
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549**

FORM 8-K

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

Date of Report (Date of earliest event reported): April 13, 2022

**HANNON ARMSTRONG SUSTAINABLE
INFRASTRUCTURE CAPITAL, INC.**

(Exact name of registrant as specified in its charter)

Maryland
(State or Other Jurisdiction of
Incorporation or Organization)

001-35877
(Commission
File Number)

46-1347456
(I.R.S. Employer
Identification Number)

**1906 Towne Centre Blvd, Suite 370 Annapolis,
Maryland 21401**
(Address of Principal Executive Offices)

(410) 571-6161
(Registrant's telephone number, including area code)

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

- Written 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))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.01 par value	HASI	New York Stock Exchange

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

Emerging growth company

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

Item 1.01. Entry into a Material Definitive Agreement.

Indenture, Supplemental Indenture and 0.00% Green Exchangeable Senior Notes due 2025

On April 13, 2022 Hannon Armstrong Sustainable Infrastructure Capital, Inc., a Maryland corporation (the “Company”), through its indirect subsidiaries HAT Holdings I LLC, a Maryland limited liability company (“HAT I”), and HAT Holdings II LLC, a Maryland limited liability company (“HAT II”, and together with HAT I, the “Issuers”), issued \$200 million aggregate initial principal amount of 0.00% green exchangeable senior notes due 2025 (the “Notes”) under an indenture, dated as of April 13, 2022 (the “Base Indenture”), between the Issuers and the Company, Hannon Armstrong Sustainable Infrastructure, L.P., a Delaware limited partnership (the “Operating Partnership”) and Hannon Armstrong Capital, LLC, a Maryland limited liability company (“HAC,” and collectively with the Company and the Operating Partnership, the “Guarantors”), as guarantors, and U.S. Bank Trust Company, National Association, as trustee (the “Trustee”), as supplemented by a supplemental indenture, dated as of April 13, 2022, between the Issuers, the Guarantors and the Trustee (the “Supplemental Indenture” and, together with the Base Indenture, the “Indenture”). The Notes were issued in a private offering exempt from the registration requirements of the Securities Act of 1933, as amended (the “Securities Act”), to qualified institutional buyers within the United States in accordance with Rule 144A under the Securities Act. The Notes are subject to restrictions on transfer and may only be offered or sold in transactions exempt from or not subject to the registration requirements of the Securities Act and other applicable securities laws. The Issuers have granted to the initial purchasers of the Notes an option to purchase, during the 13-day period beginning on, and including the first date on which the Notes are issued, up to \$30 million additional aggregate initial principal amount of the Notes.

The Issuers intend to allocate an amount equal to the net proceeds of the offering to acquire or refinance, in whole or in part, new and/or existing eligible green projects. In addition, these projects may include projects with disbursements made during the twelve months preceding the issue date of the Notes and projects with disbursements to be made following the issue date. Prior to the full allocation of such net proceeds, the Issuers intend to invest such net proceeds in interest-bearing accounts and short-term, interest-bearing securities which are consistent with the Company’s intention to qualify for taxation as a real estate investment trust (“REIT”).

The Notes will not bear regular interest and the principal amount of the Notes will accrete at a rate that provides holders with an aggregate yield to maturity of 3.25% if the Notes are not exchanged for the Company’s common stock, par value \$0.01 per share (“Common Stock”) at or prior to maturity. The Issuers may be required to pay special interest, if any, upon certain events as described in the Indenture. The Notes will mature on May 1, 2025 (the “Maturity Date”), unless earlier repurchased, redeemed or exchanged.

If the Issuers undergo a “fundamental change” (as defined in the Indenture) involving the Company, subject to certain conditions, holders of the Notes may require the Company to repurchase for cash all or parts of such holders’ Notes. The fundamental change repurchase price for the Notes generally will be equal to 100% of the accreted principal amount of the Notes to be repurchased, plus accrued and unpaid special interest, if any, to, but excluding, the fundamental change repurchase date.

Holders of the Notes may exchange any of their Notes for shares of Common Stock, at the applicable exchange rate at any time prior to the close of business on the second scheduled trading day immediately preceding the Maturity Date, unless the Notes have been previously redeemed or repurchased by the Issuers. Following the occurrence of a make-whole fundamental change, the Issuers will, in certain circumstances, increase the exchange rate for a holder that exchanges its Notes in connection with such make-whole fundamental change.

Any exchange of Notes into shares of Common Stock will be subject to certain ownership limitations (as more fully described in the Indenture). The initial exchange rate for each \$1,000 aggregate initial principal amount of the Notes is 17.6873 shares of Common Stock, equivalent to an exchange price of approximately \$56.54 per share of Common Stock, which is approximately a 32.5% premium to the closing price of the Common Stock on April 7, 2022. The exchange rate for the Notes will not increase on account of the accretion of the principal amount of the Notes. The exchange rate is subject to adjustment in certain circumstances (as more fully described in the Indenture).

The following is a brief description of the terms of the Notes and the Indenture.

Optional Redemption

The Issuers may not redeem the notes except to the extent the Company's board of directors determines such redemption is reasonably necessary to preserve its qualification as a REIT for U.S. federal income tax purposes. If the Company's board of directors determines that redeeming the Notes is necessary to preserve its qualification as a REIT, then the Issuers may at any time prior to the Maturity Date redeem all or part of the Notes at a cash redemption price equal to the accreted principal amount of the Notes to be redeemed, plus accrued and unpaid special interest, if any, to, but excluding, the redemption date.

Guarantees

When the Notes are first issued they will be guaranteed solely by the Guarantors. None of the Company's other subsidiaries will be required to guarantee the Notes in the future.

Ranking

The Notes will be:

- senior unsecured obligations of the Issuers;
- *pari passu* in right of payment with all of the Issuers' existing and future senior unsecured indebtedness and senior unsecured guarantees, including the Issuers' 6.00% Senior Notes due 2025, 3.375% Senior Notes due 2026 and 3.75% Senior Notes due 2030 as of the issue date of the Notes;
- effectively subordinated in right of payment to all of the Issuers' existing and future secured indebtedness and secured guarantees to the extent of the value of the assets securing such indebtedness and guarantees;
- senior in right of payment to any of the Issuers' future subordinated indebtedness and subordinated guarantees; and
- effectively subordinated in right of payment to all existing and future indebtedness, guarantees and other liabilities (including trade payables) and any preferred equity of the Issuers' subsidiaries.

The guarantee from each Guarantor will be:

- a senior unsecured obligation of such Guarantor;
- *pari passu* in right of payment with all existing and future senior unsecured indebtedness and senior unsecured guarantees of such Guarantor;
- effectively subordinated in right of payment to all existing and future secured indebtedness and secured guarantees of such Guarantor to the extent of the value of the assets securing such indebtedness and guarantees;
- senior in right of payment to any future subordinated indebtedness and subordinated guarantees of such Guarantor; and
- effectively subordinated in right of payment to all existing and future indebtedness, guarantees and other liabilities (including trade payables) and any preferred equity of the Company's subsidiaries (other than the Issuers) that are not guaranteeing the Notes.

The Guarantors' guarantees of a Note will automatically terminate when such Note is exchanged for shares of common stock plus any cash in lieu of fractional shares.

Events of Default

The Indenture also provides for Events of Default which, if any of them occurs, would permit or require the accreted principal amount of and accrued and unpaid interest on all the outstanding Notes to become or to be declared due and payable.

The preceding description is qualified in its entirety by reference to the Base Indenture and Supplemental Indenture, copies of which are attached as Exhibit 4.1 and Exhibit 4.2, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

Registration Rights

In connection with the issuance and sale of the Notes, on April 13, 2022, the Issuers and the Company also entered into a registration rights agreement (the “Registration Rights Agreement”) with the initial purchasers of the Notes.

Pursuant to the Registration Rights Agreement, the Company has agreed, amongst other things, that it will:

- file a shelf registration statement (the “shelf registration statement”) with the Securities and Exchange Commission (the “SEC”) and use commercially reasonable efforts to cause the shelf registration statement to become effective on or prior to the 120th day after the last original date of issuance of the Notes, covering resales of the shares of Common Stock, if any, deliverable upon exchange of the Notes;
- use commercially reasonable efforts to keep the shelf registration statement effective to and including the earliest of (1) the 40th trading day immediately following the maturity date of the Notes (subject to extension for any suspension of the effectiveness of the shelf registration statement during such 40-trading day period immediately following the maturity date of the Notes), (2) the 40th trading day immediately following the date on which there are no longer outstanding any Notes and (3) the date on which there are no shares of Common Stock delivered or deliverable upon exchange, other than shares of Common Stock that have been sold under the shelf registration statement or Rule 144 or that are eligible to be transferred without condition as contemplated under Rule 144 of the Securities Act.

If the Issuers do not fulfill certain of its obligations under the Registration Rights Agreement with respect to the Notes, the Issuers will be required to pay additional interest to holders of the Notes. If a holder of the Notes exchanges some or all of its Notes for shares of Common Stock, such holder will not be entitled to additional interest with respect to shares of Common Stock.

The preceding description is qualified in its entirety by reference to the Registration Rights Agreement, a copy of which is attached as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

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

The information required by this Item 2.03 relating to the Notes and the Indenture is contained in Item 1.01 above and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
4.1	<u>Indenture, dated as of April 13, 2022 by and among HAT Holdings I LLC and HAT Holdings II LLC, as issuers, and Hannon Armstrong Sustainable Infrastructure Capital, Inc., Hannon Armstrong Sustainable Infrastructure, L.P., and Hannon Armstrong Capital, LLC, as guarantors, and U.S. Bank Trust Company, National Association, as trustee.</u>
4.2	<u>First Supplemental Indenture, dated as of April 13, 2022 by and among HAT Holdings I LLC and HAT Holdings II LLC, as issuers, and Hannon Armstrong Sustainable Infrastructure Capital, Inc., Hannon Armstrong Sustainable Infrastructure, L.P., and Hannon Armstrong Capital, LLC, as guarantors, and U.S. Bank Trust Company, National Association, as trustee (including the form of HAT Holdings I LLC's and HAT Holdings II LLC's 0.00% Green Exchangeable Senior Note due 2025).</u>
10.1	<u>Registration Rights Agreement, dated as of April 13, 2022, by and among HAT Holdings I LLC, HAT Holdings II LLC, and Hannon Armstrong Sustainable Infrastructure Capital, Inc. and the initial purchasers party thereto.</u>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

SIGNATURES

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

HANNON ARMSTRONG SUSTAINABLE INFRASTRUCTURE
CAPITAL, INC.

Dated: April 15, 2022

By: /s/ Steven L. Chuslo
Steven L. Chuslo
Executive Vice President and Chief Legal Officer

Dated as of April 13, 2022

HAT HOLDINGS I LLC AND HAT HOLDINGS II LLC,
as Issuers

THE GUARANTORS NAMED HEREIN

and

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

INDENTURE

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This INDENTURE, dated as of April 13, 2022 among HAT HOLDINGS I LLC, a Maryland limited liability company ("**HAT I**"), and HAT HOLDINGS II LLC, a Maryland limited liability company ("**HAT II**", and together with HAT I, each an "**Issuer**" and together the "**Issuers**") each having its principal office at 1906 Towne Centre Blvd Suite 370, Annapolis, MD 21401, the Guarantors (as defined herein) named herein and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION (the "**Trustee**"), a national banking association organized under the laws of the United States of America which has its corporate trust office at CityPlace I, 185 Asylum Street, 27th Floor, Hartford, CT 06103 or as otherwise provided for herein.

Each party agrees as follows for the benefit of each other party and for the equal and ratable benefit of the Holders of the Issuers' debentures, notes or other evidences of unsecured indebtedness to be issued in one or more series ("**Securities**"):

ARTICLE I

DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01. **Definitions.**

"\$" means the lawful currency of the United States.

"**Board of Directors**" means (i) the board of directors of either Issuer or any Guarantor, (ii) any duly authorized committee of such board, (iii) any committee of officers of either Issuer or any Guarantor or (iv) any officer of either Issuer or any Guarantor acting, in the case of clauses (iii) or (iv), pursuant to authority granted by the board of directors of such Issuer or such Guarantor or any committee of such board.

"**Board Resolution**" means a resolution by the Board of Directors, or other body with analogous authority with respect to an Issuer or a Guarantor, as applicable, or any duly authorized committee of such body, certified by its Secretary or an Assistant Secretary as being duly adopted and in full force and effect.

"**Business Day**" means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a Legal Holiday.

"**Common Stock**" means the common stock, par value \$0.01 per share, of the Parent Guarantor, as that stock may be reconstituted from time to time.

"**Corporate Trust Office**" means the designated office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at for purposes of presentment, surrender, registration, transfer and exchange in respect of the Securities is located at 111 Fillmore Avenue, St. Paul, MN 55107, Attention: Hannon Armstrong Sustainable Infrastructure Capital, Inc., and for all other purposes is located at CityPlace I, 185 Asylum Street, 27th Floor, Hartford, CT 06103, Attention: Hannon Armstrong Sustainable Infrastructure Capital, Inc., or such other address as the Trustee may designate from time to time by notice to the Holders and the Issuer, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Holders and the Issuer).

“**Corporation**” includes corporations, associations, companies and business trusts.

“**Custodian**” has the meaning provided in Section 6.01.

“**Default**” means any event which, upon the giving of notice or passage of time, or both, would be an Event of Default.

“**Event of Default**” has the meaning provided in Section 6.01.

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

“**Existing Senior Notes**” means collectively, (a) the 6.00% Senior Notes due 2025, co-issued by the Issuers and guaranteed by the Parent Guarantor and the Issue Date Subsidiary Guarantors, pursuant to the indenture, dated as of April 21, 2020, as amended and supplemented, (b) the 3.375% Senior Notes due 2026, co-issued by the Issuers and guaranteed by the Parent Guarantor and the Issue Date Subsidiary Guarantors, pursuant to the indenture, dated as of June 28, 2021, as amended and supplemented and (c) the 3.75% Senior Notes due 2030, co-issued by the Issuers and guaranteed by the Parent Guarantor and the Issue Date Subsidiary Guarantors, pursuant to the indenture, dated as of August 25, 2020, as amended and supplemented.

“**Fiscal Year**” means the period commencing on January 1 of a year and ending on the next December 31 or such other period (not to exceed 12 months or 53 weeks) as the Issuers may from time to time adopt as their fiscal year.

“**Guarantees**” means the joint and several guarantees of the Issuers’ obligations under this Indenture and the Securities of any series, issued by the Guarantors pursuant to Article 13 of this Indenture.

“**Guarantors**” means the Parent Guarantor and each Issue Date Subsidiary Guarantor.

