Credit Agreement as in effect on the Amendment No. 2 Effective Date or permit any Specified Deposit Account to hold any funds not expressly contemplated by the 2019 Senior Credit Agreement as in effect on the Amendment No. 2 Effective Date or (ii) use any Collection Account or Collection/Disbursement Account (each as defined in the 2019 Senior Credit Agreement as in effect on the Amendment No. 2 Effective Date) for any purpose other than (A) collecting the (1) proceeds of accounts receivable and (2) proceeds transferred from other deposit or investment accounts of the Parent Borrower or any of its Subsidiaries and (B) disbursing those proceeds; provided that, in the case of any disbursement of proceeds of the type described in the foregoing clause (A)(2), such disbursement is made either no later than 3 Business Days after receipt of such proceeds in the applicable Collection Account or Collection/Disbursement Account or pursuant to a check, draft or other instrument written no later than 3 Business Days after receipt of such proceeds in the applicable Collection Account or Collection/Disbursement Account.

**ARTICLE X**  
**Events of Default; Remedies**

Section 10.01 Events of Default. One or more of the following events shall constitute an “Event of Default”:

(a) the Borrowers shall fail to pay any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof, by acceleration or otherwise; and (other than a payment due on the Maturity Date) such failure is not cured within three (3) Business Days after the applicable due date.

(b) the Borrowers shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in Section 10.01(a)) payable under any Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days.

(c) any representation or warranty made or deemed made pursuant to Section 6.02 by or on behalf of the Parent Borrower, the Co-Borrower or any Guarantor in or in connection with any Loan Document or any amendment or modification of any Loan Document or waiver under such Loan Document, or in any report, certificate, financial statement or other document furnished pursuant to any Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material adverse respect when made or deemed made pursuant to Section 6.02.

(d) the Parent Borrower, the Co-Borrower or any Guarantor shall fail to observe or perform any covenant, condition or agreement contained in Section 8.04 (with respect to the existence of the Borrowers), Section 8.07 or Section 8.12 or in Article IX.

(e) the Parent Borrower, the Co-Borrower or any Guarantor shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in Section 10.01(a), Section 10.01(b) or Section 10.01(d)) or any other Loan Document, and such failure shall continue unremedied for a period of thirty (30) days after the earlier to occur of (i) written notice thereof from the Administrative Agent to the Borrower (which notice will be given at the written request of the Required Lenders) or (ii) the chief executive officer or the chief financial officer (or a person holding a similar title) of the Parent Borrower, the Co-Borrower or any Guarantor otherwise becoming aware of such default.

(f) the Parent Borrower, the Co-Borrower or any Guarantor shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable.

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (after the giving of

notice, the lapse of time or both) the holder or holders of such Material Indebtedness or any trustee or administrative agent on its or their behalf to cause such Material Indebtedness to become due, or to require the redemption thereof or any offer to redeem to be made in respect thereof, prior to its scheduled maturity or require the Borrower or any Guarantor being required to make an offer in respect thereof.

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Parent Borrower, the Co-Borrower or any Guarantor or its debts, or of a substantial part of its assets, under any federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Parent Borrower, the Co-Borrower or any Guarantor or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered.

(i) the Parent Borrower, the Co-Borrower or any Guarantor shall

(i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect,

(ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in Section 10.01(h),

(iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Parent Borrower, the Co-Borrower or any Guarantor or for a substantial part of its assets,

(iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding,

(v) make a general assignment for the benefit of creditors or

(vi) take any action for the purpose of effecting any of the foregoing.

(j) one or more judgments for the payment of money in an aggregate amount in excess of \$25,000,000 (to the extent not covered by independent third party insurance provided by insurers of the highest claims paying rating or financial strength as to which the insurer does not dispute coverage and is not subject to an insolvency proceeding) shall be rendered against the Parent Borrower, the Co-Borrower or any Guarantor or any combination thereof and the same shall remain undischarged (or the Borrowers and the Guarantor shall not have provided for its discharge) for a period of sixty (60) consecutive days during which execution shall not be effectively stayed and, if stayed pending appeal, for such longer period during such appeal while providing such accruals as may be required by GAAP.

(k) any material provision of the Loan Documents, after delivery thereof, shall for any reason, except to the extent permitted by the terms thereof, cease to be in full force and effect and valid, binding and enforceable in accordance with their terms against the Parent Borrower, the Co-Borrower or any Guarantor or shall be repudiated by any of them, or cease to create a valid and perfected Lien of the priority required thereby on any material part of the collateral purported to be covered thereby, (except to the extent permitted by the terms of this Agreement, or the Parent Borrower, the Co-Borrower or any Guarantor shall so state in writing) and such invalidity, lack of binding effect or priority is not cured within thirty (30) days after the earliest to occur of (x) notice from the Administrative Agent (as directed by the Required Lenders) concerning its belief that a material provision is not valid and binding or asserting the lack of priority of a Lien, or (y) the chief executive officer or chief financial officer of the Borrower otherwise becomes aware that any material provision is not valid and binding or that a Lien lacks the intended priority.

(l) an ERISA Event shall have occurred that, in the opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, has resulted in, or could reasonably be expected to result in, liability of the Borrowers and any Guarantor in an aggregate amount that could reasonably be expected to have a Material Adverse Effect.

#### Section 10.02 Remedies.

(a) In the case of an Event of Default other than one described in Section 10.01(h) or Section 10.01(i), at any time thereafter during the continuance of such Event of Default, the Administrative Agent may, and at the written request of the Required Lenders, shall, by notice to the Borrowers, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees, premiums and other obligations of the Borrowers accrued hereunder and under the other Loan Documents, shall become due and payable immediately, without presentment, demand, protest, notice of intent to accelerate, notice of acceleration or other notice of any kind, all of which are hereby waived by the Borrowers; and in case of an Event of Default described in Section 10.01(h), Section 10.01(i), the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees, premiums and the other obligations of the Borrowers accrued hereunder and under the other Loan Documents, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers.

(b) In the case of the occurrence of an Event of Default, the Administrative Agent and the Lenders will have all other rights and remedies available under the Loan Documents or at law and equity.

(c) All proceeds realized from the liquidation or other disposition of Collateral or otherwise received after maturity of the Loans, whether by acceleration or otherwise, shall be applied:

- (i) first, to payment or reimbursement of that portion of the Indebtedness constituting fees, expenses and indemnities (including legal fees and expenses) payable to the Administrative Agent in its capacity as such;
- (ii) second, pro rata to payment or reimbursement of that portion of the Indebtedness constituting fees, expenses and indemnities payable to the Lenders;
- (iii) third, pro rata to payment of accrued interest on the Loans;
- (iv) fourth, pro rata to payment of principal outstanding on the Loans;
- (v) fifth, pro rata to any other Indebtedness; and
- (vi) sixth, any excess, after all of the Indebtedness shall have been indefeasibly paid in full in cash, shall be paid to the Borrowers or as otherwise required by any Governmental Requirement.

**ARTICLE XI**  
**The Agents**

Section 11.01 Appointment; Powers. Each of the Lenders hereby appoints Wilmington Trust, National Association as its Administrative Agent and the Collateral Agent (including as trustee/mortgagee under the Fleet Mortgage). Each Lender authorizes the Agents to take such actions on its behalf and to exercise such powers as are delegated to such Agent by the terms hereof and the other Loan Documents.