“**Holder**” or “**Securityholder**” means a Person in whose name a Security is registered on the Registrar’s books.

“**Indenture**” means this Indenture as amended or supplemented from time to time and will include the form and terms of the Securities of each series established as contemplated by Section 2.01.

“**Interest Payment Date**” means the date on which an installment of interest on the Securities is due and payable.

“**Issue Date Subsidiary Guarantors**” means Hannon Armstrong Sustainable Infrastructure, L.P. and Hannon Armstrong Capital, LLC.

“**Issuers**” means the Persons named as such in this Indenture until a successor replaces it and after that means the successor.

“**Legal Holiday**” has the meaning provided in Section 12.08.

“**Maturity Date**” means the date the principal of Securities is due and payable.

“**Officer**” means the Chairman of the Board, any Vice Chairman of the Board, the President, the Chief Executive Officer, the Chief Financial Officer, any Vice President, the Treasurer, the Secretary, the Controller or any Assistant Secretary of a Person.

“**Officers’ Certificate**” when used with respect to either Issuer or any Guarantor means a certificate signed by two Officers of such Issuer or such Guarantor. Each such certificate will include the statements described in Section 12.05.

“**Opinion of Counsel**” means a written opinion from legal counsel which is reasonably acceptable to the Trustee. That counsel may be an employee of or counsel to either Issuer or any Guarantor. Each such opinion will include the statements described in Section 12.05 if and to the extent required by that Section.

“**Parent Guarantor**” means Hannon Armstrong Sustainable Infrastructure Capital, Inc., a Maryland corporation.

“**Paying Agent**” has the meaning provided in Section 2.05.

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

“**Registrar**” has the meaning provided in Section 2.05.

“**SEC**” means the Securities and Exchange Commission.

“**Securities**” has the meaning provided in the recitals to this Indenture.

“**State**” means any state of the United States or the District of Columbia.

“**Subsidiary**” means, with respect to either Issuer or any Guarantor, any Person (other than an individual), a majority of the outstanding voting stock, partnership interests, membership interests or other equity interest, as the case may be, of which is owned or controlled, directly or indirectly, by such Issuer or such Guarantor or one or more other Subsidiaries of such Issuer or such Guarantor. For the purposes of this definition, “voting stock” means stock having voting power for the election of directors, trustees or managers, as the case may be, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency.

“**Supplemental Indenture**” means an indenture among the Issuers, the Guarantors and the Trustee which supplements this Indenture.

“Trustee” means the Person named as such in this Indenture and, subject to the provisions of Article VII, any successor to that person.

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

“United States” means the United States of America.

Section 1.02. [Reserved]

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

- (a) a term has the meaning assigned to it;
- (b) an accounting term not otherwise defined has the meaning assigned to it in accordance with generally accepted accounting principles in the United States;
- (c) “or” is not exclusive; and
- (d) words in the singular include the plural, and in the plural include the singular.

ARTICLE II

THE SECURITIES

Section 2.01. **Form and Dating.**

(a) The Securities of each series will be substantially in the form established by a Supplemental Indenture relating to the Securities of that series. The Securities may have notations, legends or endorsements required by law, stock exchange rules or usage. The Issuers will approve the form of the Securities and any notation, legend or endorsement on them. Each Security will be dated the date of its authentication.

(b) The Trustee’s certificate of authentication will be substantially in the form of Exhibit A.

Section 2.02. **Amount Unlimited; Issuable in Series.** The aggregate principal amount of the Securities which may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued in one or more series. Prior to the issuance of Securities of a series, the Issuers, the Guarantors and the Trustee will execute a Supplemental Indenture which will set forth as to the Securities of that series, to the extent applicable:

- (a) the title of the Securities;
- (b) any limit upon the aggregate principal amount of Securities which may be issued;

-
- (c) the date or dates on which the Securities will mature and the amounts to be paid upon maturity of the Securities;
 - (d) the rate or rates (which may be fixed or variable) at which the Securities will bear interest, if any, the dates from which interest will accrue, the dates on which interest will be payable and the record date for the interest payable on any interest payment date;
 - (e) the currency or currencies in which principal, premium, if any, and interest, if any, will be payable;
 - (f) the place or places where principal of, premium, if any, and interest, if any, on the Securities will be payable;
 - (g) any provisions regarding the right of the Issuers to redeem Securities or of holders to require the Issuers to redeem Securities;
 - (h) the right, if any, of holders of the Securities to convert or exchange them into stock or other securities of the Issuers or the Guarantors, including any provisions intended to prevent dilution of those conversion rights or exchange rights, as the case may be;
 - (i) any provisions by which the Issuers will be required or permitted to make payments to a sinking fund which will be used to redeem Securities or a purchase fund which will be used to purchase Securities;
 - (j) the percentage of the principal amount of the Securities which is payable if maturity of the Securities is accelerated because of a default;
- and
- (k) any other terms of the Securities.

Section 2.03. **Denominations.** Unless otherwise provided in the Supplemental Indenture relating to a series of Securities, the Securities of each series will be issuable in registered form without coupons, in denominations of \$1,000 and any integral multiple thereof unless otherwise specified as to any series in the applicable Supplemental Indenture.

Section 2.04. **Execution and Authentication.** Two Officers will sign the Securities of each series for each Issuer by manual or facsimile signature. If an Officer whose signature is on a Security no longer holds office at the time the Trustee authenticates the Security, the Security will be valid nonetheless.

A Security will not be valid until an authorized signatory of the Trustee manually signs the certificate of authentication on the Security. The signature will be conclusive evidence that the Security has been authenticated under this Indenture.

Section 2.05. **Registrar and Paying Agent.** The Issuers will maintain an office or agency where Securities of each series may be presented for conversion, registration of transfer or for exchange (the “**Registrar**”) and an office or agency where Securities of each series may be presented for payment (“**Paying Agent**”). The Registrar will keep a register of the Securities of each series and of their transfer and exchange. The Issuers may have one or more co-registrars and one or more additional paying agents. The term “Paying Agent” includes any additional paying agent.

The Issuers will enter into an appropriate agency agreement with any Registrar, Paying Agent or co-registrar not a party to this Indenture. The agreement will implement the provisions of this Indenture that relate to that agent. The Issuers will notify the Trustee of the name and address of any such agent. If the Issuers fail to maintain a Registrar or Paying Agent, the Trustee will act as such. The Issuers or any Subsidiary may act as Paying Agent, Registrar, co-registrar or transfer agent.

The Issuers initially appoint the Trustee to act as Registrar and Paying Agent in connection with the Securities of each series, except in instances in which the Supplemental Indenture relating to a series of Securities appoints a different Registrar or Paying Agent. In acting hereunder and in connection with the Securities, the Paying Agent and Registrar shall act solely as agents of the Issuers, and will not thereby assume any obligations towards or relationship of agency or trust for or with any Holder of any Series of Securities.

Section 2.06. Paying Agent to Hold Money in Trust Prior to each due date of the principal of, premium, if any, or interest, if any, on any Security, the Issuers will deposit with the Paying Agent a sum sufficient to pay that principal, premium or interest when due. The Paying Agent will hold in trust for the benefit of the Holders of the Securities of a series, and if the Paying Agent is not the Trustee, in trust for the benefit of the Trustee, all sums held by the Paying Agent for the payment of principal, premium or interest on the Securities of that series and, in the case of a Paying Agent other than the Trustee, the Paying Agent will give the Trustee notice of any default by the Issuers in making any such payment. If either Issuer or a Subsidiary acts as Paying Agent, it will segregate the money held by it as Paying Agent and hold it as a separate trust fund. The Issuers at any time may require a Paying Agent to pay all money held by it to the Trustee and to account for any funds disbursed by the Paying Agent. Upon complying with this Section, the Paying Agent will have no further liability for the money.

Section 2.07. Securityholder Lists. The Trustee will preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of the Holders of the Securities of each series. If the Trustee is not the Registrar, the Issuers will furnish to the Trustee in writing (a) at least five Business Days before each Interest Payment Date and (b) at such other times as the Trustee may request in writing, all information in the possession or control of the Issuers or their Paying Agent as to the names and addresses of Holders of the Securities of a series; **provided, however, that** if the provisions of (a) and (b) do not provide for the furnishing of such information at stated intervals of not more than six months, at least as frequently as semiannually.

Section 2.08. Transfer and Exchange. Unless otherwise provided in the Supplemental Indenture relating to Securities of a series, Securities which are issued in registered form will be transferred only upon the surrender of the Securities for registration of transfer. When a Security is presented to the Registrar or a co-registrar with a request to register a transfer, the Registrar will register the transfer as requested if the requirements of Article VIII of the New York Uniform Commercial Code are met. When Securities are presented to the Registrar or a co-registrar with a request to exchange them for an equal principal amount of Securities of the same series of other denominations, the Registrar will make the exchange as requested if the same requirements are met. To permit registration of transfers and exchanges, the Issuers will execute and, upon receipt of written direction from the Issuers, the Trustee will authenticate Securities at the Registrar's or co-registrar's request. The Issuers will not charge a fee for transfers or exchanges.

The Issuers will not be required to make, and the Registrar need not register, transfers or exchanges of (i) Securities selected for redemption (except, in the case of Securities to be redeemed in part, transfers or exchanges of the portion of the Securities not to be redeemed) or (ii) any Securities of a series for a period of 15 days before the first mailing of a notice of the Securities of that series which are to be redeemed.

Prior to the due presentation for registration or transfer of any Security which was issued in registered form, the Issuers, the Trustee, the Paying Agent, the Registrar or any co-registrar may deem and treat the person in whose name the Security is registered as the absolute owner of the Security for all purposes, and none of the Issuers, the Trustee, the Paying Agent, the Registrar or any co-registrar will be affected by notice to the contrary.

Neither the Trustee nor any Agent shall have any responsibility or liability for any actions taken or not taken by the depository. The Trustee shall have no responsibility or obligation to any beneficial owner of a Global Security, a member of, or a participant in the Depository or any other Person with respect to the accuracy of the records of the Depository or its nominee or of any participant or member thereof, with respect to any ownership interest in the Securities or with respect to the delivery to any participant, member, beneficial owner or other Person (other than the Depository) of any notice (including any notice of redemption or repurchase) or the payment of any amount, under or with respect to such Securities. All notices and communications to be given to the Holders of the Securities and all payments to be made to Holders under the Securities shall be given or made only to the registered Holders of the Securities (which shall be the Depository or its nominee in the case of a Global Security). The rights of beneficial owners in any Global Security shall be exercised only through the Depository subject to the applicable rules and procedures of the Depository. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depository with respect to its members, participants and any beneficial owners.

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among participants in the Depository or beneficial owners of interests in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 2.09. Replacement Securities. If a mutilated Security which had been issued in registered form is surrendered to the Registrar or if the Holder presents evidence to the satisfaction of the Issuers and the Trustee that a Security which had been issued in registered form has been lost or destroyed, the Issuers will issue and, upon receipt of written direction from the Issuers, the Trustee will authenticate a replacement Security of the same series if the requirements of Section 8-405 of the New York Uniform Commercial Code are met and the Holder satisfies any other

reasonable requirements of the Trustee. The replacement Security will not be issued until the Holder furnishes an indemnity bond sufficient in the judgment of the Issuers and the Trustee to protect the Issuers, the Trustee, the Paying Agent and the Registrar or any co-registrar from any loss which any of them may suffer if the Security is replaced. The Issuers may charge the Holder for their expenses in replacing a Security.

Every replacement Security will be an obligation of the Issuers, even if the replaced Security is subsequently found.

Section 2.10. **Outstanding Securities.** The Securities outstanding at any time will be all the Securities authenticated by the Trustee, except those cancelled by it, those delivered to it for cancellation and those described in this Section as not outstanding. A Security does not cease to be outstanding because either Issuer or its affiliates hold the Security.

If a Security is replaced pursuant to Section 2.09, it ceases to be outstanding unless the Trustee and the Issuers receive proof satisfactory to them that the replaced Security is held by a protected purchaser (in which case the replaced Security will be treated as outstanding to the extent permitted by Section 8-210 of the New York Uniform Commercial Code).

If the Paying Agent (other than the Issuers or a Subsidiary) segregates and holds in trust, in accordance with this Indenture, on a redemption date or Maturity Date money sufficient to pay all principal, premium, if any, and interest, if any, payable on that date with respect to the Securities to be redeemed or maturing, as the case may be, then on that date those Securities will cease to be outstanding and interest on them will cease to accrue.

Section 2.11. **Temporary Securities.** Until definitive Securities of a series are ready for delivery, the Issuers may prepare and, upon receipt of written direction from the Issuers, the Trustee will authenticate temporary Securities of that series. Temporary Securities will be substantially in the form of definitive Securities but may have variations that the Issuers consider appropriate for temporary Securities. Without unreasonable delay, the Issuers will prepare and, upon receipt of written direction from the Issuers, the Trustee will authenticate definitive Securities and deliver them in exchange for temporary Securities.

Section 2.12. **Cancellation.** The Issuers at any time may deliver Securities of a series to the Trustee for cancellation and the Trustee will reduce accordingly the aggregate amount of the Securities of that series which are outstanding. The Registrar and the Paying Agent will forward to the Trustee any Securities surrendered to them for registration of transfer, exchange, payment, or conversion. The Trustee and no one else will cancel and dispose of (subject to the record retention requirements of the Exchange Act) all Securities surrendered for registration of transfer, exchange, payment, conversion or cancellation and deliver evidence of such disposal to the Issuers. Subject to Section 2.09, the Issuers may not issue new Securities of a series to replace Securities of the series it has redeemed, paid, converted, exchanged or delivered to the Trustee for cancellation.

Section 2.13. **Defaulted Interest.** If the Issuers default in a payment of interest on the Securities of a series, it will pay defaulted interest (plus interest on such defaulted interest to the extent lawful) to the persons who are Holders of the Securities of that series on a subsequent special record date, which date will be at least five Business Days prior to the payment date. The Issuers will fix the special record date and payment date, and, at least 15 days before the special record date, the Issuers will mail to each Holder of Securities of that series a notice that states the special record date, the payment date and the amount of defaulted interest and any interest on that defaulted interest which is to be paid. Notwithstanding the foregoing, the Issuers may pay defaulted interest in any other lawful manner.

Section 2.14. **CUSIP Numbers.** The Issuers in issuing the Securities may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to Holders; provided that the Trustee shall have no liability for any defect in the "CUSIP" numbers as they appear on the any Security, notice or elsewhere, and, provided further that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Issuers will promptly notify the Trustee in writing of any change in the "CUSIP" numbers.

Section 2.15. Joint and Several Liability.

(a) Each Issuer shall be jointly and severally liable for all obligations under this Indenture and the Securities of any series, regardless of which Issuer actually receives the proceeds of the sale of such Securities. Each Issuer's obligations with respect to this Indenture and the Securities shall be separate and distinct obligations. Each Issuer acknowledges that it will receive benefits from the financing arrangements contemplated by this Indenture.

(b) Each Issuer's obligations arising as a result of the joint and several liability of such Issuer hereunder with respect to this Indenture and any Security shall, in each case, to the fullest extent permitted by law, be unconditional irrespective of (A) the validity or enforceability, avoidance or subordination of the obligations of the other Issuer or of any document evidencing all or any part of the obligations of the other Issuer, (B) the absence of any attempt to collect the payment due under this Indenture or any Security from the other Issuer, any Guarantor, or any other security therefor, or the absence of any other action to enforce the same, (C) the disallowance of all or any portion of any Holder's or the Trustee's claim(s) for the repayment of the obligations of the other Issuer under Section 502 of the Bankruptcy Code or similar provision under any other applicable debtor relief law, or (D) any other circumstances which might constitute a legal or equitable discharge or defense of the other Issuer (other than the defense of payment).

ARTICLE III

REDEMPTION

Section 3.01. **Issuers' Option to Redeem.** The Issuers will have the option to redeem Securities of a series only to the extent, if any, and only on the terms, set forth in the Supplemental Indenture relating to the Securities of that series. If the Issuers have the option to redeem Securities of a series, unless otherwise provided in the Supplemental Indenture relating to the series, the terms of the redemption will include those set forth in Sections 3.02 through 3.06.

Section 3.02. **Notices to Trustee.** If the Issuers elect to redeem Securities of a series, it will notify the Trustee of the redemption date and the principal amount and series of Securities to be redeemed. The Issuers will give each notice provided for in this Section at least 15 days before the redemption date. If fewer than all the Securities of a series are to be redeemed, the record date for determining which Securities of the series are to be redeemed will be selected by the Issuers, which will give notice of the record date to the Trustee at least 5 days before the record date.

Section 3.03. **Selection of Securities to be Redeemed.** If fewer than all the Securities of a series are to be redeemed at the Issuers' option, the Trustee will select the Securities of that series to be redeemed by lot or, in its sole discretion, pro-rata or in accordance with the customary procedures of the depository. The Trustee will make the selection from outstanding Securities of that series not previously called for redemption. The Trustee may select for redemption portions of the principal of Securities that have denominations larger than the minimum denomination in which Securities of the applicable series may be issued. Securities and portions of Securities the Trustee selects will be in amounts equal to the minimum denomination in which Securities of the applicable series may be issued and multiples of that amount. Provisions of this Indenture that apply to Securities called for redemption also apply to portions of Securities called for redemption. The Trustee will notify the Issuers promptly of the Securities or portions of Securities to be redeemed.

Section 3.04. **Notice of Redemption at the Issuers' Option.** At least 10 days and not more than 60 days before a date set for redemption at the Issuers' option, the Issuers will mail a notice of redemption by first-class mail to each Holder of Securities to be redeemed in whole or in part.

The notice will identify the principal amount and series of each Security (including the CUSIP number) to be redeemed and will state:

- (a) the redemption date;
- (b) the redemption price plus accrued interest, if any;
- (c) the name and address of the Paying Agent;
- (d) that Securities called for redemption in whole or in part must be surrendered to the Paying Agent to collect the redemption price plus accrued interest, if any;
- (e) any conditions precedent to such redemption;
- (f) that (subject to any applicable conditions precedent), unless the Issuers default in making the redemption payment, interest on Securities (or portions of Securities) called for redemption will cease to accrue on the redemption date and, if applicable, that those Securities (or the portions of them called for redemption) will cease on the redemption date (or such other date as is provided in the Supplemental Indenture relating to the Securities) to be convertible into, or exchangeable for, other securities or assets;
- (g) if applicable, the current conversion or exchange price; and

(h) that no representation is made as to the correctness or accuracy of the CUSIP number, if any, listed in such notice or printed on the Securities.

At the Issuers' request, pursuant to an Officers' Certificate delivered to the Trustee at least 15 days prior to the redemption date, the Trustee will give the notice of redemption in the Issuers' name and at the Issuers' expense. In such event, the Issuers will provide the Trustee with the information required by clauses (a) through (c), (e) and (g).

Section 3.05. Effect of Notice of Redemption. Once notice of redemption is mailed, Securities, or portions of Securities called for redemption will become due and payable on the redemption date and at the redemption price. Notice of redemption may, at the Issuers' option and discretion, be subject to one or more conditions precedent. Subject to any such conditions precedent, (i) upon surrender to the Paying Agent, those Securities will be paid at the redemption price, plus accrued and unpaid interest to the redemption date, and (ii) on and after the date fixed for redemption (unless the Issuers default in the payment of the redemption price, together with interest accrued to the redemption date) interest on the Securities, or portions of them, which are redeemed will cease to accrue and any right to convert those Securities into, or exchange them for, other securities or assets will terminate and those Securities will cease to be convertible or exchangeable. Failure to give notice or any defect in the notice to any Holder will not affect the validity of the notice to any other Holder.

Section 3.06. Deposit of Redemption Price. No later than 10:00 a.m. Eastern Time on the redemption date specified in a notice of redemption, the Issuers will deposit with the Paying Agent (or, if the Issuers or a Subsidiary is the Paying Agent, segregate and hold in trust) money sufficient to redeem on the redemption date all the Securities called for redemption on that redemption date at the appropriate redemption price, together with accrued interest to the redemption date, other than Securities or portions of Securities called for redemption which have been delivered by the Issuers to the Trustee for cancellation or Securities which have been surrendered for conversion or exchange. If any Securities called for redemption are converted or exchanged, any money deposited with the Paying Agent for redemption of those Securities will be paid to the Issuers upon their request, or, if the money is held in trust by the Issuers or a Subsidiary as Paying Agent, the money will be discharged from the trust.

Section 3.07. Holder's Right to Require Redemption. Holders of Securities of a series will have the right to require the Issuers to redeem those Securities only to the extent, and only on the terms, set forth in the Supplemental Indenture relating to the Securities of that series. If Holders of Securities of a series have the right to require the Issuers to redeem those Securities, unless otherwise provided in the Supplemental Indenture relating to the Securities of that series, the terms of the redemption will include those set forth in Section 3.08.

Section 3.08. Procedure for Requiring Redemption. If a Holder has the right to require the Issuers to redeem Securities, to exercise that right, the Holder must deliver the Securities to the Paying Agent, endorsed for transfer and with the form on the reverse side entitled "Option to Require Redemption" completed. Delivery of Securities to the Paying Agent as provided in this Section will constitute an irrevocable election to cause the specified principal amount of Securities to be redeemed. When Securities are delivered to the Paying Agent as provided in this Section, unless the Issuers fail to make the payments due as a result of the redemption within 20 days after the Securities are delivered to the Paying Agent as provided in this Section interest on the Securities will cease to accrue and, if the Securities are convertible or exchangeable, the Holder's right to convert or exchange the Securities will terminate.

The Issuers' determination of all questions regarding the validity, eligibility (including time of receipt) and acceptance of any Security for redemption will be final and binding.

Section 3.09. **Securities Redeemed in Part.** Upon surrender of a Security that is redeemed in part, the Issuers will execute and the Trustee will authenticate and deliver to the Holder (at the Issuers' expense) a new Security equal of the same series in principal amount equal to the unredeemed portion of the Security which was surrendered.

ARTICLE IV

COVENANTS

Section 4.01. **Payment of Securities.** The Issuers will promptly pay or cause to be paid the principal of, premium, if any, and interest, if any, on each of the Securities of a series at the places and time and in the manner provided in the Securities and in the Supplemental Indenture relating to the series. An installment of principal, premium or interest will be considered paid on the date it is due if the Trustee or Paying Agent holds on that date in accordance with this Indenture or the applicable Supplemental Indenture money designated for and sufficient to pay the installment then due.

The Issuers will pay or cause to be paid interest on overdue principal at the rate specified in the Securities; it will also pay interest on overdue installments of interest at the same rate (or such other rate as is provided in the applicable Supplemental Indenture), to the extent lawful.

Section 4.02. **Reporting.**

(a) To the extent any Securities of a series are outstanding, the Parent Guarantor or the Issuers shall deliver to the Trustee within 15 days after it files them with the SEC copies of the annual reports and of the information, documents, and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) which the Parent Guarantor is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act. Reports, information and documents filed with the SEC via the EDGAR system will be deemed to be delivered to the Trustee as of the time of such filing via EDGAR for purposes of this Section 4.02.

(b) The Trustee shall not be under a duty to review or evaluate any report or information delivered to the Trustee pursuant to the provisions of this Section 4.02 for the purposes of making such reports available to it and to the Holders of Securities of any Series who may request such information. Delivery of such reports, information and documents to the Trustee as may be required under this Section 4.02 is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Issuers' or the Guarantors' compliance with any of their covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

Section 4.03. **Corporate Existence.** Subject to Article V, each Issuer and each Guarantor will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights (charter and statutory) and franchises; **provided, however,** that neither the Issuers nor the Guarantors will be required to preserve any such right or franchise if the Board of Directors determines that the preservation of the right or franchise is no longer desirable in the conduct of the business of the Issuers or Guarantors, as the case may be, and that such loss will not be disadvantageous in any material respect to the Holders of Securities of any series.

Section 4.04. **Compliance Certificate.** The Issuers will deliver to the Trustee within 120 days after the end of each fiscal year of the Issuers (which fiscal year ends on December 31) an Officers' Certificate stating that in the course of the performance by the signers of their duties as Officers of the Issuers they would normally have knowledge of any default by the Issuers or Guarantors and whether or not the signers know of any default that occurred during the fiscal year. If they do, the certificate will describe the default, its status and what action the Issuers are taking or proposes to take with respect thereto.

Section 4.05. **Further Instruments and Acts.** Upon request of the Trustee, the Issuers will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

ARTICLE V

SUCCESSOR CORPORATION

Section 5.01. **Issuers and Parent Guarantor May Consolidate, Etc., Only on Certain Terms** Neither the Issuers nor the Parent Guarantor will consolidate with or merge into any other corporation or convey, transfer or lease their respective properties and assets substantially as an entirety to any person, unless:

(a) the corporation formed by the consolidation or into which an Issuer or the Parent Guarantor is merged or the person which acquires by conveyance or transfer, or which leases, the properties and assets of such Issuer or Parent Guarantor, as the case may be, substantially as an entirety will be a Person, or in the case of Parent Guarantor, a corporation, organized and existing under the laws of the United States of America, a State of the United States of America or the District of Columbia and expressly assumes, by one or more supplemental indentures, executed and delivered to the Trustee, in form satisfactory to the Trustee, the due and punctual payment of the principal of, premium, if any, and interest, if any, on all the Securities of each series and the performance of every covenant of this Indenture and of all Supplemental Indentures to be performed or observed by such Issuer or Parent Guarantor;

(b) immediately after giving effect to the transaction, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, will have occurred and be continuing; and

(c) such Issuer or Parent Guarantor has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that the consolidation, merger, conveyance, transfer or lease and the supplemental indenture (or the supplemental indentures together) comply with this Article and that all the conditions precedent relating to the transaction set forth in this Section have been fulfilled.

Section 5.02. **Successor Corporation Substituted.** Upon any event described in Section 5.01, the successor Person will succeed to, and be substituted for, and may exercise every right and power of, the relevant Issuer or Parent Guarantor under this Indenture and all the Supplemental Indentures relating to outstanding series of Securities, and the predecessor corporation will be relieved of all obligations and covenants under this Indenture and each of those Supplemental Indentures.

ARTICLE VI

DEFAULTS AND REMEDIES

Section 6.01. **Events of Default.** An “**Event of Default**” occurs if:

(a) The Issuers default in the payment of interest on any Security of any series when it becomes due and payable and the default continues for a period of 30 days (or such other period, which may be no period) as is specified in the Supplemental Indenture relating to the series;

(b) The Issuers default in the payment of the principal of, or premium, if any, on any Security of any series as and when it becomes due and payable at its stated maturity or upon redemption, acceleration or otherwise and, if provided in the Supplemental Indenture relating to a series, the default continues for a period specified in the Supplemental Indenture;

(c) The Issuers or the Parent Guarantors fail to comply with any of their other covenants or agreements with regard to Securities of a series or this Indenture (other than a covenant or agreement, a default in whose performance or whose breach is dealt with specifically elsewhere in this Section) and that failure continues for a period of 60 days after the date of the notice specified below;

(d) Either Issuer or any Guarantor, pursuant to any Bankruptcy Law applicable to such Issuer or Guarantor:

(i) commences a voluntary case;

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

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

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

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

(i) for relief in an involuntary case with respect to either Issuer or any Guarantor;
(ii) appointing a Custodian of either Issuer or any Guarantor or for any substantial part of its property; or
(iii) ordering either Issuer's or any Guarantor's winding up or liquidation; and the order or decree remains unstayed and in effect for 90 days; or

(f) Any Guarantee shall be held in any judicial proceeding to be unenforceable or invalid or shall cease for any reason to be in full force and effect or any Guarantor, or any person acting on behalf of any such Guarantor, shall deny or disaffirm its obligations under its Guarantee.

Each of the occurrences described in clauses (a) through (f) will constitute an Event of Default whatever the reason for the occurrence and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body.

The term "**Bankruptcy Law**" means Title 11 of the United States Code or any similar United States Federal or State law for the relief of debtors. The term "**Custodian**" means any receiver, trustee, assignee, liquidator, custodian or similar official under any Bankruptcy Law.

A Default under clause (c) of this Section is not an Event of Default until the Trustee notifies the Issuers and the Guarantors, or the Holders of at least 25% in principal amount of the then outstanding Securities of a series with regard to which the Issuers or Guarantors have failed to comply with a covenant or agreement notify the Issuers, the Guarantors and the Trustee, of the Default and the Issuers or the Guarantors do not cure the Default within 60 days after the giving of the notice. The notice must specify the Default, demand that it be remedied and state that the notice is a "**Notice of Default**."

A Default under clause (a), (b) or (c) with regard to Securities of a series will not constitute a Default with regard to Securities of any other series except to the extent, if any, provided in the Supplemental Indenture relating to the other series.

The Issuers will deliver to the Trustee, within 20 days after it occurs, written notice in the form of an Officers' Certificate of any event of which the Issuers are aware which with the giving of notice and the lapse of time would become an Event of Default under clause (c), its status and what action the Issuers are taking or proposes to take with respect to it.