Section 11.02 Duties and Obligations of the Agents. The Agents shall have no duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, (a) no Agent shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing (the use of the term "Administrative Agent", "Collateral Agent" or "Agent" herein and in the other Loan Documents with reference to the Administrative Agent or the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law; rather, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties), (b) no Agent shall have any duty to take any discretionary action or exercise any discretionary powers, except as provided in Section 11.03, and (c) except as expressly set forth herein, no Agent shall have a duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Parent Borrower or any of its Subsidiaries that is communicated to or obtained by such Agent or any of its Affiliates in any capacity. The Agents shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to a responsible officer of such Agent by the Parent Borrower, the Co-Borrower or a Lender, and shall not be responsible for or have any duty to ascertain or inquire into

- (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document,

(ii) the contents of any certificate, report or other document delivered hereunder or under any other Loan Document or in connection herewith or therewith,

(iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or in any other Loan Document,

(iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document,

(v) the satisfaction of any condition set forth in Article VI or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to such Agent or as to those conditions precedent expressly required to be to such Agent's satisfaction,

(vi) the existence, value, perfection or priority of any collateral security or the financial or other condition of the Parent Borrower and its Subsidiaries, or

(vii) any failure by the Parent Borrower, the Co-Borrower or any other Person (other than itself) to perform any of its obligations hereunder or under any other Loan Document or the performance or observance of any covenants, agreements or other terms or conditions set forth herein or therein.

For purposes of determining compliance with the conditions specified in Article VI, each Lender shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless an Agent shall have received written notice from such Lender prior to the proposed Effective Date specifying its objection thereto.

Section 11.03 Action by Agents. Each Agent shall have no duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that such Agent is required to exercise in writing as directed by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 12.02) and in all cases each Agent shall be fully justified in failing or refusing to act hereunder or under any other Loan Documents unless it shall (a) receive written instructions from the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 12.02) specifying the action to be taken and (b) be indemnified to its satisfaction by the Lenders against any and all liability claims, losses, fees and expenses which may be incurred by it by reason of taking or continuing to take any such action. The instructions as aforesaid and any action taken or failure to act pursuant thereto by an Agent shall be binding on all of the Lenders. If a Default has occurred and is continuing, then an Agent shall take such action with respect to such Default as shall be directed by the requisite Lenders in the written instructions (with indemnities satisfactory to it) described in this Section 11.03; provided that, unless and until such Agent shall have received such directions, such Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default as it shall deem advisable in the interests of the Lenders. In no event, however, shall an Agent be required to take any action which exposes such Agent to a risk of personal liability or which is contrary to this Agreement, the Loan Documents or applicable law. If a Default has occurred and



is continuing, no Agent shall have any obligation to perform any act in respect thereof. Each Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 12.02), and otherwise such Agent shall not be liable for any action taken or not taken by it hereunder or under any other Loan Document or under any other document or instrument referred to or provided for herein or therein or in connection herewith or therewith including its own ordinary negligence, except for its own gross negligence or willful misconduct.

Section 11.04 Reliance by Agents. Each Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. Each Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon, except in the case of gross negligence or willful misconduct by such Agent and each of the Borrowers, the Guarantors, and the Lenders hereby waives the right to dispute such Agent's record of such statement absent manifest error. Each Agent may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. Each Agent may deem and treat the payee of any Note as the holder thereof for all purposes hereof unless and until a written notice of the assignment or transfer thereof permitted hereunder shall have been filed with such Agent.

Section 11.05 Sub-Agents. Each Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-Agents appointed by such Agent. Each Agent and any such sub-Agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding Sections of this Article XI shall apply to any such sub-Agent and to the Related Parties of such Agent and any such sub-Agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as such Agent.

Section 11.06 Resignation or Removal of Agents. Subject to the appointment and acceptance of a successor Agent, including as the case may be, the Collateral Agent, as trustee/mortgagee under the Fleet Mortgage, as provided in this Section 11.06, each Agent may resign at any time by notifying the Lenders and the Borrowers, and such Agent may be removed at any time with or without cause by the Required Lenders. Upon any such resignation or removal, the Required Lenders shall have the right, in consultation with the Borrowers, to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Agent gives notice of its resignation or removal of the retiring Agent, then the retiring Agent may, on behalf of the Lenders and at the expense of the Borrowers, appoint a successor Agent, or an Affiliate of any such Lender as approved by the Required Lenders or if no such successor shall be appointed by the retiring Agent as aforesaid, the Required Lenders shall thereafter perform all of the duties of the retiring Agent hereunder (and the retiring Agent shall be discharged from its duties and obligations hereunder) until such appointment by the Required Lenders is made and accepted. Upon the acceptance of its appointment as Agent hereunder by a successor, such successor shall

succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations hereunder. The fees payable by the Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After an Agent's resignation hereunder, the provisions of this Article XI and Section 12.03 shall continue in effect for the benefit of such retiring Agent, its sub-Agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Agent. The institution acting as Collateral Agent shall always also act as trustee/mortgagee under the Fleet Mortgage.

Section 11.07 Agents as Lenders. Each Lender serving as an Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not an Agent, and such Lender and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Parent Borrower or any of its Subsidiaries or other Affiliates as if it were not an Agent hereunder.

Section 11.08 Funds held by Agents. The Agents shall have no responsibility for interest or income on any funds held by it hereunder and any funds so held shall be held uninvested pending distribution thereof.

Section 11.09 No Reliance. Each Lender acknowledges that it has, independently and without reliance upon any Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and each other Loan Document to which it is a party. Each Lender also acknowledges that it will, independently and without reliance upon any Agent or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document, any related agreement or any document furnished hereunder or thereunder. No Agent shall be required to keep itself informed as to the performance or observance by the Parent Borrower or any of its Subsidiaries of this Agreement, the Loan Documents or any other document referred to or provided for herein or to inspect the Property or books of the Parent Borrower or its Subsidiaries. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders by an Agent hereunder, no Agent shall have any duty or responsibility to provide any Lender with any credit or other information concerning the affairs, financial condition or business of the Borrowers (or any of their Affiliates) which may come into the possession of such Agent or any of its Affiliates. Each party hereto will consult with its own legal counsel to the extent that it deems necessary in connection with the Loan Documents and the matters contemplated therein.

Section 11.10 Agents May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Borrowers, the Guarantors or any of their Subsidiaries, each Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether an Agent shall have made any demand on the Borrowers or the Guarantors) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file a proof-of-claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Indebtedness that are owing and unpaid and to file such other documents as may be necessary and directed by the Required Lenders in order to have the claims of the Lenders and the Agents (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Agents and their respective agents and counsel and all other amounts due the Lenders and the Agents under Section 12.03) allowed in such judicial proceeding;

(b) to collect and receive any monies or other Property payable or deliverable on any such claims and to distribute the same; and

(c) and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized and directed by each Lender to make such payments to the Agents and, in the event that the Agents shall consent to the making of such payments directly to the Lenders, to pay to the Agents any amount due for the reasonable compensation, expenses, disbursements and advances of the Agents and their agents and counsel, and any other amounts due the Agents under Section 12.03.

Nothing contained herein shall be deemed to authorize any Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Indebtedness or the rights of any Lender or to authorize any Agent to vote in respect of the claim of any Lender in any such proceeding.