Section 6.02. Acceleration. If an Event of Default as to the Securities of a series occurs and is continuing, unless the principal of all of the Securities of the series has already become due and payable, the Trustee by notice to the Issuers, the Guarantors or the Holders of at least 25% in aggregate principal amount of the Securities of the series then outstanding by notice to the Issuers, the Guarantors and the Trustee, may declare the principal of and accrued interest, if any, on all the Securities of the series to be due and payable. Upon such a declaration, that principal and interest will be due and payable immediately. If an Event of Default specified in Section 6.01(d) or (e) occurs, the principal of, premium, if any, and accrued interest, if any, on all the Securities will automatically become and be immediately due and payable without any declaration or other act on

the part of the Trustee or any Securityholders. The Holders of a majority in principal amount of the Securities of a series then outstanding, on behalf of the Holders of all the Securities of the series, by written notice to the Trustee may rescind an acceleration and its consequences if all existing Events of Default have been cured or waived except nonpayment of principal, premium, if any, or interest, if any, that has become due solely because of acceleration, and if the rescission would not conflict with any judgment or decree. No such rescission will affect any subsequent default or impair any consequent right.

Section 6.03. **Other Remedies.** If an Event of Default as to a series occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of principal of, premium, if any, and interest, if any, on the Securities of the series or to enforce the performance of any provision under this Indenture or any applicable Supplemental Indenture.

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

Section 6.04. **Waiver of Existing Defaults.** The Holders of a majority in aggregate principal amount of the Securities of a series then outstanding, on behalf of the Holders of all the Securities of that series, by written notice to the Trustee may consent to the waiver of any past Default with regard to Securities of the series and its consequences except (i) a default in the payment of interest or premium, if any, on, or the principal of, Securities of the series, or (ii) a default in respect of a covenant or a provision that under Section 9.02 cannot be modified or amended without the consent of the Holders of all Securities of the series then outstanding. The defaults described in clauses (i) and (ii) in the previous sentence may be waived with the consent of the Holders of all Securities of the series then outstanding. When a Default or Event of Default is waived, it is deemed cured and not continuing, but no waiver will extend to any subsequent or other Default or impair any consequent right.

Section 6.05. **Control by Majority.** The Holders of a majority in principal amount of the Securities of a series then outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee with regard to the Securities of that series or of exercising any trust or power conferred on the Trustee with regard to the Securities of that series. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or, subject to Section 7.01, that the Trustee determines is unduly prejudicial to the rights of other Securityholders (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not any such directions are unduly prejudicial to such Holders) or that would involve the Trustee in personal liability; **provided, however, that** the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. Prior to taking any action as a result of a direction given under this Section, the Trustee will be entitled to indemnification and/or security satisfactory to it in its sole discretion against all losses and expenses caused by taking or not taking that action.

Section 6.06. **Payments of Securities on Default; Suit Therefor.** The Issuers covenant that upon the occurrence of an Event of Default described in Section 6.01(a) or (b), then, upon demand of the Trustee, the Issuers will pay to the Trustee, for the benefit of the holders of the Securities in all series, the whole amount that will then have become due and payable on all such Securities for principal, premium, if any, and interest, with interest on the overdue principal and premium, if any, and (to the extent that payment of such interest is enforceable under applicable law) on the overdue installments of interest at the rate borne by the Securities in all series; and, in addition, such further amount as will be sufficient to cover the costs and expenses of collection, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and any expenses or liabilities incurred by the Trustee hereunder other than through its gross negligence or willful misconduct. Until such demand by the Trustee, the Issuers may pay the principal of and premium, if any, and interest on the Securities of all series to the registered Holders, whether or not the Securities in that series are overdue.

Section 6.07. **Limitation on Suits.** A Securityholder may not pursue any remedy with respect to this Indenture unless:

- (a) the Holder gives to the Trustee written notice stating that an Event of Default as to a series is continuing;
- (b) the Holders of at least 25% in principal amount of the Securities of the series then outstanding make a written request to the Trustee to pursue the remedy;
- (c) such Holder or Holders offer to the Trustee security and/or indemnity satisfactory to the Trustee against any loss, liability or expense;
- (d) the Trustee does not comply with the request within 60 days after receipt of the request and the offer of security and/or indemnity, and the Event of Default has not been waived; and
- (e) the Trustee has received no contrary direction from the Holders of a majority in principal amount of the Securities of the series then outstanding during such 60-day period.

A Securityholder may not use this Indenture to prejudice the rights of another Holder of the same series of Securities or to obtain a preference or priority over another Holder of the same series of Securities (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders).

Section 6.08. **Rights of Holders to Receive Payment and to Demand Conversion or Exchange.** Notwithstanding any other provision of this Indenture, the right of any Holder of a Security of any series to receive payment of principal of, premium, if any, and interest, if any, on the Security (and interest on overdue principal and interest on overdue installments of interest, if any, as provided in Section 4.01), on or after the respective due dates expressed in the Security or, in the case of redemption, on or after the redemption date, or in the case of conversion or exchange, to receive the security issuable upon conversion or exchange or to institute suit for the enforcement of any such payment, conversion or exchange on or after the applicable due date, redemption date or conversion or exchange date, as the case may be, against the Issuers or the Guarantors, will not be impaired or affected without the consent of the Holder.

Section 6.09. **Collection Suit by Trustee.** If an Event of Default in payment of principal, premium, if any, or interest, if any, specified in clause (a) or (b) of Section 6.01 occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Issuers and the Guarantors for the whole amount of principal, premium, if any, and interest remaining unpaid (together with interest on that unpaid interest to the extent lawful) and the amounts provided for in Section 7.07.

Section 6.10. **Trustee May File Proofs of Claim.** The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and the Holders of the Securities of any or all series allowed in any judicial proceedings relative to the Issuers or the Guarantors, their creditors or their property and, unless prohibited by law or applicable regulations, may vote on behalf of the Holders in any election of a trustee in bankruptcy or other person performing similar functions, and any Custodian in any such judicial proceeding is hereby authorized by each Holder to make payments to the Trustee and, if the Trustee consents to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and its counsel, and any other amounts due the Trustee under Section 7.07.

Section 6.11. **Restoration of Positions.** If a judicial proceeding by the Trustee or a Securityholder to enforce any right or remedy under this Indenture or any Supplemental Indenture is dismissed or decided favorably to the Issuers or Guarantors, as the case may be, except as otherwise provided in the judicial proceeding, the Issuers, the Guarantors, the Trustee and the Securityholders will be restored to the positions they would have been in if the judicial proceeding had not been instituted.

Section 6.12. **Priorities.** If the Trustee collects any money pursuant to this Article VI with respect to Securities of a series, subject to Article XI, it will pay out the money or property in the following order:

FIRST: to the Trustee and its attorneys and agents for amounts due under Section 7.07;

SECOND: to Securityholders for amounts due and unpaid on the Securities of the series for principal and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities of the series for principal and interest, respectively; and

THIRD: to the Issuers and Guarantors.

The Trustee may fix a record date and payment date for any payment to Holders of Securities of a series pursuant to this Section. At least 15 days before the record date, the Issuers will mail to each Holder of Securities of the series and the Trustee a notice that states the record date, the payment date and the amount to be paid.

Section 6.13. **Undertaking for Costs.** In any suit for the enforcement of any right or remedy under this Indenture or any Supplemental Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made

by the party litigant. This Section 6.13 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07, or a suit by Holders of in aggregate more than 10% in principal amount of the Securities of a series then outstanding, or to any suit instituted by any Holder for the enforcement of the payment of the principal of, premium, if any, or interest on any Security held by that Holder on or after the due date provided in the Security or to any suit for the enforcement of the right to convert or exchange any Security in accordance with the provisions of a Supplemental Indenture applicable to that Security.

Section 6.14. **Stay, Extension or Usury Laws.** Each Issuer and each Guarantor agree (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim, and will resist any and all efforts to be compelled to take the benefit or advantage of, any stay or extension law or any usury or other law, wherever enacted, now or at any subsequent time in force, which would prohibit or forgive such Issuer or such Guarantor, as the case may be, from paying all or any portion of the principal of, premium, if any, and/or interest on any of the Securities as contemplated in this Indenture or a Supplemental Indenture, or which may affect the covenants or performance of this Indenture, and each Issuer and each Guarantor (to the extent that it may lawfully do so) hereby expressly waive all benefit or advantage of any such law and agrees that it will not hinder, delay or impede the execution of any power granted to the Trustee in this Indenture or any Supplemental Indenture, but (to the extent that it may lawfully do so) will suffer and permit the execution of any such power as though no such law had been enacted.

Section 6.15. **Liability of Stockholders, Officers, Directors and Incorporators.** No stockholder, officer, director or incorporator, as such, past, present or future, of the Issuers or Guarantors, or any of their respective successor Person, will have any personal liability in respect of the Issuers' or the Guarantors' obligations under this Indenture, the Guarantees or any Securities by reason of his or its status as such stockholder, officer, director, incorporator or member; **provided, however, that** nothing in this Indenture, the Guarantees or in the Securities will prevent recourse to and enforcement of the liability of any stockholder or subscriber to capital stock in respect of shares of capital stock which have not been fully paid up.

ARTICLE VII

TRUSTEE

Section 7.01. **Duties of Trustee.**

(a) If an Event of Default has occurred and is continuing, the Trustee will exercise the rights and powers vested in it by this Indenture and any applicable Supplemental Indenture and use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

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

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

(ii) the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed in them, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture in the absence of willful misconduct on the Trustee's part; **provided, however, that** the Trustee will examine the certificates and opinions to determine whether or not they substantially conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

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

(i) this paragraph does not limit the effect of paragraph (b) of this Section 7.01;

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

(iii) the Trustee will not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.05; and

(iv) the Trustee will not be required to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties under this Indenture or any Supplemental Indenture or in the exercise of any of its rights or powers, if it has reasonable grounds to believe repayment of the funds or adequate indemnity and/or security against the risk or liability is not assured to it.

(d) Every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee is subject to the provisions of this Section 7.01.

(e) The Trustee may refuse to perform any duty or exercise any right or power unless it receives indemnity and/or satisfactory to it against any loss, liability or expense.

(f) The Trustee will not be liable for interest on any money received by it except as the Trustee may agree in writing with the Issuers. Money and Government Obligations held in trust by the Trustee need not be segregated from other funds or items except to the extent required by law.

(g) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the written direction of the holders of not less than a majority in principal amount of the Securities at the time outstanding given pursuant to Section 6.05 of this Indenture, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture or any Supplemental Indenture.

Section 7.02. Rights of Trustee.

(a) The Trustee may conclusively rely on any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting, it may require an Officers' Certificate and/or an Opinion of Counsel or both which conforms to Section 12.05. The Trustee will not be liable for any action it takes or omits to take in good faith in reliance on such an Officers' Certificate and/or Opinion of Counsel.

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

(d) The Trustee will not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers, except conduct which constitutes willful misconduct or gross negligence.

(e) The Trustee may consult with counsel of its selection, and the Trustee will not be liable for any action it takes or omits in reliance on, and in accordance with, the advice of counsel and in good faith.

(f) The Trustee will not be required to investigate any facts or matters stated in any document, but if it decides to investigate any matters or facts, the Trustee or its agents or attorneys will be entitled to examine the books, records and premises of the Issuers at the expense of the Issuers, and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation.

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

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

(i) In no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(j) The permissive right of the Trustee to take any action under this Indenture shall not be construed as a duty to so act.

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

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

Section 7.03. **Individual Rights of Trustee.** The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Issuers or any of their affiliates with the same rights it would have if it were not Trustee. Any Paying Agent, Registrar, co-registrar or co-paying agent may do the same with like rights. However, the Trustee must comply with Sections 7.10 and 7.11.

Section 7.04. **Trustee's Disclaimer.** The Trustee (i) is not responsible for and makes no representation as to the validity or adequacy of this Indenture, (ii) will not be responsible for and will not make any representation as to the validity or adequacy of any Supplemental Indenture, (iii) will not be accountable for the Issuers' use of the proceeds from the Securities of any series, and (iv) will not be responsible for any statement of the Issuers in this Indenture or any Supplemental Indenture, other than the Trustee's certificate of authentication, or in any prospectus or offering memorandum used in the sale of any of the Securities, other than statements, if any, provided in writing by the Trustee for use in such a prospectus or offering memorandum.

Section 7.05. **Notice of Defaults.** The Trustee will give to the Holders of the Securities of a series notice of any Default with regard to the Securities of that series actually known to a Trust Officer, within 90 days after receipt of such knowledge and otherwise as provided in Section 12.03 of this Indenture; **provided, however, that**, except in the case of a Default in the payment of the principal of, or premium, if any, or interest on any Security, the Trustee will be protected in withholding notice of the Default if and so long as it in good faith determines that the withholding of the notice is in the interests of the Holders of the Securities of the series.

Section 7.06. **Reports by Trustee.** Within 60 days after each May 15 beginning with the May 15 following the date of this Indenture, the Trustee will mail to each Securityholder, if any, at the name and address which appears on the registration books of the Issuers, and to each Securityholder who has, within the two years preceding the mailing, filed that person's name and address with the Trustee for that purpose and each Securityholder whose name and address have been furnished to the Trustee pursuant to Section 2.07, a brief report dated as of that May 15.

A copy of each report will at the time of its mailing to Securityholders as required be filed with each stock exchange on which Securities are listed, if any, and also with the SEC. The Issuers will promptly notify the Trustee in writing when the Securities of any series are listed on any stock exchange and of any delisting of Securities of any series.

Section 7.07. **Compensation and Indemnity.** The Issuers, jointly and severally, will pay to the Trustee from time to time such compensation for its services as mutually agreed to in writing. The Trustee's compensation will not be limited by any law on compensation of a trustee of an express trust. The Issuers, jointly and severally, will reimburse the Trustee upon request for all reasonable out-of-pocket expenses incurred or made by it, including costs of collection, in addition to the compensation for its services. Those expenses will include the reasonable compensation and expenses, disbursements and advances of the Trustee's agents, counsel, accountants and experts. The Issuers, jointly and severally, will indemnify the Trustee against any and all loss,

liability, claims (whether asserted by the Issuers, a holder or any other person) or expense (including reasonable attorneys' fees and expenses) incurred by it in connection with the administration of the trust created by this Indenture or any Supplemental Indenture and the performance of its duties under this Indenture or any Supplemental Indenture. The Trustee will notify the Issuers promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Issuers will not relieve the Issuers of their obligations under this Section. The Issuers will defend the claim, with counsel reasonably satisfactory to the Trustee, and the Trustee may have separate counsel and the Issuers will pay the fees and expenses of such counsel. The Issuers need not pay for any settlement made without their consent. The Issuers need not reimburse any expense or indemnify against any loss, expense or liability incurred by the Trustee to the extent it is due to the Trustee's own willful misconduct or gross negligence (as finally adjudicated by a court of competent jurisdiction). Any settlement which affects the Trustee may not be entered into without the written consent of the Trustee, unless the Trustee is given a full and unconditional release from liability with respect to the claims covered thereby and such settlement does not include a statement or admission of fault, culpability or failure to act by or on behalf of the Trustee.