Section 11.11 Authority of the Agents to Release Collateral and Liens. Each Lender hereby authorizes the Collateral Agent to release any Collateral or any Guarantor that is permitted to be sold or released pursuant to the terms of the Loan Documents. Each Lender hereby authorizes the Collateral Agent to execute and deliver to the Borrowers, at the Borrowers' sole cost and expense, any and all releases of Liens, termination statements, assignments or other documents reasonably requested by the Borrowers in connection with any sale or other disposition of Property to the extent such sale or other disposition is authorized by the terms of the Loan Documents and complies with Section 9.14 of the Guaranty and Collateral Agreement, as evidenced in an Officer's Certificate delivered to the Collateral Agent. Notwithstanding the foregoing, it is understood and agreed that, except as contemplated by Sections 8.11(b) and 8.14(b) and clause (h) of the definition of "Permitted Investments," the Liens on any Collateral securing the Indebtedness shall not be released (x) upon a sale, transfer or other disposition of such Collateral to any Person that is, or that is required to be, in each case at the time of such sale, transfer or other disposition, a Loan Party (but disregarding the grace period provided for in Section 8.14(a)(ii)) or (y) if such Collateral is Vessel Collateral, if the transferee is a Restricted Subsidiary of the Parent Borrower; provided, however, that in connection with (A) a Foreign Vessel Reflagging Transaction or a Collateral Substitution Transaction if the Person to whom such Collateral is being transferred grants a new Lien on such Collateral (in the case of a Foreign Vessel Reflagging Transaction) or on other Collateral (as contemplated by a Collateral Substitution Transaction) in favor of the Collateral Agent, for the benefit of the Secured Parties that is comparable, in the good faith determination of the Initial Lenders, in scope, validity and perfection to the existing Lien or (B) a Permitted Asset Swap where new Collateral is granted consistent with Section 8.14(a)(iii) or 8.14(a)(iv), then the Collateral Agent shall release such

Collateral. For purposes of the preceding sentence, any Specified Foreign Subsidiary the Equity Interests of which are required to be pledged in accordance with Section 8.14(a)(ii) shall be deemed to be a Loan Party. Upon the request of the Borrowers, in connection with any transaction otherwise permitted hereunder, the Administrative Agent and/or the Collateral Agent is authorized to release Collateral that is disposed of (other than to a Person that is, or that is required to be, in each case at the time of such sale, transfer or other disposition, a Loan Party (but disregarding the grace period provided for Section 8.14(a)(ii) or whose owner ceases to be a Restricted Subsidiary of the Parent Borrower) and any Guarantor that ceases to be a Restricted Subsidiary of the Parent Borrower or otherwise ceases to be required to be a Guarantor under the Loan Documents and to execute any intercreditor arrangements or releases or amendments to the Security Instruments to reflect the pari passu or junior nature of any Liens associated with Debt permitted to be incurred (and so secured) hereunder (including, for the avoidance of doubt, Debt incurred pursuant to Section 9.02(b)(i) or 9.02(b)(x) and secured pursuant to Section 9.03), in each case, pursuant to a transaction permitted by this Agreement.

Section 11.12 Merger, Conversion or Consolidation of Agents. Any corporation into which the Agents may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Agents shall be a party, or any corporation succeeding to the corporate trust and loan agency business of the Agents, shall be the successor of the Agents hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

## **ARTICLE XII**

### **Miscellaneous**

#### Section 12.01 Notices.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to Section 12.01(b)), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(i) if to the Borrowers (or either of them), to it at:

Hornbeck Offshore Services, Inc.  
Hornbeck Offshore Services, LLC  
103 Northpark Blvd., Suite 300  
Covington, LA 70433  
Attention: James O. Harp, Jr., Executive Vice President and Chief Financial Officer  
Email: james.harp@hornbeckoffshore.com

with a copy to:

Hornbeck Offshore Services, Inc.  
Hornbeck Offshore Services, LLC  
103 Northpark Blvd., Suite 300  
Covington, LA 70433  
Attention: Samuel A. Giberga, Executive Vice President, General Counsel and Chief Compliance Officer  
Email: Samuel.giberga @hornbeckoffshore.com

(ii) if to the Administrative Agent, to it at

Wilmington Trust, National Association  
Suite 1290, 50 South Sixth Street  
Minneapolis, MN 55402  
Attention: Alisha Clendaniel, Assistant Vice President  
Email: [aclendaniel@wilmingtontrust.com](mailto:aclendaniel@wilmingtontrust.com)

(iii) if to Collateral Agent, to it at:

Wilmington Trust, National Association  
Suite 1290, 50 South Sixth Street  
Minneapolis, MN 55402  
Attention: Alisha Clendaniel, Assistant Vice President  
Email: [aclendaniel@wilmingtontrust.com](mailto:aclendaniel@wilmingtontrust.com)

(iv) if to any other Lender, to it at its address (or telecopy number) set forth on its signature page hereto, as the same may be updated from time to time by written notice to the Administrative Agent and the Borrowers.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Articles II, III, IV and V unless otherwise agreed by the Administrative Agent and the applicable Lender. Notices and other communications to the Borrowers may be delivered or furnished by electronic communications; provided that, unless receipt of such electronic communication is acknowledged by the Borrowers, such communication is followed by telephonic and hard copy communication as well. The Administrative Agent may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

(c) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

Section 12.02 Waivers; Amendments.

(a) No failure on the part of the Administrative Agent or any Lender to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege, or any abandonment or discontinuance of steps to enforce such right, power or privilege, under any of the Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any of the Loan Documents preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies of the Administrative Agent and the Lenders hereunder and under the other Loan Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or any other Loan Document or consent to any departure by the Parent Borrower, the Co-Borrower or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by Section 12.02(b), and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent or any other Lender may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any provision hereof nor any Security Instrument nor any provision thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrowers and the Required Lenders or by the Borrowers and the Administrative Agent with the consent of the Required Lenders; provided that no such agreement shall

(i) increase the Commitment of any Lender without the written consent of such Lender,

(ii) reduce the principal amount of any Loan or reduce the rate of interest thereon, or reduce any fees payable hereunder, or reduce any other Indebtedness hereunder or under any other Loan Document, without the written consent of each Lender affected thereby,

(iii) postpone the scheduled date of payment or prepayment of the principal amount of any Loan, or any interest thereon, or any fees payable hereunder, or any other Indebtedness hereunder or under any other Loan Document, or reduce the amount of, waive or excuse any such payment, or postpone or extend the Maturity Date without the written consent of each Lender affected thereby,

(iv) change Section 4.01(b) or Section 4.01(c) in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender,

(v) release all or substantially all of the collateral or all or substantially all of the value of the guarantees of the Indebtedness made by the Guarantors without the written consent of each Lender,

(vi) change any of the provisions of this Section 12.02(b) or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or under any other Loan Documents or make any determination or grant any consent hereunder or any other Loan Documents, without the written consent of each Lender, or

(vii) amend or modify Section 2.09 or any condition precedent to the incurrence of any Incremental Term Commitments or Incremental Term Loans, or otherwise amend this Agreement in any manner that would permit the incurrence of any additional Indebtedness hereunder, in each case without the consent of each Lender;

provided, further that (y) without the prior written consent of each Initial Lender, no such agreement shall amend, modify or waive any provision under this Agreement that expressly requires the consent or other agreement of the Initial Lenders, and (z) no such agreement shall amend, modify or otherwise affect the rights or duties of any Agent hereunder or under any other Loan Document without the prior written consent of such Agent. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender.

(c) Notwithstanding anything to the contrary contained in this Section 12.02, the Administrative Agent may, with the consent of the Borrowers and the Initial Lenders only, amend, modify or supplement this Agreement or any of the other Loan Documents to correct any clerical errors or cure any ambiguity, omission, mistake, defect or inconsistency so long as such correction is not materially adverse to the Lenders as certified in an Officer's Certificate.

**Section 12.03 Expenses, Indemnity; Damage Waiver.**

(a) The Borrowers shall pay (i) all reasonable out-of-pocket fees and expenses incurred by the Agents and the Lenders and their respective Affiliates, including, without limitation, the reasonable fees, charges and disbursements of counsel for the Agents and the Lenders (but limited to one primary counsel for each of (x) the Agents and their respective Affiliates, collectively and (y) the Lenders and their respective Affiliates, collectively, and in each case, if necessary, one local counsel in each relevant jurisdiction (which may include a single special counsel acting in multiple jurisdictions) and special counsel for each relevant specialty (and, in the case of an actual conflict of interest, where the party affected by such conflict, informs the Borrowers of such conflict and thereafter retains its own counsel, of another firm of counsel for each such affected person)), the reasonable travel, photocopy, mailing, courier, telephone and other similar expenses, in connection with the preparation, negotiation, execution, delivery and administration (both before and after the execution hereof and including advice of counsel to the Agents and/or the Lenders as to the rights and duties of the Administrative Agent and the Lenders with respect thereto) of this Agreement and the other Loan Documents and any amendments, modifications or waivers of or consents related to the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all costs, expenses, Taxes, assessments and other charges incurred by any Agent or any Lender in connection with any filing, registration, recording or perfection of any security interest contemplated by this Agreement or any Security Instrument or any other document referred to therein, and (iii) all out-of-pocket fees and expenses incurred by any Agent or any Lender, including the fees, charges and disbursements of any counsel for any Agent or any Lender (but limited to one primary counsel for each of (x) the Agents and their

respective Affiliates, collectively and (y) the Lenders and their respective Affiliates, collectively, and in each case, if necessary, one local counsel in each relevant jurisdiction (which may include a single special counsel acting in multiple jurisdictions) and special counsel for each relevant specialty (and, in the case of an actual conflict of interest, where the party affected by such conflict, informs the Borrowers of such conflict and thereafter retains its own counsel, of another firm of counsel for each such affected person)), in connection with the enforcement or protection of its rights in connection with this Agreement or any other Loan Document, including its rights under this Section 12.03, and including, without limitation, all such out-of-pocket expenses incurred during any workout or restructuring in respect of such Loans.

(b) THE BORROWERS SHALL INDEMNIFY THE ADMINISTRATIVE AGENT AND EACH LENDER, AND EACH RELATED PARTY OF ANY OF THE FOREGOING PERSONS (EACH SUCH PERSON BEING CALLED AN "INDEMNITEE") AGAINST, AND HOLD EACH INDEMNITEE HARMLESS FROM, ANY AND ALL LOSSES, CLAIMS, DAMAGES, LIABILITIES, FEES AND RELATED EXPENSES, INCLUDING THE FEES, CHARGES AND DISBURSEMENTS OF ANY COUNSEL FOR ANY INDEMNITEE, INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF (i) THE EXECUTION OR DELIVERY OF THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY OR THEREBY, THE PERFORMANCE BY THE PARTIES HERETO OR THE PARTIES TO ANY OTHER LOAN DOCUMENT OF THEIR RESPECTIVE OBLIGATIONS HEREUNDER OR THEREUNDER OR THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREBY OR BY ANY OTHER LOAN DOCUMENT, (ii) THE FAILURE OF THE PARENT BORROWER OR ANY SUBSIDIARY TO COMPLY WITH THE TERMS OF ANY LOAN DOCUMENT, INCLUDING THIS AGREEMENT, OR WITH ANY GOVERNMENTAL REQUIREMENT, (iii) ANY INACCURACY OF ANY REPRESENTATION OR ANY BREACH OF ANY WARRANTY OR COVENANT OF ANY LOAN PARTY SET FORTH IN ANY OF THE LOAN DOCUMENTS OR ANY INSTRUMENTS, DOCUMENTS OR CERTIFICATIONS DELIVERED IN CONNECTION THEREWITH, (iv) ANY LOAN OR THE USE OF THE PROCEEDS THEREFROM, (v) ANY OTHER ASPECT OF THE LOAN DOCUMENTS, (vi) THE OPERATIONS OF THE BUSINESS OF THE PARENT BORROWER AND ITS SUBSIDIARIES BY THE PARENT BORROWER AND ITS SUBSIDIARIES, (vii) ANY ASSERTION THAT THE LENDERS WERE NOT ENTITLED TO RECEIVE THE PROCEEDS RECEIVED PURSUANT TO THE SECURITY INSTRUMENTS, (viii) ANY ENVIRONMENTAL LAW APPLICABLE TO THE PARENT BORROWER OR ANY SUBSIDIARY OR ANY OF THEIR PROPERTIES, INCLUDING WITHOUT LIMITATION, THE PRESENCE, GENERATION, STORAGE, RELEASE, THREATENED RELEASE, USE, TRANSPORT, DISPOSAL, ARRANGEMENT OF DISPOSAL OR TREATMENT OF OIL, OIL AND GAS WASTES, SOLID WASTES OR HAZARDOUS SUBSTANCES ON ANY OF THEIR PROPERTIES, (ix) THE BREACH OR NON-COMPLIANCE BY THE PARENT BORROWER OR ANY SUBSIDIARY WITH ANY ENVIRONMENTAL LAW APPLICABLE TO THE PARENT BORROWER OR ANY SUBSIDIARY, (x) THE PAST OWNERSHIP BY THE PARENT BORROWER OR ANY