To secure the Issuers' obligation to make payments to the Trustee under this Section 7.07, the Trustee will have a lien prior to the Securities on all money or property held or collected by the Trustee, other than money or property held in trust to pay principal or interest on particular Securities. Those obligations of the Issuers will survive the satisfaction and discharge of this Indenture and the resignation or removal of the Trustee.

When the Trustee incurs expenses or renders services after an Event of Default specified in clause (d) or (e) of Section 6.01 occurs, the expenses and the compensation for the services of the Trustee are intended to constitute expenses of administration under any Bankruptcy Law.

For purposes of this Section 7.07, "Trustee" will include any predecessor Trustee, but the willful misconduct or gross negligence or bad faith of any Trustee will not affect the rights of any other Trustee under this Section 7.07.

Section 7.08. **Replacement of Trustee.** The Trustee may resign at any time by so notifying the Issuers. The Holders of a majority in aggregate principal amount of the Securities of all series then outstanding may remove the Trustee by so notifying the Trustee and the Issuers and may appoint a successor Trustee. The Issuers may remove the Trustee if:

- (a) the Trustee fails to comply with Section 7.10;
- (b) the Trustee is adjudged bankrupt or insolvent or an order for relief is entered with respect to the Trustee under any bankruptcy law;
- (c) a receiver or other public officer takes charge of the Trustee or its property; or
- (d) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Issuers will promptly appoint a successor Trustee. Within one year after the successor Trustee takes office, the Holders of a majority in aggregate principal amount of Securities of all series then outstanding may appoint a successor Trustee to replace the successor Trustee appointed by the Issuers.

No removal or appointment of a Trustee will be valid if that removal or appointment would conflict with any law applicable to the Issuers.

A successor Trustee will deliver a written acceptance of its appointment to the retiring Trustee and to the Issuers. Immediately after that, the retiring Trustee will, subject to the lien provided for in Section 7.07, transfer all property held by it as a Trustee to the successor Trustee, the resignation or removal of the retiring Trustee will become effective, and the successor Trustee will have all the rights, powers and duties of the Trustee under this Indenture and all Supplemental Indentures. A successor Trustee will mail notice of its succession to each Securityholder.

If a successor Trustee does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the resigning Trustee, Issuers or the Holders of a majority in aggregate principal amount of Securities of all series then outstanding may petition any court of competent jurisdiction, at the expense of the Issuers, for the appointment of a successor Trustee.

If the Trustee fails to comply with Section 7.10, any Securityholder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

Notwithstanding the replacement of the Trustee pursuant to this Section, the Issuers' obligations under Section 7.07 will continue for the benefit of the retiring Trustee.

Section 7.09. **Successor Trustee by Merger, Etc.** If the Trustee consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust assets to, another Person, the resulting, surviving or transferee Person will, without any further act, be the successor Trustee.

If at the time a successor by merger, conversion or consolidation to the Trustee succeeds to the trusts created by this Indenture any of the Securities have been authenticated but not delivered, the successor to the Trustee may adopt the certificate of authentication of the predecessor Trustee, and deliver the Securities which were authenticated by the predecessor Trustee; and if at that time any of the Securities have not been authenticated, the successor to the Trustee may authenticate those Securities in its own name as the successor to the Trustee; and in either case the certificates of authentication will have the full force provided in this Indenture for certificates of authentication.

Section 7.10. **Eligibility; Disqualification.** The Trustee will at all times have (or shall be a member of a bank holding company system whose parent corporation has) a combined capital and surplus of at least \$50,000,000 as set forth in its most recently published annual report of condition, which will be deemed for this paragraph to be its combined capital and surplus.

ARTICLE VIII

DISCHARGE OF INDENTURE

Section 8.01. **Termination of the Issuers' and Guarantors' Obligations** When (i) the Issuers deliver to the Trustee all outstanding Securities of all series (other than Securities replaced pursuant to Section 2.09) for cancellation or (ii) all outstanding Securities of all series have become due and payable, or are due and payable within one year or are to be called for redemption within one year, under arrangements satisfactory to the Trustee for giving the notice of redemption, and the Issuers or Guarantors irrevocably deposits in trust with the Trustee (subject to Article XI) money or U.S. Government Obligations sufficient to pay the principal, premium, if any, and interest, if any, on the Securities of all series to maturity or redemption, as the case may be, and if, in the case of either (i) or (ii) above the Issuers or the Guarantors also pays or causes to be paid all other sums payable by the Issuers under this Indenture, then this Indenture will cease to be of further effect.

Notwithstanding the foregoing, the Issuers' obligations to pay principal, premium, if any, and interest, if any, on the Securities and the Issuers' obligations in Sections 2.05, 2.06, 2.07, 2.08, 2.09, 7.07, 7.08 and in Article X will survive until all the Securities of all series are no longer outstanding. Thereafter, the Issuers' obligations in Section 7.07 will survive.

Before or after a deposit the Issuers may make arrangements satisfactory to the Trustee for the redemption of Securities of a series at a future date to the extent the Securities are redeemable in accordance with Article III and the applicable Supplemental Indenture.

After a deposit pursuant to this Section 8.01 or after all outstanding Securities of all series have been delivered to the Trustee for cancellation, the Trustee upon receipt of written request from the Issuers, accompanied by an Officers' Certificate and an Opinion of Counsel which complies with Section 12.05, and at the cost of the Issuers, will acknowledge in writing the satisfaction and discharge of the Issuers' and the Guarantors' obligations under the Securities of all series, the Guarantees and this Indenture except for those surviving obligations specified above.

In order to have money available on payment dates to pay principal, premium, if any, or interest, if any, on the Securities of a series, the U.S. Government Obligations will be payable as to principal, premium, if any, or interest on or before those payment dates in amounts sufficient to provide the necessary money. U.S. Government Obligations used for this purpose may not be callable at the issuer's option.

"U.S. Government Obligations" means:

(a) direct obligations of the United States for the payment of which its full faith and credit is pledged;

or

(b) obligations of a person controlled or supervised by and acting as an agency or instrumentality of the United States the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States.

Section 8.02. **Application of Trust Money.** Subject to Article XI and Section 8.03, the Trustee will hold in trust money or U.S. Government Obligations deposited with it pursuant to Section 8.01. It will apply the deposited money and the money from the U.S. Government Obligations through the Paying Agent and in accordance with this Indenture and any applicable Supplemental Indentures to the payment of principal of, premium, if any, and interest, if any, on the Securities with regard to which the money or U.S. Government Obligations were deposited.

Section 8.03. **Repayment to the Issuers.** The Trustee and the Paying Agent will promptly pay to the Issuers upon receipt of written request any excess money or securities held by them at any time. The Trustee and the Paying Agent will, subject to applicable escheatment laws, pay to the Issuers upon receipt of written request any money held by them for the payment of principal, premium or interest that remains unclaimed for two years. After such payment, the Holder of any Securities shall thereafter look to the Issuers for any payment which such Holder may be entitled to collect, and all liability of the Trustee and the Paying Agent with respect to that money will cease.

ARTICLE IX

AMENDMENTS, SUPPLEMENTS AND WAIVERS

Section 9.01. **Without Consent of Holders.** The Issuers, the Guarantors and the Trustee may amend or supplement this Indenture or the Securities without notice to or consent of any Securityholder:

(a) to cure any ambiguity, defect or inconsistency, or to conform any provision hereof to any provision under the heading "Description of Debt Securities" in the applicable prospectus or offering memorandum, in each case, as evidenced in an Officers' Certificate;

(b) to comply with Article V;

(c) to establish the form and terms of the Securities of any series as contemplated in Article II of this Indenture;

(d) to provide for uncertificated Securities in addition to or in place of certificated Securities; or

(e) to make any change that does not materially adversely affect the rights of any Securityholder.

After an amendment under this Section becomes effective, the Issuers will mail to the Securityholders a notice briefly describing the amendment. The failure to give such notice to all Securityholders, or any defect in a notice, will not impair or affect the validity of an amendment under this Section.

Section 9.02. **With Consent of Holders.** The Issuers, the Guarantors and the Trustee may (i) amend or supplement this Indenture or the Securities without notice to any Securityholder but with the written consent of the Holders of a majority in aggregate principal amount of the Securities of all series then outstanding or (ii) supplement this Indenture with regard to a series of

Securities, amend or supplement a Supplemental Indenture relating to a series of Securities, or amend the Securities of a series, without notice to any Securityholder but with the written consent of the Holders of a majority in aggregate principal amount of the Securities of that series then outstanding. The Holders of a majority in principal amount of the Securities of all series then outstanding may waive compliance by the Issuers and the Guarantors with any provision of this Indenture, the Guarantees or the Securities without notice to any Securityholder. The Holders of a majority in principal amount of the Securities of any series then outstanding may waive compliance with any provision of this Indenture, the Guarantees, any Supplemental Indenture or the Securities of that series with regard to the Securities of that series without notice to any Securityholder. However, without the consent of the Holder so affected, no amendment, supplement or waiver, including a waiver pursuant to Section 6.04, may:

(a) extend the fixed maturity of any Security, reduce the rate or extend the time for payment of interest on any Security, reduce the principal amount of any Security or premium, if any, on any Security;

(b) impair or affect the right of a Holder to institute suit for the payment of interest, if any, principal or premium, if any, on the Securities;

(c) change the currency in which the Securities are payable from that specified in the Securities or in a Supplemental Indenture applicable to the Securities;

(d) impair the right, if any, to convert the Securities into, or exchange the Securities for, other securities or assets;

(e) reduce the percentage of Securities required to consent to an amendment, supplement or waiver;

(f) reduce the amount payable upon the redemption of any Security or change the time at which any Security may or will be redeemed;

(g) modify the provisions of any Supplemental Indenture with respect to subordination of the Securities of a series in a manner adverse to the Securityholders;

(h) make any change in Section 6.04 or 6.08 or the fourth sentence of this Section; or

(i) release any Guarantor from any of its obligations under its Guarantee, except in accordance with the terms of this Indenture.

It will not be necessary for the consent of the Holders under this Section to approve the particular form of any proposed amendment, supplement or waiver, but it will be sufficient if the consent approves the substance of the amendment, supplement or waiver.

Section 9.03. **[Reserved]**.

Section 9.04. **Revocation and Effect of Consents.** A consent to an amendment, supplement or waiver by a Holder of a Security will bind the Holder and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent is not made on any Security. However, any such Holder or subsequent Holder may revoke the consent as to the Holder's Security or portion of a Security. For a revocation to be effective, the Trustee must receive written notice of the revocation before the date the amendment, supplement or waiver becomes effective. After an amendment, supplement or waiver becomes effective in accordance with its terms, it will bind every Holder of every Security of every series to which it applies.

Section 9.05. **Notation on or Exchange of Securities.** If an amendment changes the terms of a series of Securities, the Trustee may require the Holder of a Security of the series to deliver the Holder's Security to the Trustee, who will place an appropriate notation about the amendment, supplement or waiver on the Security and will return it to the Holder. Alternatively, the Issuers may, in exchange for the Security, issue, and, upon receipt of a written direction from the Issuers, the Trustee will authenticate, a new Security that reflects the amendment, supplement or waiver.

Section 9.06. **Trustee to Sign Amendments, Etc.** The Trustee will sign any amendment, supplement or waiver authorized pursuant to Article II or this Article IX if the amendment, supplement or waiver does not adversely affect the rights, liabilities or immunities of the Trustee. If it does adversely affect those rights, liabilities or immunities, the Trustee may but need not sign it. The Issuers and Guarantors may not sign an amendment or supplement until the amendment or supplement is approved by an appropriate Board Resolution. A Board Resolution authorizing the creation of one or more series of Securities pursuant to Article II may provide that, prior to the issuance of any such series, any or all terms of such series may be set forth in or determined in the manner provided in an Officers' Certificate. In executing any Supplemental Indenture permitted by this Article the Trustee shall receive, and shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel stating that the execution of such Supplemental Indenture is authorized or permitted by this Indenture and that such Supplemental Indenture is the legal, valid and binding obligation of the Issuers and the Guarantors, enforceable against the Issuers and the Guarantors in accordance with its terms.

ARTICLE X

CONVERSION OR EXCHANGE OF SECURITIES

Section 10.01. **Provisions Relating to Conversion or Exchange of Securities.** Any rights which Holders of Securities of a series will have to convert or exchange those Securities into other securities of the Issuers or the Guarantors or to exchange those Securities for securities of other Persons or other assets, including but not limited to the terms of the conversion or exchange and the circumstances, if any, under which those terms will be adjusted to prevent dilution or otherwise, will be set forth in a Supplemental Indenture relating to the series of Securities. In the absence of provisions in a Supplemental Indenture relating to a series of Securities setting forth rights to convert or exchange the Securities of that series into or for other securities or assets, Holders of the Securities of that series will not have any such rights.

ARTICLE XI

SINKING OR PURCHASE FUNDS

Section 11.01. **Provisions Relating to Sinking or Purchase Funds.** Any requirements that the Issuers or Guarantors make, or rights of the Issuers or Guarantors to make at their respective option, payments prior to maturity of the Securities of a series which will be used as a fund with which to redeem or to purchase Securities of that series, including but not limited to provisions regarding the amount of the payments, when the Issuers or Guarantors will be required, or will have the option, to make the payments and when the payments will be applied, will be set forth in a Supplemental Indenture relating to the series of Securities. In the absence of provisions in a Supplemental Indenture relating to a series of Securities setting forth requirements that the Issuers or Guarantors make, or rights of the Issuers or Guarantors to make at their respective option, payments to be used as a fund with which to redeem or purchase Securities of the series, the Issuers or Guarantors, as the case may be, will not be subject to any such requirements and will not have any such rights. However, unless otherwise specifically provided in a Supplemental Indenture relating to a series of Securities, the Issuers and Guarantors will at all times have the right to purchase Securities from Holders in market transactions or otherwise.

ARTICLE XII

MISCELLANEOUS

Section 12.01. **[Reserved].**

Section 12.02. **Supplemental Indentures Contract.** If any provision of a Supplemental Indenture relating to a series of Securities is inconsistent with any provision of this Indenture, the provision of the Supplemental Indenture will control with regard to the Securities of the series to which it relates.