SUBSIDIARY OF ANY OF THEIR PROPERTIES OR PAST ACTIVITY ON ANY OF THEIR PROPERTIES WHICH, THOUGH LAWFUL AND FULLY PERMISSIBLE AT THE TIME, COULD RESULT IN PRESENT LIABILITY, (xi) THE PRESENCE, USE, RELEASE, STORAGE, TREATMENT, DISPOSAL, GENERATION, THREATENED RELEASE, TRANSPORT, ARRANGEMENT FOR TRANSPORT OR ARRANGEMENT FOR DISPOSAL OF OIL, OIL AND GAS WASTES, SOLID WASTES OR HAZARDOUS SUBSTANCES ON OR AT ANY OF THE PROPERTIES OWNED OR OPERATED BY THE PARENT BORROWER OR ANY SUBSIDIARY OR ANY ACTUAL OR ALLEGED PRESENCE OR RELEASE OF HAZARDOUS MATERIALS ON OR FROM ANY PROPERTY OWNED OR OPERATED BY THE PARENT BORROWER OR ANY SUBSIDIARY, (xii) ANY ENVIRONMENTAL LIABILITY RELATED IN ANY WAY TO THE PARENT BORROWER OR ANY SUBSIDIARY, (xiii) ANY OTHER ENVIRONMENTAL, HEALTH OR SAFETY CONDITION IN CONNECTION WITH THE LOAN DOCUMENTS, OR (xiv) ANY ACTUAL OR PROSPECTIVE CLAIM, LITIGATION, INVESTIGATION OR PROCEEDING RELATING TO ANY OF THE FOREGOING, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY AND REGARDLESS OF WHETHER ANY INDEMNITEE IS A PARTY THERETO, AND SUCH INDEMNITY SHALL EXTEND TO EACH INDEMNITEE NOTWITHSTANDING THE SOLE OR CONCURRENT NEGLIGENCE OF EVERY KIND OR CHARACTER WHATSOEVER, WHETHER ACTIVE OR PASSIVE, WHETHER AN AFFIRMATIVE ACT OR AN OMISSION, INCLUDING WITHOUT LIMITATION, ALL TYPES OF NEGLIGENT CONDUCT IDENTIFIED IN THE RESTATEMENT (SECOND) OF TORTS OF ONE OR MORE OF THE INDEMNITEES OR BY REASON OF STRICT LIABILITY IMPOSED WITHOUT FAULT ON ANY ONE OR MORE OF THE INDEMNITEES; PROVIDED THAT ANY OF THE ABOVE INDEMNITIES (EXCEPT FOR ANY INDEMNITIES REGARDING ENVIRONMENTAL LAW) SHALL NOT, AS TO ANY INDEMNITEE, BE AVAILABLE TO THE EXTENT THAT SUCH LOSSES, CLAIMS, DAMAGES, LIABILITIES OR RELATED EXPENSES ARE DETERMINED BY A COURT OF COMPETENT JURISDICTION BY FINAL AND NONAPPEALABLE JUDGMENT TO HAVE RESULTED FROM (X) THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH INDEMNITEE OR (Y) ANY DISPUTE SOLELY AMONG INDEMNITEES (OTHER THAN ANY CLAIMS AGAINST AN INDEMNITEE IN ITS CAPACITY OR IN FULFILLING ITS ROLE AS AN AGENT OR ARRANGER OR ANY SIMILAR ROLE HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT AND OTHER THAN ANY CLAIMS ARISING OUT OF ANY ACT OR OMISSION OF THE PARENT BORROWER OR ANY OF ITS SUBSIDIARIES).

(c) To the extent any Agent is not reimbursed and/or indemnified by the Borrowers in accordance with the provisions of this Agreement, the Lenders will reimburse and indemnify such Agent, severally and not jointly, in proportion to each Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), for and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, costs, expenses or disbursements of whatsoever kind or nature which may be imposed on, asserted against or incurred by such Agent in connection with or arising out of any act or omission of such Agent related to its duties hereunder or under any other Loan Document or the performance thereof or in any way relating to or arising out of this Agreement

or any other Loan Document; provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses or disbursements resulting from such Agent's gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision). In the case of any investigation, litigation or proceeding giving rise to any claim for indemnification hereunder, this Section 12.03 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person.

(d) To the extent permitted by applicable law, no party hereto shall assert, and each party hereto hereby waives, any claim against each other, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the Transactions, any Loan or the use of the proceeds thereof; provided that the foregoing shall not limit the Borrower's indemnification obligations pursuant to Section 12.03(b) to the extent such damages are included in any such claim that is entitled to such indemnification.

(e) All amounts due under this Section 12.03 shall be payable not later than ten (10) days after written demand therefor. This Section 12.03 shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

#### Section 12.04 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) except as expressly permitted by Section 9.04, no Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by such Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 12.04. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (to the extent provided in Section 12.04(c)) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments or the Loans at the time owing to it) pursuant to an Assignment and Assumption Agreement substantially in the form of Exhibit G (an "Assignment") with the prior written consent of: (A) the Borrowers (such consent not to be unreasonably withheld); provided that no consent of the Borrowers shall be required for an assignment to a Lender, an Affiliate of a Lender (or, in the case of an assignment by any Initial Lender, to any Approved Lender with respect to such Initial Lender), an Approved Fund (as defined below) or, except as provided in subsection (b)(ii)(E) below, if an Event of Default under Section 10.01(a), (b), (h) or (i) has occurred and is continuing, any other Person; and (B) the Administrative Agent.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Loans, the amount of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment is delivered to the Administrative Agent) shall not be less than \$1,000,000, unless each of the Borrowers and the Administrative Agent otherwise consent; provided, that simultaneous assignments to affiliated funds may be aggregated; provided, further, that no such consent of the Borrowers shall be required if an Event of Default under Section 10.01(a), (b), (h) or (i) has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement (provided that the foregoing shall not permit any assignment of Loan, separate from Commitments, or any assignment of Commitments, separate from Loans);

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment, together with a processing and recordation fee of \$3,500; provided that (x) the Administrative Agent may, in its sole discretion, elect to waive or reduce such processing and recordation fee in the case of any assignment and (y) simultaneous assignments to affiliated funds shall be deemed to constitute a single assignment for purposes of the foregoing;

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire; and

(E) notwithstanding anything to the contrary herein, no assignments shall be made to (1) a Defaulting Lender or any of its Subsidiaries or Affiliates, (2) the Parent Borrower or any of its Subsidiaries except as permitted by Section 12.04(g) or (3) any Lender if such Lender would request reimbursement for Indemnified Taxes pursuant to Section 5.03 or cannot comply with the requirements of Section 5.03(g).

(iii) Subject to Section 12.04(b)(iv) and the acceptance and recording thereof, from and after the effective date specified in each Assignment the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment, be released from its obligations under this Agreement (and, in the case of an Assignment covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Section 5.01, Section 5.02, Section 5.03 and Section 12.03 with respect to facts and

circumstances occurring prior to the Effective Date). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 12.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 12.04(c)(i).

(iv) The Administrative Agent, acting for this purpose as an administrative agent of the Borrowers, shall maintain at one of its offices a copy of each Assignment delivered to it and a register for the recordation of the names, addresses and telecopy number of the Lenders, and the Commitment of, and principal amount (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrowers, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrowers and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire and applicable required tax forms (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in Section 12.04(b) and any written consent to such assignment required by Section 12.04(b), the Administrative Agent shall accept such Assignment and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register after meeting the requirements provided in this Section 12.04(b).

(c) (i) Any Lender may, without the consent of the Borrowers or the Administrative Agent, sell participations to one or more Lenders or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrowers, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the proviso to Section 12.02 that affects such Participant. In addition such agreement must provide that the Participant be bound by the provisions of Section 12.03. Subject to Section 12.04(c)(ii), the Borrowers agree that each Participant shall be entitled to the benefits of Sections 5.01, 5.02 and 5.03 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 12.04(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 12.08 as though it were a Lender; provided such Participant agrees to be subject to Section 4.01(c) as though it were a Lender.

(ii) A Participant shall not be entitled to receive any greater payment under Section 5.02 or Section 5.03 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrowers' prior written consent or to extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. A Participant shall not be entitled to the benefits of Section 5.03 unless such Participant agrees to comply with Section 5.03(g) as though it were a Lender (it being understood that the documentation shall be delivered to the participating Lender).

(iii) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including, without limitation, any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section 12.04(d) shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that affects such Participant. Each Lender that sells a participation agrees, at the Borrowers' request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of Section 2.07 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 12.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 4.01 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrowers,

maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(f) Notwithstanding anything in this Agreement to the contrary, in no event shall any Lender or Participant assign any portion of or sell any participations in its rights and obligations under this Agreement to a competitor of the Parent Borrower or a Subsidiary in the business of providing the services of offshore supply vessels, or offshore service vessels (including, without limitation, crew boats, fast supply vessels, multi-purpose support vessels, construction vessels, anchor handling towing supply vessels, tugs, double hulled tank barges and double hulled tankers or other complementary offshore marine vessels) or any other marine vessel business, including any logistics services related thereto or any ancillary, complementary or related line of business, or an Affiliate of any such competitor. This prohibition shall be included in any documentation effecting an assignment of any interest herein or in any Loans and any attempted assignment in violation of this provision shall be void ab initio.

(g) Notwithstanding anything in this Agreement to the contrary, any Lender may, at any time, assign all or a portion of its Loans on a non-pro rata basis to the Borrowers in accordance with the procedures set forth on Exhibit I, pursuant to an offer made by the Borrowers available to all Lenders on a pro rata basis (a "Dutch Auction"), subject to the following limitations:

(i) the Borrowers shall represent and warrant, as of the date of the launch of the Dutch Auction and on the date of any such assignment, that neither it, its Affiliates nor any of its respective directors or officers has any Excluded Information that has not been disclosed to the Lenders generally (other than to the extent any such Lender does not wish to receive material non-public information with respect to the Parent Borrower or its Subsidiaries or any of their respective securities) prior to such date;

(ii) immediately and automatically, without any further action on the part of the Borrowers, any Lender, the Administrative Agent or any other Person, upon the effectiveness of such assignment of Loans from a Lender to the Borrowers, such Loans and all rights and obligations as a Lender related thereto shall, for all purposes under this Agreement, the other Loan Documents and otherwise, be deemed to be irrevocably

prepaid (provided that the Borrowers shall also pay any applicable premium or call protection), terminated, extinguished, cancelled and of no further force and effect and the Borrowers shall neither obtain nor have any rights as a Lender hereunder or under the other Loan Documents by virtue of such assignment;

(iii) the Borrowers shall not use the proceeds of any Loans for any such assignment; and

(iv) no Event of Default shall have occurred and be continuing before or immediately after giving effect to such assignment.

Section 12.05 Survival; Revival; Reinstatement.

(a) All covenants, agreements, representations and warranties made by the Borrowers herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 3.05, 5.01, 5.02, 5.03 and 12.03 and Article XI shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the resignation or removal of any Agent, the expiration or termination of the Commitments or the termination of this Agreement, any other Loan Document or any provision hereof or thereof.

(b) To the extent that any payments on the Indebtedness or proceeds of any collateral are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver or other Person under any Debtor Relief Law, common law or equitable cause, then to such extent, the Indebtedness so satisfied shall be revived and continue as if such payment or proceeds had not been received and the Administrative Agent's and the Lenders' Liens, rights, powers and remedies under this Agreement and each Loan Document shall continue in full force and effect. In such event, each Loan Document shall be automatically reinstated and the Borrowers shall take such action as may be reasonably requested by the Administrative Agent (as directed by the Required Lenders) to effect such reinstatement.

Section 12.06 Counterparts; Integration; Effectiveness.

(a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. The exchange of copies of this Agreement and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Agreement as to the parties hereto and may be used in lieu of the original Agreement and signature pages for all purposes.

(b) This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent or the Lenders constitute the entire contract among the parties relating to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof and thereof.

(c) Except as provided in Section 6.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be as effective as delivery of a manually executed counterpart of this Agreement.

Section 12.07 Severability. Any provision of this Agreement or any other Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof or thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 12.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the Borrowers or any other Loan Party against any and all of the obligations of the Borrowers or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or their respective Affiliates, irrespective of whether or not such Lender or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrowers or such Loan Party may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness. The rights of each Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective Affiliates may have. Each Lender agrees to notify the Borrowers and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

Section 12.09 GOVERNING LAW; JURISDICTION; WAIVER OF JURY TRIAL.

(a) THIS AGREEMENT AND THE NOTES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.



(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO ANY LOAN DOCUMENT SHALL BE BROUGHT EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY HEREBY ACCEPTS FOR ITSELF AND (TO THE EXTENT PERMITTED BY LAW) IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS; PROVIDED THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE (I) ANY AGENT FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS UNDER THE LOAN DOCUMENTS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF THE ADMINISTRATIVE AGENT OR THE COLLATERAL AGENT OR (II) ANY PARTY FROM BRINGING ANY LEGAL ACTION OR PROCEEDING IN ANY JURISDICTION FOR THE RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT. EACH PARTY HEREBY AGREES THAT A FINAL JUDGMENT IN ANY SUCH LEGAL 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. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING, WITHOUT LIMITATION, ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH RESPECTIVE JURISDICTIONS.

(c) EACH PARTY HEREBY (i) IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN; (ii) CERTIFIES THAT NO PARTY HERETO NOR ANY REPRESENTATIVE OR ADMINISTRATIVE AGENT OR COUNSEL FOR ANY PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, OR IMPLIED THAT SUCH PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (iii) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT, THE LOAN DOCUMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS CONTAINED IN THIS SECTION 12.09.

Section 12.10 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 12.11 Confidentiality. Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed

(a) to its and its Affiliates' directors, officers, employees and Administrative Agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential),

(b) to the extent requested by any regulatory authority,

(c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process,

(d) to any other party to this Agreement or any other Loan Document,

(e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder,

(f) subject to an agreement containing provisions substantially the same as those of this Section 12.11, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any Hedging Obligation relating to the Parent Borrower or the Co-Borrower, as applicable, and its obligations,

(g) with the consent of the Borrowers or

(h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 12.11 or (ii) becomes available to the Administrative Agent or any Lender on a nonconfidential basis from a source other than the Borrowers.

For the purposes of this Section 12.11, "Information" means all information received from the Parent Borrower or any Subsidiary relating to the Borrowers or any Subsidiary and their businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Parent Borrower or a Subsidiary; provided that, in the case of information received from the Parent Borrower or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 12.11 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Section 12.12 Interest Rate Limitation. It is the intention of the parties hereto that each Lender shall conform strictly to usury laws applicable to it. Accordingly, if the transactions contemplated hereby would be usurious as to any Lender under laws applicable to it (including the laws of the United States of America and the State of New York or any other jurisdiction whose laws may be mandatorily applicable to such Lender notwithstanding the other provisions of this Agreement), then, in that event, notwithstanding anything to the contrary in any of the Loan Documents or any agreement entered into in connection with or as security for the Loans, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under law