Section 12.03. **Notices.** Any notice or communication under or relating to this Indenture or any Supplemental Indenture will be sufficiently given if in writing and delivered in person, emailed to the address that follows or mailed by first-class mail, certified or registered, overnight delivery return receipt requested, addressed as follows:

if to the Issuers or Guarantors:

Hannon Armstrong Sustainable Infrastructure Capital, Inc.
1906 Towne Centre Blvd, Suite 370
Annapolis, MD 21401
Attention: Office of the General Counsel

With a copy to:
Clifford Chance US LLP
31 West 52nd Street
New York, NY 10019
Attention: Andrew Epstein and Matt Worden

if to the Trustee:

U.S. Bank Trust Company, National Association,
CityPlace I, 185 Asylum Street, 27th Floor,
Hartford, CT 06103
Attention: Global Corporate Trust Services

The Issuers, the Guarantors or the Trustee by a notice to the others may designate additional or different addresses for subsequent notices or communications.

Any notice or communication mailed to a Securityholder will be mailed to the Securityholder at the Securityholder's address as it appears on the registration books of the Registrar and will be sufficiently given to the Securityholder if so mailed within the time prescribed.

Failure to mail a notice or communication to a Securityholder or any defect in it will not affect its sufficiency with respect to other Securityholders. If a notice or communication is emailed or mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

If by reason of the suspension of regular mail service, or by reason of any other cause, it is impossible to mail any notice as required by this Indenture or any Supplemental Indenture, then any method of notification which is approved by the Trustee will constitute a sufficient mailing of the notice.

The Issuers may set a record date for purposes of determining the identity of Securityholders entitled to vote or consent to any action by vote or consent authorized or permitted by Sections 6.04 and 6.05. The record date will be the later of 30 days prior to the first solicitation of consents or the date of the most recent list of Holders furnished to the Trustee pursuant to Section 2.07 prior to the solicitation.

Section 12.04. Use of Electronic Communications.

For the avoidance of doubt, all notices, approvals, consents, requests and any communications hereunder or with respect to the Securities must be in writing (provided that any communication sent to Trustee hereunder must be in the form of a document that is signed manually or by way of a digital signature provided by DocuSign or Adobe (or such other digital signature provider as specified in writing to Trustee by the authorized representative), in English. The Issuers and the Guarantors agree to assume all risks arising out of the use of using digital signatures and electronic methods to submit communications to Trustee, including without limitation the risk of Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 12.05. **Certificate and Opinion as to Conditions Precedent.** Upon any request or application by the Issuers or the Guarantors to the Trustee to take any action under this Indenture, the Guarantees or any Supplemental Indenture, the Issuers or the Guarantors will furnish to the Trustee:

- (a) an Officers' Certificate stating that, in the opinion of the signer, all conditions precedent, if any, provided for in this Indenture or any Supplemental Indenture relating to the proposed action have been complied with;
- (b) an Opinion of Counsel stating that, in the opinion of such counsel, all those conditions precedent have been complied with; and
- (c) such other opinions and certificates as may be required by applicable provisions of this Indenture or the Supplemental Indenture.

Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture or a Supplemental Indenture will include (i) a statement that the person making the certificate or opinion has read the covenant or condition; (ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in the certificate or opinion are based; (iii) a statement that, in the opinion of the person giving the certificate or opinion, that person has made such examination or investigation as is necessary to enable that person to express an informed opinion as to whether or not the covenant or condition has been complied with; and (iv) a statement as to whether or not, in the opinion of that person, the condition or covenant has been complied with. Nothing in this Section 12.05 will be construed as requiring that the Issuers or the Guarantors furnish to the Trustee any evidence of compliance with the conditions and covenants provided for in this Indenture or any Supplemental Indenture other than the evidence specified in this Section 12.05.

Section 12.06. **When Treasury Securities Disregarded.** In determining whether the Holders of the required principal amount of Securities have concurred in any direction, waiver or consent, Securities owned by either Issuer or any Guarantor, or anyone under direct or indirect control or under direct or indirect common control with such Issuer or such Guarantor will be disregarded and deemed not to be outstanding, except that for the purposes of determining whether the Trustee will be protected in relying on any such direction, waiver or consent, only Securities which a Trust Officer of the Trustee actually knows are so owned will be so disregarded. Securities so owned which have been pledged in good faith will not be disregarded if the pledgee establishes to the satisfaction of the Trustee the pledgee's right to act with respect to the Securities and that the pledgee is not an Issuer or a Guarantor or a person directly or indirectly controlling or controlled by, or under common control with, either Issuer or any Guarantor. Nothing in this Section 12.06 will be construed as requiring that the Issuers or the Guarantors furnish to the Trustee any evidence of compliance with the conditions and covenants provided for in this Indenture other than the evidence specified in this Section 12.06.

Section 12.07. **Rules by Trustee, Paying Agent, Registrar.** The Trustee may make reasonable rules for action by or at a meeting of Securityholders. The Paying Agent or Registrar may make reasonable rules for its functions.

Section 12.08. **Legal Holidays.** A "Legal Holiday" is a Saturday, a Sunday, or a day on which banking institutions are not required to be open in the State of New York. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest on the sum being paid will accrue for the intervening period.

Section 12.09. **Governing Law and Submission to Jurisdiction; Waiver of Jury Trial.** The laws of the State of New York will govern this Indenture, the Guarantees, each Supplemental Indenture and the Securities. The Issuers and Guarantors submit to the jurisdiction of the courts of the State of New York sitting in the Borough of Manhattan, City of New York, and of the United States District Court for the Southern District of New York, in any action or proceeding to enforce any of their obligations under this Indenture, the Guarantees or any Supplemental Indenture or with regard to the Securities, and agrees not to seek a transfer of any such action or proceeding on the basis of inconvenience of the forum or otherwise (but the Issuers and Guarantors will not be prevented from removing any such action or proceeding from a state court to the United States District Court for the Southern District of New York). Each Issuer and each Guarantor agree that process in any such action or proceeding may be served upon it by registered mail or in any other manner permitted by the rules of the court in which the action or proceeding is brought.

EACH OF THE ISSUERS, THE GUARANTORS, THE HOLDERS AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 12.10. **Actions by the Issuers.** Any action or proceeding brought by the Issuers or Guarantors to enforce any right, assert any claim or obtain any relief in connection with this Indenture, the Guarantees, any Supplemental Indenture or the Securities will be brought by the Issuers or the Guarantors, as applicable, exclusively in the courts of the State of New York sitting in the Borough of Manhattan, City of New York or in the United States District Court for the Southern District of New York.

Section 12.11. **No Adverse Interpretation of Other Agreements** Neither this Indenture nor any Supplemental Indenture may be used to interpret another indenture, loan or debt agreement of the Issuers or the Guarantors or any of their respective Subsidiaries. No such indenture, loan or debt agreement may be used to interpret this Indenture, the Guarantees or any Supplemental Indenture.

Section 12.12. **Successors.** All agreements of the Issuers and the Guarantors in this Indenture, the Guarantees, any Supplemental Indentures and the Securities will bind their successors. All agreements of the Trustee in this Indenture and any Supplemental Indentures will bind their successors.

Section 12.13. **Duplicate Originals.** The parties may sign any number of copies of this Indenture or any Supplemental Indenture. Each signed copy will be an original, but all of them together will represent the same agreement. The exchange of copies of this Indenture or any Supplemental Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture or any Supplemental Indenture as to the parties hereto and may be used in lieu of the original Indenture or any Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 12.14. **Table of Contents, Headings, etc.** The table of contents, cross-reference sheet and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only. They are not to be considered a part of this Indenture, and will in no way modify or restrict any of the terms or provisions of this Indenture.

Section 12.15. **U.S.A. PATRIOT Act.** The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. PATRIOT Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. PATRIOT Act.

Section 12.16. **Force Majeure.** In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

ARTICLE XIII GUARANTEES

Section 13.01. Guarantee.

(a) Subject to this Article 13, each of the Guarantors hereby, jointly and severally, fully and unconditionally guarantees to each Holder of a Security authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, the Securities held thereby and the obligations of the Issuers hereunder and thereunder, that: (i) the principal of and interest on the Securities will be promptly paid in full when due, subject to any applicable grace period, whether at the Maturity Date, by acceleration, upon redemption, upon repurchase or otherwise, and interest on the overdue principal of and (to the extent permitted by law) interest on the Securities, and the consideration upon exchange will be promptly paid and/or delivered in full when due upon exchange, and all other obligations (including, without limitation, obligations to deliver Common Stock) of the Issuers to the Holders or the Trustee hereunder or thereunder will be promptly paid in full and performed, all in accordance with the terms hereof and thereof; and (ii) in case of any extension of time of payment or renewal of any Securities or any of such other obligations, the same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, subject to any applicable grace period, whether at the Maturity Date, by acceleration, upon redemption, upon repurchase or otherwise. Failing payment or performance when so due of any amount or obligation so guaranteed for whatever reason, the Guarantors will be jointly and severally obligated to pay or perform the same immediately. An Event of Default with respect to the Securities under this Indenture shall constitute an event of default under the Guarantees, and shall entitle the Holders of Securities to any series to accelerate the obligations of the Guarantors hereunder in the same manner and to the same extent as the obligations of the Issuers.

(b) The Guarantors hereby agree that their respective obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Securities or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder with respect to any provisions hereof or thereof, the recovery of any judgment against the Issuers, any action to enforce the same or any other circumstance (other than complete performance) which might otherwise constitute a legal or equitable discharge or defense of a Guarantor. Each Guarantor further, to the extent permitted by law, hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Issuers, any right to require a proceeding first against the Issuers, protest, notice and all demands whatsoever and covenants that its Guarantee will not be discharged except by complete performance of the obligations contained in the Securities and this Indenture, or pursuant to Section 13.03.

(c) Each of the Guarantors also agrees, jointly and severally, to pay any and all compensation, indemnification, costs and expenses (including reasonable attorneys' fees and expenses) incurred by or due to the Trustee or any Holder in enforcing any rights under this Section 13.01.

(d) If any Holder of Securities of any series or the Trustee is required by any court or otherwise to return to either Issuer, any Guarantor, or any Custodian, Trustee or other similar official acting in relation to such Issuer or such Guarantor, any amount paid or delivered by such Issuer or such Guarantor to the Trustee or such Holder, the relevant Guarantees to the extent theretofore discharged, shall be reinstated in full force and effect.

(e) Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders of Securities of any series and the Trustee, on the other hand, (a) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 of this Indenture for the purposes of its Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed thereby, and (b) in the event of any declaration of acceleration of such obligations as provided in Article 6 of this Indenture, such obligations (whether or not due and payable) shall forthwith become due and payable by such Guarantor for the purpose of its Guarantee. The Guarantors shall have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders of Securities of any series under the Guarantees.

(f) Each Guarantee shall remain in full force and effect and continue to be effective should any petition be filed by or against either Issuer for liquidation or reorganization, should either Issuer become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of either Issuer's assets, and shall, to the fullest extent permitted by law, continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Securities are, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee on the Securities or the Guarantees, whether as a "voidable preference," "fraudulent transfer" or otherwise, all as though such payment or performance had not been made. In the event that any payment or any part thereof, is rescinded, reduced, restored or returned, the Securities shall, to the fullest extent permitted by law, be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

(g) In case any provision of any Guarantee shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(h) Each payment to be made by a Guarantor in respect of its Guarantee shall be made withoutset-off, counterclaim, reduction or diminution of any kind or nature.

Section 13.02. **Execution and Delivery.** The Guarantees shall be evidenced by the execution and delivery of this Indenture or a Supplement Indenture and no notation of any Guarantee or any release, termination or discharge thereof need be endorsed on any Security. Each Guarantor hereby agrees that its Guarantee set forth in Section 13.01 shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Guarantee on the Securities subject to release of such Guarantor and to the termination of its Guarantee as provided in Section 13.03.

If an Officer whose signature is on this Indenture no longer holds that office at the time the Trustee authenticates the Securities of a series, the Guarantees shall be valid nevertheless.

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

Section 13.03. **Release of Guarantees.** The Guarantee of a Guarantor shall be automatically and unconditionally released and discharged under this Indenture upon:

(a) in the case of an Issue Date Subsidiary Guarantor, the release or discharge of the guarantee by such Issue Date Subsidiary Guarantor of each of the Existing Senior Notes; or

(b) the discharge of the Issuers' obligations under this Indenture in accordance with the terms of this Indenture.

In the event that any released Issue Date Subsidiary Guarantor (in the case of Section 13.03(a) above) thereafter is required to provide a guarantee pursuant to terms of the Existing Senior Notes, such former Guarantor shall again provide a Guarantee under this Indenture.

At the request of the Issuers or Guarantors and upon delivery of an Officers' Certificate and Opinion of Counsel, the Trustee shall execute any documents reasonably requested by the Issuers or Guarantors in order to evidence the release of any Guarantor from its obligations under its Guarantee. Any Guarantor not released from its obligations under its Guarantee shall remain liable for the full amount of principal of and interest on the Securities and for the other obligations of such Guarantor under this Indenture as provided in this Article 13.

Section 13.04. **Limitation on Guarantor Liability.** Each Guarantor, and by its acceptance of Securities, each Holder, hereby confirms that it is the intention of all such parties that the Guarantee of such Guarantor not constitute a fraudulent conveyance or a fraudulent transfer for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Guarantee. To effectuate the foregoing intention, the Trustee, the Holders of Securities and the Guarantors hereby irrevocably agree that the obligations of each Guarantor under its Guarantee will be limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of such Guarantor and after giving effect to any collections from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under its Guarantee or pursuant to its contribution obligations under this Indenture, result in the obligations of such Guarantor under its Guarantee not constituting a fraudulent conveyance or fraudulent transfer under federal or state law and not otherwise being void or voidable under any similar laws affecting the rights of creditors generally. Each Guarantor that makes a payment under its Guarantee shall be entitled upon payment in full of all guaranteed obligations under this Indenture to a contribution from each other Guarantor in an amount equal to such other Guarantor's *pro rata* portion of such payment based on the respective net assets of all the Guarantors at the time of such payment determined in accordance with accounting principles generally accepted in the United States.

Section 13.05. **Subrogation.** Each Guarantor shall be subrogated to all rights of Holders against the Issuers in respect of any amounts paid by any Guarantor pursuant to the provisions of Section 13.01; *provided* that, if an Event of Default has occurred and is continuing, no Guarantor shall be entitled to enforce or receive any payments arising out of, or based upon, such right of subrogation until all amounts then due and payable by the Issuers under this Indenture or the Securities shall have been paid in full.

Section 13.06. **Benefits Acknowledged.** Each Guarantor acknowledges that it will receive benefits from the financing arrangements contemplated by this Indenture and that the guarantee and waivers made by it pursuant to its Guarantee are knowingly made in contemplation of such benefits.