applicable to any Lender that is contracted for, taken, reserved, charged or received by such Lender under any of the Loan Documents or agreements or otherwise in connection with the Loans shall under no circumstances exceed the maximum amount allowed by such applicable law, and any excess shall be canceled automatically and if theretofore paid shall be credited by such Lender on the principal amount of the Indebtedness (or, to the extent that the principal amount of the Indebtedness shall have been or would thereby be paid in full, refunded by such Lender to the Borrowers); and (ii) in the event that the maturity of the Loans is accelerated by reason of an election of the holder thereof resulting from any Event of Default under this Agreement or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest under law applicable to any Lender may never include more than the maximum amount allowed by such applicable law, and excess interest, if any, provided for in this Agreement or otherwise shall be canceled automatically by such Lender as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited by such Lender on the principal amount of the Indebtedness (or, to the extent that the principal amount of the Indebtedness shall have been or would thereby be paid in full, refunded by such Lender to the Borrowers). All sums paid or agreed to be paid to any Lender for the use, forbearance or detention of sums due hereunder shall, to the extent permitted by law applicable to such Lender, be amortized, prorated, allocated and spread throughout the stated term of the Loans evidenced by the Notes until payment in full so that the rate or amount of interest on account of any Loans hereunder does not exceed the maximum amount allowed by such applicable law. If at any time and from time to time (i) the amount of interest payable to any Lender on any date shall be computed at the Highest Lawful Rate applicable to such Lender pursuant to this Section 12.12 and (ii) in respect of any subsequent interest computation period the amount of interest otherwise payable to such Lender would be less than the amount of interest payable to such Lender computed at the Highest Lawful Rate applicable to such Lender, then the amount of interest payable to such Lender in respect of such subsequent interest computation period shall continue to be computed at the Highest Lawful Rate applicable to such Lender until the total amount of interest payable to such Lender shall equal the total amount of interest which would have been payable to such Lender if the total amount of interest had been computed without giving effect to this Section 12.12.

Section 12.13 No Third Party Beneficiaries. This Agreement, the other Loan Documents, and the agreement of the Lenders to make Loans hereunder are solely for the benefit of the Borrowers, the Guarantors and no other Person (including, without limitation, any Subsidiary of the Borrowers, any Subsidiary of the Guarantors, any obligor, contractor, subcontractor, supplier or materialsman) shall have any rights, claims, remedies or privileges hereunder or under any other Loan Document against the Administrative Agent or any Lender for any reason whatsoever. There are no third party beneficiaries other than the Guarantors.

Section 12.14 Electronic Communications.

(a) The Borrowers hereby agree that, unless otherwise requested by the Administrative Agent, each will provide to the Administrative Agent all information, documents and other materials that it is obligated to furnish to the Administrative Agent pursuant to the Loan Documents, including, without limitation, all notices, requests, financial statements, financial and other reports, certificates and other information materials, but

excluding any such communication that (i) relates to a request for a new, or a conversion of an existing, Borrowing or other extension of credit (including any election of an interest rate or interest period relating thereto), (ii) relates to the payment of any principal or other amount due under this Agreement prior to the scheduled date therefor, (iii) provides notice of any Default or Event of Default under this Agreement, (iv) is required to be delivered to satisfy any condition precedent to the effectiveness of this Agreement and/or any Borrowing or other extension of credit hereunder or (v) initiates or responds to legal process (all such non-excluded information being referred to herein collectively as the “Communications”) by transmitting the Communications in an electronic/soft medium (provided such Communications contain any required signatures) in a format acceptable to the Administrative Agent, to such e-mail address designated by the Administrative Agent from time to time. Each of the Agents and the Lenders hereby agrees that, unless otherwise requested by the Borrowers, to the extent such Agent or Lender delivers or furnishes any communication hereunder to the Loan Parties by electronic communications, unless receipt of such electronic communication is acknowledged by the Borrowers, such Agent or Lender will provide such notice or communication by telephone and hard copy communication as well.

(b) Each party hereto agrees that the Administrative Agent may make the Communications available to the Lenders by posting the Communications on IntraLinks or another relevant website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent) (the “Platform”). Nothing in this Section 12.14 shall prejudice the right of the Administrative Agent to make the Communications available to the Lenders in any other manner specified in the Loan Documents.

(c) The Parent Borrower hereby acknowledges that certain of the Lenders may be “public-side” Lenders (i.e., Lenders that do not wish to receive material non public information with respect to the Borrower or their securities) (each, a “Public Lender”). The Parent Borrower hereby agrees that (i) Communications that may not be made available to Public Lenders shall be clearly and conspicuously marked “PRIVATE” which, at a minimum, shall mean that the word “PRIVATE” shall appear prominently on the first page thereof, (ii) by not marking Communications “PRIVATE,” the Parent Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Communications as either publicly available information or not material information (although it may be sensitive and proprietary) with respect to the Parent Borrower or its securities for purposes of United States federal and state securities laws, (iii) all Communications not marked “PRIVATE” are permitted to be made available through a portion of the Platform designated “Public Lender,” and (iv) the Administrative Agent shall be entitled to treat any Communications that are marked “PRIVATE” as being suitable only for posting on a portion of the Platform not designated “Public Lender.”

(d) Each Lender agrees that e-mail notice to it (at the address provided pursuant to the next sentence and deemed delivered as provided in the next paragraph) specifying that Communications have been posted to the Platform shall constitute effective delivery of such Communications to such Lender for purposes of the Loan Documents. Each Lender agrees (i) to notify the Administrative Agent in writing (including by electronic communication) from

time to time to ensure that the Administrative Agent has on record an effective e-mail address for such Lender to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such e-mail address.

(e) Each party hereto agrees that any electronic communication referred to in this Section 12.14 shall be deemed delivered upon the posting of a record of such communication (properly addressed to such party at the e-mail address provided to the Administrative Agent) as “sent” in the e-mail system of the sending party or, in the case of any such communication to the Administrative Agent, upon the posting of a record of such communication as “received” in the e-mail system of the Administrative Agent; provided that if such communication is not so received by the Administrative Agent during the normal business hours of the Administrative Agent, such communication shall be deemed delivered at the opening of business on the next Business Day for the Administrative Agent.

(f) Each party hereto acknowledges that (i) the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution, (ii) the Communications and the Platform are provided “as is” and “as available,” (iii) none of the Administrative Agents, their affiliates nor any of their respective officers, directors, employees, Administrative Agents, advisors or representatives (collectively, the “Administrative Agent Parties”) warrants the adequacy, accuracy or completeness of the Communications or the Platform, and each Administrative Agent Party expressly disclaims liability for errors or omissions in any Communications or the Platform, and (iv) no warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by any Administrative Agent Party in connection with any Communications or the Platform.

Section 12.15 USA Patriot Act Notice. Each Lender and the Administrative Agent hereby notifies the Borrowers that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies the Borrowers, which information includes the names and addresses of each of the Borrowers and other information that will allow such Lender to identify the Borrowers in accordance with the USA PATRIOT Act. The Borrowers hereby each agree that it will provide each Lender and the Administrative Agent with such information as they may request in order to satisfy the requirement of the USA PATRIOT Act.

Section 12.16 Acknowledgement and Consent to Bail-In Action. Notwithstanding any other term of any Loan Document or any other agreement, arrangement or understanding between the parties hereto, each party hereto acknowledges and accepts any liability of any EEA Financial Institution arising under any Loan Document may be subject to the write-down and conversion powers of a Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by a Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution;

(b) the effects of any Bail-In Action in relation to any such liability, including (without limitation) (i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability; (ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under any Loan Document; and (iii) a cancellation of any such liability; or

(c) a variation of any term of any Loan Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

Section 12.17 Intercreditor Agreements.

(a) Each Lender hereunder authorizes and instructs the Agents to enter into each Intercreditor Agreement as and when contemplated hereunder (including, in each case, any and all amendments, amendments and restatements, modifications, supplements and acknowledgements thereto permitted hereby from time to time) as the Agents, in each case, on behalf of such Lender, and by its acceptance of the benefits of the Security Instruments, hereby acknowledges and agrees to be bound by all such provisions to the extent in effect. Notwithstanding anything herein to the contrary, each Lender, the Administrative Agent and the Collateral Agent acknowledges that the Lien and security interest granted to the Collateral Agent pursuant to the Security Instruments and the exercise of any right or remedy by the Administrative Agent and/or the Collateral Agent thereunder, are subject to the provisions of the Intercreditor Agreements to the extent in effect. In the event of a conflict or any inconsistency between the terms of either Intercreditor Agreement and the Security Instruments, the terms of the applicable Intercreditor Agreement shall prevail to the extent then in effect.

(b) In connection with the incurrence by any Loan Party of Debt under the Revolver Facility or any Junior Lien Debt permitted to be incurred pursuant to the terms hereof, each of the Administrative Agent and the Collateral Agent agree to execute and deliver each Intercreditor Agreement and/or any necessary supplements, joinders or confirmations to such Intercreditor Agreements and any amendments, amendments and restatements, restatements or waivers of or supplements to or other modifications to any Security Instrument, and to make or consent to any filings or take any other actions in connection therewith, as may be reasonably deemed by the Borrowers (in consultation with the Initial Lenders) to be necessary or reasonably desirable for any Lien on the assets of any Loan Party permitted to secure such Debt to become a valid, perfected lien (with such priority as may be designated by the relevant Loan Party to the extent such priority is permitted by the Loan Documents) pursuant to the Security Instrument being so amended, amended and restated, restated, waived, supplemented or otherwise modified or otherwise.

Section 12.18 Force Majeure. In no event shall the Agents be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications

or computer (software or hardware) services; it being understood that the Agents shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 12.19 Joint and Several Liability; Etc

(a) The Borrowers shall have joint and several liability in respect of all Indebtedness hereunder without regard to any defense (other than the defense of payment), setoff or counterclaim which may at any time be available to or be asserted by any other Loan Party against the Lenders, or by any other circumstance whatsoever (with or without notice to or knowledge of the Borrowers) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Borrowers' liability hereunder, in bankruptcy or in any other instance, and such Indebtedness of the Borrowers shall not be conditioned or contingent upon the pursuit by the Lenders or any other person at any time of any right or remedy against the Borrowers or against any other person which may be or become liable in respect of all or any part of the Indebtedness or against any Collateral or guarantee therefor or right of offset with respect thereto. The Borrowers hereby acknowledge that this Agreement is the independent and several obligation of each Borrower (regardless of which Borrower shall have delivered a Borrowing Request) and may be enforced against each Borrower separately, whether or not enforcement of any right or remedy hereunder has been sought against any other Borrower. Each Borrower hereby expressly waives, with respect to any of the Loans made to any other Borrower hereunder and any of the amounts owing hereunder by such other Loan Parties in respect of such Loans, diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that the Administrative Agent or any Lender exhaust any right, power or remedy or proceed against such other Loan Parties under this Agreement or any other Loan Document or any other agreement or instrument referred to herein or against any other person under any other guarantee of, or security for, any of such amounts owing hereunder.

(b) Without in any way affecting or limiting Section 12.19(a), (x) the Co-Borrower hereby agrees that all actions required or permitted to be taken hereunder by the Borrowers may be taken by the Parent Borrower on behalf of the Co-Borrower, and any such action so taken by the Parent Borrower shall be binding on the Co-Borrower and (y) the Parent Borrower hereby agrees that all actions required or permitted to be taken hereunder by the Borrowers may be taken by the Co-Borrower on behalf of the Parent Borrower, and any such action so taken by the Co-Borrower shall be binding on the Parent Borrower.

**[SIGNATURES BEGIN NEXT PAGE]**

The parties hereto have caused this First Lien Term Loan Agreement to be duly executed as of the day and year first above written.

**PARENT BORROWER:**

HORNBECK OFFSHORE SERVICES, INC.

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

**CO-BORROWER:**

HORNBECK OFFSHORE SERVICES, LLC

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

Signature Page – First Lien Term Loan Agreement  
Hornbeck Offshore Services, Inc.



By: \_\_\_\_\_

Name:

Title:

Signature Page – First Lien Term Loan Agreement  
Hornbeck Offshore Services, Inc.

By: \_\_\_\_\_

Name:

Title:

Signature Page – First Lien Term Loan Agreement  
Hornbeck Offshore Services, Inc.

**LENDER:**

\_\_\_\_\_, as a Lender

By: \_\_\_\_\_

Name:

Title:

Commitment: \$ \_\_\_\_\_

Address for Notices:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature Page – First Lien Term Loan Agreement  
Hornbeck Offshore Services, Inc.



**HORNBECK OFFSHORE**  
*Service with Energy®*

**NEWS RELEASE**  
**19-009**

Contacts: Todd Hornbeck, CEO  
Jim Harp, CFO  
Hornbeck Offshore Services  
985-727-6802

**For Immediate Release**

Ken Dennard, Managing Partner  
Dennard Lascar / 713-529-6600

**HORNBECK OFFSHORE ANNOUNCES  
NEW SENIOR CREDIT FACILITY**

**July 8, 2019 — Covington, Louisiana** — Hornbeck Offshore Services, Inc. (NYSE:HOS) (“the Company”) announced today that on June 28, 2019, the Company entered into a new \$100 million senior secured asset-based revolving credit facility (the “Senior Credit Facility”). The fully-funded Senior Credit Facility is secured by first priority liens on certain eligible receivables, certain restricted cash amounts and related assets.

The Senior Credit Facility enhances the Company’s financial flexibility and is comprised of two tranches that will rebalance each month based on the variable eligible receivables-backed borrowing base. The unrestricted receivables-backed tranche will mature in 2022, and the restricted cash-backed tranche will mature in 2025. The receivables-backed tranche may be used for working capital and general corporate purposes, including the repayment or refinancing of existing debt, subject to, among other things, compliance with certain requirements. The cash-backed tranche may, over time, rebalance to the receivables-backed tranche as eligible receivables increase and may be refinanced over time.

Loans under the Senior Credit Facility accrue interest at LIBOR plus a floating-rate spread of 5.00% for the life of the facility.

The Administrative and Collateral Agent of the Senior Credit Facility is CIT Northbridge Credit, LLC. The Company’s exclusive financial advisor in connection with the transaction and the sole lead arranger of the facility was Oppenheimer & Co. Inc. and the Company’s legal advisors were Latham & Watkins LLP and Winstead PC.

The foregoing is only a summary, is not necessarily complete, and is qualified by the full text of the Senior Credit Agreement and the Guaranty and Security Agreement, which were filed as exhibits to the Company’s Current Report on Form 8-K related to this matter on Friday, July 5, 2019.

Hornbeck Offshore Services, Inc. is a leading provider of technologically advanced, new generation offshore service vessels primarily in the Gulf of Mexico and Latin America.

## Forward-Looking Statements

*This news release contains forward-looking statements, including, in particular, statements about the Company's plans and intentions with regard to the Senior Credit Facility and potential uses of proceeds. These statements are 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, including whether and to what extent the Company will arrange any additional tranches of debt facilities or whether it will be able to gain full access to the restricted cash-backed tranche or refinance the Senior Credit Facility on more favorable terms prior to its scheduled maturity.*

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