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

HAT HOLDINGS I LLC, as Issuer

By: /s/ Jeffrey A. Lipson
Name: Jeffrey A. Lipson
Title: Executive Vice President

HAT HOLDINGS II LLC, as Issuer

By: /s/ Jeffrey A. Lipson
Name: Jeffrey A. Lipson
Title: Executive Vice President

HANNON ARMSTRONG SUSTAINABLE
INFRASTRUCTURE CAPITAL, INC., as Guarantor

By: /s/ Jeffrey A. Lipson
Name: Jeffrey A. Lipson
Title: Executive Vice President, Chief Financial Officer
and Chief Operating Officer

HANNON ARMSTRONG SUSTAINABLE
INFRASTRUCTURE, L.P., as Guarantor

By: /s/ Jeffrey A. Lipson
Name: Jeffrey A. Lipson
Title: Executive Vice President, Chief Financial Officer
and Chief Operating Officer

HANNON ARMSTRONG CAPITAL, LLC, as Guarantor

By: /s/ Jeffrey A. Lipson
Name: Jeffrey A. Lipson
Title: Executive Vice President, Chief Financial Officer
and Chief Operating Officer

By: /s/ Kathy L. Mitchell
Name: Kathy L. Mitchell
Title: Vice President

EXHIBIT A

FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Securities of the series described in the within-mentioned Indenture and Supplemental Indenture.

**U.S. Bank Trust Company, National Association, as
Trustee**

By: _____
Authorized Signatory

Dated:

HAT Holdings I LLC

and

HAT Holdings II LLC,

as Issuers

The Guarantors Named Herein

and

U.S. Bank Trust Company, National Association,

as Trustee

First Supplemental Indenture

Dated as of April 13, 2022

to the Indenture

Dated as of April 13, 2022

0.00% Green Exchangeable Senior Notes due 2025

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Accretion Table	Schedule	B-1
EXHIBIT A	Exhibit	A-1

FIRST SUPPLEMENTAL INDENTURE (this “**Supplemental Indenture**”), dated as of April 13, 2022, among HAT Holdings I LLC, a Maryland limited liability company (“**HAT I**”), and HAT Holdings II LLC, a Maryland limited liability company (“**HAT II**”, and together with HAT I, each an “**Issuer**” and together the “**Issuers**”), Hannon Armstrong Sustainable Infrastructure Capital, Inc. (the “**Parent Guarantor**”), Hannon Armstrong Sustainable Infrastructure, L.P. and Hannon Armstrong Capital, LLC (each an “**Issue Date Subsidiary Guarantor**” and, together with the Parent Guarantor, the “**Guarantors**”) and U.S. Bank Trust Company, National Association (the “**Trustee**”), as trustee under the Indenture dated as of April 13, 2022, among the Issuers, the Guarantors and the Trustee (as amended or supplemented from time to time in accordance with the terms thereof, the “**Base Indenture**”).

RECITALS OF THE ISSUERS AND THE GUARANTORS

WHEREAS, the Issuers and the Guarantors executed and delivered the Base Indenture to the Trustee to provide, among other things, for the issuance, from time to time, of the Issuers’ unsecured debt securities, in an unlimited aggregate principal amount, in one or more series to be established by the Issuers under, and authenticated and delivered as provided in, the Base Indenture;

WHEREAS, Section 9.01(c) of the Base Indenture provides for the Issuers, the Guarantors and the Trustee to enter into supplemental indentures to the Base Indenture to establish the form and terms of Securities of any series as contemplated by Article II of the Base Indenture;

WHEREAS, the Board of Directors of the Issuers and the Guarantors have duly adopted resolutions authorizing the Issuers and the Guarantors to execute and deliver this Supplemental Indenture;

WHEREAS, pursuant to the terms of the Base Indenture, the Issuers have authorized the creation and issuance under this Supplemental Indenture of their 0.00% Green Exchangeable Senior Notes due 2025 (the “**Securities**”), the form and substance of such Securities and the terms, provisions and conditions thereof to be set forth as provided in the Base Indenture and this Supplemental Indenture, and each Guarantor has duly authorized the issuance of its Guarantee; and

WHEREAS, the Issuers and the Guarantors have requested that the Trustee execute and deliver this Supplemental Indenture, and that all requirements necessary to make (i) this Supplemental Indenture a valid instrument in accordance with its terms, and (ii) the Securities, when executed by the Issuers and authenticated and delivered by the Trustee, the valid obligations of each Issuer and each Guarantor have been performed, and the execution and delivery of this Supplemental Indenture have been duly authorized in all respects.

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

ARTICLE 1

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01 *Scope of Supplemental Indenture*. The changes, modifications and supplements to the Base Indenture effected by this Supplemental Indenture shall be applicable only with respect to, and shall govern only the terms of (and only the rights of the Holders and the obligations of the Issuers and the Guarantors with respect to), the Securities, which may be issued from time to time, and shall not apply to any other securities that may be issued under the Base Indenture (or govern the rights of the Holders or the obligations of the Issuers or the Guarantors with respect to any such other securities) unless a supplemental indenture with respect to such other securities specifically incorporates such changes, modifications and supplements. The provisions of this Supplemental Indenture shall, with respect to the Securities, supersede any corresponding provisions in the Base Indenture. Subject to the preceding sentence, and except as otherwise provided herein, the provisions of the Base Indenture shall apply to the Securities and govern the rights of the Holders of the Securities and the obligations of the Issuers, the Guarantors and the Trustee with respect thereto.

Section 1.02 *Definitions*. For all purposes of the Indenture, except as otherwise expressly provided or unless the context otherwise requires:

- (i) *the terms defined in this Article 1 shall have the meanings assigned to them in this Article 1 and include the plural as well as the singular; and*
- (ii) *all words, terms and phrases defined in the Base Indenture (but not otherwise defined herein) shall have the same meanings as in the Base Indenture.*

“**Accreted Principal Amount**” means the Original Principal Amount plus the principal accreted thereon pursuant to Section 2.05.

“**Additional Shares**” has the meaning specified in Section 4.06(a) hereof.

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

“**Agent Members**” has the meaning specified in Section 2.02(c) hereof.

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

“**Base Indenture**” has the meaning specified in the first paragraph of this Supplemental Indenture, as such instrument may be supplemented from time to time by one or more indentures supplemental thereto, including this Supplemental Indenture, entered into pursuant to the applicable provisions of the Base Indenture.

“**Business Day**” means, notwithstanding anything to the contrary in Section 1.01 of the Base Indenture, any day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York is authorized or required by law, regulation or executive order to close or to be closed.

“**Capital Stock**” means, for any Person, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) the equity of such Person, but excluding any debt securities convertible and/or exchangeable into such equity.

“**Clause A Distribution**” has the meaning specified in Section 4.04(c) hereof.

“**Clause B Distribution**” has the meaning specified in Section 4.04(c) hereof.

“**Clause C Distribution**” has the meaning specified in Section 4.04(c) hereof.

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

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

“**Common Stock**” means, subject to Section 4.07, the shares of common stock, par value \$0.01 per share, of the Parent Guarantor authorized at the date of this instrument as originally executed or shares of any class or classes of common stock resulting from any reclassification or reclassifications thereof; *provided, however*, that if at any time there shall be more than one such resulting class, the shares so issuable on exchange of Securities shall include shares of all such classes, and the shares of each such class then so issuable shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications. “Common Stock” includes any stock of any class of Capital Stock which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the issuer thereof and which is not subject to redemption by the issuer thereof.

“**Continuing Director**” means a director who either was a member of the Parent Guarantor’s board of directors on the date of the Preliminary Offering Memorandum or who becomes a member of the Parent Guarantor’s board of directors subsequent to that date and whose election, appointment or nomination for election by the Parent Guarantor’s stockholders is duly approved by a majority of the “Continuing Directors” on the Parent Guarantor’s board of directors at the time of such approval, either by a specific vote or by approval of the proxy statement issued by the Parent Guarantor on behalf of the Parent Guarantor’s entire board of directors in which such individual is named as nominee for election as a director, and whose election is recommended by the board of directors.

“**Custodian**” means the Trustee, as custodian with respect to the Securities (so long as the Securities constitute Global Securities), or any successor entity.

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

“**Depository**” means, unless otherwise specified by the Issuers, with respect to Securities issued as a Global Security, The Depository Trust Company, New York, New York, or any successor thereto registered as a clearing agency under the Exchange Act, as amended, or other applicable statute or regulation.

“**DTA**” has the meaning specified in Section 4.04(d) hereof.

“**Effective Date**” has the meaning specified in Section 4.06(c) hereof.

“**Event of Default**” has the meaning specified in Section 6.02 hereof.

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

“**Exchange Agent**” means the office or agency designated by the Issuers where Securities may be presented for exchange as specified in Section 5.02.

“**Exchange Date**” has the meaning specified in Section 4.02(b) hereof.

“**Exchange Notice**” has the meaning specified in Section 4.02(b)(1) hereof.

“**Exchange Obligation**” has the meaning specified in Section 4.03(a) hereof.

“**Exchange Price**” means, in respect of each Security, as of any date, \$1,000 *divided* by the Exchange Rate in effect on such date.

“**Exchange Rate**” means initially 17.6873 shares of Common Stock per \$1,000 Original Principal Amount of Securities, subject to adjustment as set forth herein.

“**Ex-Dividend Date**” means the first date on which shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question.

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

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

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

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

(1) any “person” or “group” (within the meaning of Section 13(d) of the Exchange Act) other than the Parent Guarantor or its Subsidiaries files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect ultimate “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of the Common Stock representing more than 50% of the voting power of the Common Stock;

(2) the consummation of (x) any consolidation, merger, amalgamation, scheme of arrangement or other binding share exchange or reclassification or similar transaction between the Parent Guarantor and another person (other than any of the Parent Guarantor's Subsidiaries), in each case pursuant to which the outstanding Common Stock shall be converted into, or exchanged for, cash, securities or other property or assets, other than a transaction (i) that results in the holders of all classes of the Parent Guarantor's Common Equity immediately prior to such transaction owning, directly or indirectly, as a result of such transaction, more than 50% of all classes of Common Equity of the surviving corporation or transferee or the parent thereof immediately after such event, or (ii) effected solely to change the Parent Guarantor's jurisdiction of incorporation or to form a holding company for the Parent Guarantor and that results in a share exchange or reclassification or similar exchange of the outstanding Common Stock solely into common shares of the surviving entity or (y) any sale, lease or other disposition in one transaction or a series of transactions of all or substantially all of the assets of the Parent Guarantor and its Subsidiaries, on a consolidated basis, to another person (other than any of the Parent Guarantor's Subsidiaries);

(3) Continuing Directors cease to constitute at least a majority of the Parent Guarantor's Board of Directors;

(4) the Parent Guarantor's stockholders approve any plan or proposal for the liquidation or dissolution of the Parent Guarantor (other than in a transaction described in clause (2) above); or

(5) the Common Stock ceases to be listed on The New York Stock Exchange, The Nasdaq Global Select Market or The Nasdaq Global Market (or any of their respective successors);

provided, however, that in the case of a transaction or event described in clause (1) or (2) above, if at least 90% of the consideration received or to be received by holders of the Common Stock (excluding cash payments for fractional shares) in the transaction or transactions that would otherwise constitute a "Fundamental Change" consists of shares of common stock or common equity interests that are traded on The New York Stock Exchange, The Nasdaq Global Select Market or The Nasdaq Global Market (or any of their respective successors) or that will be so traded when issued or exchanged in connection with the transaction that would otherwise constitute a "Fundamental Change" under clause (1) or (2) above ("**Publicly Traded Securities**"), and as a result of such transaction or transactions, the Securities become exchangeable into or by reference to such Publicly Traded Securities, excluding cash payments for fractional shares (subject to settlement in accordance with the provisions of Sections 4.03, 4.04 and 4.06 hereof), such event shall not be a "Fundamental Change."

"**Fundamental Change Issuer Notice**" has the meaning specified in Section 3.02(b) hereof.

"**Fundamental Change Expiration Time**" has the meaning specified in Section 3.02(a)(1) hereof.

"**Fundamental Change Purchase Date**" has the meaning specified in Section 3.02(a) hereof.

“**Fundamental Change Purchase Notice**” has the meaning specified in Section 3.02(a)(1) hereof.

“**Fundamental Change Purchase Price**” has the meaning specified in Section 3.02(a) hereof.

“**Global Security**” means a Security which is executed by the Issuers and authenticated and delivered to the Depository or its nominee, all in accordance with the Indenture and pursuant to an Issuer Order, which shall be registered in the name of the Depository or its nominee and which shall represent the amount of uncertificated Securities as specified therein.

“**Holder**” means, notwithstanding anything to the contrary in Section 1.01 of the Base Indenture, the Person in whose name a Security is registered in the Register.

“**Indenture**” means, notwithstanding anything to the contrary in Section 1.01 of the Base Indenture, the Base Indenture, as originally executed and as supplemented by this Supplemental Indenture, each as may be amended or supplemented from time to time.

“**Initial Purchasers**” means the initial purchasers specified in Exhibit A of the Purchase Agreement.

“**Issue Date**” means April 13, 2022.

“**Issuer**” has the meaning specified in the first paragraph of this Supplemental Indenture, and subject to the provisions of Section 9.02, shall include its successors and assigns.

“**Issuer Request**” and “**Issuer Order**” mean a written request or order, as applicable, signed in the name of each Issuer by its Chairman of the Board of Directors, President, Chief Executive Officer, Chief Financial Officer, Treasurer, Controller, General Counsel, Secretary or any Vice President, and delivered to the Trustee.

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

“**Make-Whole Fundamental Change**” means any event that (i) is a Fundamental Change or (ii) would be a Fundamental Change, but for the exclusion in section (x)(i) of clause (2) of the definition thereof.

“**Market Disruption Event**” means (1) a failure by the primary exchange or quotation system on which the Common Stock trades or is quoted to open for trading during its regular trading session or (2) the occurrence or existence, prior to 1:00 p.m., New York City time, on any Trading Day for the Common Stock, of an aggregate one half-hour period of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the stock exchange or otherwise) in the Common Stock or in any options, contracts or future contracts relating to the Common Stock.

“**Maturity Date**” means, with respect to any Security and the payment of the Accreted Principal Amount thereof, unless earlier repurchased, redeemed or exchanged, May 1, 2025.

“**Merger Event**” has the meaning specified in Section 4.07(a) hereof.

“**Non-Recourse Indebtedness**” means indebtedness of a Subsidiary of the Parent Guarantor that is not either Issuer or any Guarantor, with respect to which recourse for payment is limited to assets of such Subsidiary encumbered by a lien securing such indebtedness but for which recourse shall not extend to any other Subsidiary’s general credit, it being understood that the instruments governing such indebtedness may include customary carve-outs to such limited recourse such as, for example, personal recourse to such Subsidiary for breach of representations, fraud, misapplication or misappropriation of cash, voluntary or involuntary bankruptcy filings, violation of loan document prohibitions against transfer of assets or ownership interests therein, environmental liabilities, tax indemnities and liabilities and other circumstances customarily excluded by lenders from exculpation provisions and/or included in separate indemnification and/or guaranty agreements in project financing transactions.

“**Notice of Default**” has the meaning specified in Section 6.02(f) hereof.

“**Offer Expiration Date**” has the meaning specified in Section 4.04(e) hereof.

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

“**Original Principal Amount**” means, with respect to each \$1,000 initial principal amount of Securities, \$1,000.

“**Outstanding**” means, with respect to the Securities, any Securities authenticated by the Trustee except (i) Securities cancelled by it, (ii) Securities delivered to it for cancellation and (iii)(A) Securities replaced pursuant to Section 2.09 of the Base Indenture, on and after the time such Security is replaced (unless the Trustee and the Issuers receive proof satisfactory to them that such Security is held by a bona fide purchaser), (B) Securities exchanged pursuant to Article 4 hereof, on and after their Exchange Date, (C) any and all Securities, as of the Maturity Date, if the Paying Agent holds, in accordance with the Indenture, money sufficient to pay all of the Securities then payable, (D) Securities redeemed by the Issuers in accordance with Section 11.01(a) or (b) and (E) any and all Securities owned by the Issuers or any other obligor upon the Securities or any Affiliate of the Issuers or of such other obligor, except that in determining whether the Trustee shall be protected in relying upon any request, demand, authorization, direction, notice consent or waiver or other action that is to be made by a requisite Accreted Principal Amount of Outstanding Securities, for purposes of clause (E) only those Securities identified to the Trustee pursuant to an Officers’ Certificate shall be disregarded and deemed not to be Outstanding.

“**Paying Agent**” has the meaning set forth in the Base Indenture and shall be the Person authorized by the Issuers to pay the Accreted Principal Amount of, any Special Interest on, or Fundamental Change Purchase Price or REIT Redemption Price of, any Securities on behalf of the Issuers.

“**Physical Securities**” means any non-Global Security issued pursuant to Section 2.03 that is in definitive, fully registered form, without interest coupons.

“**Place of Payment**” means the city or political subdivision so designated with respect to the Securities in accordance with the provisions of Section 5.02.

“**Preliminary Offering Memorandum**” means the Preliminary Offering Memorandum of the Issuers, dated April 7, 2022, relating to the offering and sale of the Securities.

“**Publicly Traded Securities**” has the meaning specified in the definition of “Fundamental Change” in this Section 1.02.

“**Purchase Agreement**” means that certain Purchase Agreement, dated as of April 7, 2022, between the Issuers, the Guarantors and Morgan Stanley & Co. LLC and Oppenheimer & Co. Inc., as representatives of the Initial Purchasers.

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

“**Redemption Date**” has the meaning specified in Section 11.02(a) hereof.

“**Redemption Notice**” has the meaning specified in Section 11.02(a) hereof.

“**Reference Property**” has the meaning specified in Section 4.07(a) hereof.

“**Register**” shall mean the register for the Securities maintained by the Registrar in accordance with Section 2.05 of the Base Indenture.

“**Registration Default**” shall have the meaning specified in the Registration Rights Agreement.

“**Registration Default Additional Interest**” means the “Additional Interest” payable pursuant to Section 7 of the Registration Rights Agreement.

“**Registration Rights Agreement**” means the Registration Rights Agreement, dated as of April 13, 2022, among the Issuers, the Parent Guarantor, Morgan Stanley & Co. LLC and Oppenheimer & Co. Inc., as representatives of the initial purchasers referenced therein, as amended from time to time in accordance with its terms.

“**REIT Redemption**” has the meaning specified in Section 11.01(a) hereof.

“**REIT Redemption Price**” has the meaning specified in Section 11.01(a) hereof.

“**Reporting Event of Default**” has the meaning specified in Section 6.04(a) hereof.

“**Resale Restriction Termination Date**” has the meaning specified in Section 2.03(f) hereof.

“**Responsible Officer**” means any officer of the Trustee with direct responsibility for the administration of the Indenture and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

“**Restricted Securities**” has the meaning specified in Section 2.03(e) hereof.

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

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

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

“**Security**” or “**Securities**” has the meaning specified in the fourth paragraph of the Recitals of this Supplemental Indenture, notwithstanding anything to the contrary in Section 1.01 of the Base Indenture.

“**Securities Act**” means the Securities Act of 1933, as amended.

“**Securityholder**” means a Person in whose name a Security is registered in the Register.

“**Significant Subsidiary**” means, with respect to any Person, a Subsidiary of such Person that would constitute a “significant subsidiary” as such term is defined in Article 1, Rule 1-02 of Regulation S-X, promulgated pursuant to the Securities Act, as in effect on the original date of issuance of the Securities.

“**Special Interest**” means all amounts, if any, payable pursuant to Section 5.05(d) or Section 6.04(a), as applicable.

“**Special Interest Payment Date**” means, with respect to the payment of Special Interest, if any, on the Securities and notwithstanding anything to the contrary in Section 1.01 of the Base Indenture, each May 1 and November 1 of each year, beginning on November 1, 2022.

“**Special Interest Record Date**” means, with respect to any Special Interest Payment Date, the April 15 (whether or not a Business Day) or the October 15 (whether or not a Business Day), as the case may be, immediately preceding such Special Interest Payment Date.

“**Spin-Off**” has the meaning specified in Section 4.04(c) hereof.

“**Stock Price**” has the meaning specified in Section 4.06(c) hereof.

“**Successor Issuer**” has the meaning specified in Section 9.02(a) hereof.

“**Successor Parent Guarantor**” has the meaning specified in Section 9.02(a) hereof.

“**Supplemental Indenture**” has the meaning specified in the first paragraph hereof, as such instrument may be supplemented from time to time by one or more indentures supplemental hereto, entered into pursuant to the applicable provisions of the Base Indenture and the Supplemental Indenture.

“**Trading Day**” means a day during which (i) trading in the Common Stock generally occurs on the primary exchange or quotation system on which the Common Stock then trades or is quoted and (ii) there is no Market Disruption Event. If the Common Stock is not so listed or traded, “Trading Day” means a Business Day.

“**Trigger Event**” has the meaning specified in Section 4.04(c) hereof.

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

“**Unit of Reference Property**” has the meaning specified in Section 4.07(a) hereof.

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

“**Valuation Period**” has the meaning specified in Section 4.04(c)(3) hereof.

Section 1.03 *References to Special Interest*. Any reference to Special Interest on, or in respect of, any Security in the Indenture shall be deemed to refer to Special Interest if, in such context, Special Interest is, was or would be payable pursuant to Section 5.05(d) or Section 6.04(a).

ARTICLE 2

THE SECURITIES

Section 2.01 *Title and Terms; Payments.*

(a) *Establishment; Designation.* Pursuant to Section 2.02 of the Base Indenture, there is hereby established and authorized a new series of Securities under the Indenture, which series of Securities shall be designated the “0.00% Green Exchangeable Senior Notes due 2025.”

(b) *Initial Issuance.* Subject to Section 2.01(c) hereof, the aggregate Original Principal Amount of Securities that may initially be authenticated and delivered under the Indenture is limited to \$200,000,000 (as increased by an amount equal to the aggregate Original Principal Amount of any additional Securities purchased by the Initial Purchasers pursuant to the exercise of their option to purchase additional Securities as set forth in the Purchase Agreement). In addition, the Issuers may execute, and the Trustee may authenticate and deliver, in each case, in accordance with Section 2.04 of the Base Indenture, an unlimited aggregate Original Principal Amount of additional Securities upon the transfer, purchase or exchange of Securities pursuant to Sections 2.08, 2.09 and 2.11 of the Base Indenture and Sections 3.06 and 4.02 hereof.

(c) *Further Issues.* The Issuers may, without notice to or the consent of the Holders, issue additional Securities under the Indenture with the same terms and the same CUSIP number as the Securities initially issued under the Indenture in an unlimited aggregate Original Principal Amount; *provided*, that the Issuers may issue such additional Securities only if they are part of the same issue (and part of the same series) as the Securities initially issued hereunder for United States federal income tax and securities law purposes, and any such additional Securities that are not fungible for United States federal income tax and securities law purposes with the Securities initially issued hereunder shall have a separate CUSIP number. Any such additional Securities will, for all purposes of the Indenture, including waivers, amendments and offers to purchase, be treated as part of the same series as the Securities initially issued under the Indenture.

(d) *Purchases.* The Issuers and their Subsidiaries may from time to time purchase Securities in open market purchases or negotiated transactions at the same or differing prices without giving prior notice to or obtaining any consent of the Holders. Any Securities purchased by the Issuers or any of their Subsidiaries pursuant to the foregoing sentence or otherwise will be retired and will no longer be Outstanding under the Indenture.

(e) *Denominations.* Pursuant to Sections 2.02 and 2.03 of the Base Indenture, the Securities will be issued only in minimum denominations of \$1,000 Original Principal Amount and integral multiples of \$1,000 in excess thereof.

Section 2.02 *Forms.*

(a) *In General.* Pursuant to Section 2.01 of the Base Indenture, the Securities will be substantially in the forms set forth in Exhibit A hereto, and may include such insertions, omissions, substitutions and other variations as are required or permitted by the Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or as may, consistently herewith, be determined by the officers executing such Securities, as evidenced by their execution of the Securities.

Notwithstanding Section 2.08 of the Base Indenture, each Security will bear a Trustee's certificate of authentication substantially in the form included in Exhibit A hereto. Each Security will also bear the Form of Notice of Exchange, the Form of Fundamental Change Purchase Notice and the Form of Assignment and Transfer.

Any Security that is a Global Security will bear a legend substantially in the form of the legend set forth in Exhibit A hereto and shall also bear the "Schedule of Increases and Decreases of Global Security" set forth in Annex A to Exhibit A hereto.

The terms and provisions contained in the Securities will constitute, and are hereby expressly made, a part of the Indenture and, to the extent applicable, the Issuers, the Guarantors and the Trustee, by their execution and delivery of this Supplemental Indenture, expressly agree to such terms and provisions and to be bound thereby. However, to the extent that any provision of any Security conflicts with the express provisions of the Indenture, the provisions of this Supplemental Indenture will govern and control.

(b) *Initial and Subsequent Form of Securities.* The Issuers hereby initially appoint The Depository Trust Company as the Depository for the Securities, which initially shall be issued in the form of one or more Global Securities without interest coupons (i) registered in the name of Cede & Co., as nominee of the Depository, and (ii) delivered to the Trustee as custodian for the Depository.

So long as the Securities are eligible for book-entry settlement with the Depository, unless otherwise required by law, and except to the extent provided in Section 2.03(b)(1) through (3) hereof, all Securities will be represented by one or more Global Securities.

(c) *Global Securities.* Each Global Security will represent the aggregate Original Principal Amount of the then Outstanding Securities endorsed thereon and provide that it represents such aggregate Original Principal Amount of the then Outstanding Securities, which aggregate Original Principal Amount may, from time to time, be reduced or increased to reflect transfers, exchanges or purchases by the Issuers.

Only the Trustee, or the Custodian holding such Global Security for the Depository, at the direction of the Trustee, may endorse a Global Security to reflect the amount of any increase or decrease in the aggregate Original Principal Amount of the then Outstanding Securities represented thereby, and whenever the Holder of a Global Security delivers instructions to the Trustee to increase or decrease the aggregate Original Principal Amount of the then Outstanding Securities represented by a Global Security in accordance with the Indenture and the Applicable Procedures, the Trustee, or the Custodian holding such Global Security for the Depository, at the direction of the Trustee, will endorse such Global Security to reflect such increase or decrease in the aggregate Original Principal Amount of the then Outstanding Securities represented thereby. None of the Trustee, the Issuers or any agent of the Trustee or the Issuers will have any responsibility or bear any liability for any aspect of the records relating to or payments made on account of the ownership of any beneficial interest in a Global Security or with respect to maintaining, supervising or reviewing any records relating to such beneficial interest.

Members of, or participants in, the Depository (“**Agent Members**”) shall have no rights under the Indenture with respect to any Global Security held on their behalf by the Depository, or the Trustee as its custodian, or under the Global Security, and Cede & Co., or such other Persons designated by the Depository as its nominee, may be treated by the Issuers, the Trustee and any agent of the Issuers or the Trustee as the absolute owner of the Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Issuers, the Trustee or any agent of the Issuers or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of any Holder.

Section 2.03 Transfer and Exchange.

(a) *In General.* Notwithstanding anything to the contrary in Article II of the Base Indenture, the Issuers are not required to transfer or exchange any Securities or portions thereof that have been surrendered for purchase in accordance with Article 3 hereof (unless the related Fundamental Change Purchase Notice is withdrawn in accordance with the provisions of Section 3.04) or for exchange in accordance with Article 4 hereof, and a written form of transfer substantially in the form of the Form of Assignment and Transfer will be deemed to be written instrument of transfer satisfactory to the Issuers and the Registrar.

At such time as all interests in a Global Security have been purchased, redeemed, cancelled or exchanged for Securities in certificated form, such Global Security shall, upon receipt thereof, be cancelled by the Trustee in accordance with standing procedures and instructions existing between the Depository and the Custodian for the Global Security. At any time prior to such cancellation, if any interest in a Global Security is purchased, exchanged, redeemed or cancelled for Securities in certificated form, the Original Principal Amount of such Global Security shall, in accordance with the standing procedures and instructions existing between the Depository and the Custodian for the Global Security, be appropriately reduced, and an endorsement shall be made on such Global Security, by the Trustee or the Custodian for the Global Security, at the direction of the Trustee, to reflect such reduction.

(b) *Global Securities.* Notwithstanding anything to the contrary in Section 2.08 of the Base Indenture, every transfer and exchange of a beneficial interest in a Global Security will be effected through the Depository in accordance with the Applicable Procedures and the provisions of the Indenture, and each Global Security may be transferred only as a whole and only (A) by the Depository to a nominee of the Depository, (B) by a nominee of the Depository to the Depository or to another nominee of the Depository, or (C) by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository.

(c) *Holders Deemed Owners.* Prior to due presentment of a Security for registration of transfer, the Issuers, the Trustee and any agent of the Issuers or the Trustee may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of Accreted Principal Amount of and any Special Interest (subject to Section 2.13 of the Base Indenture) on such Security at the Maturity Date, in connection with a Fundamental Change, REIT Redemption, upon any exchange and for all other purposes whatsoever, including delivery of shares of Common Stock on exchange, for distribution of notices to such Holders or solicitations of their consent, whether or not such Security be overdue, and neither the Issuers, the Trustee nor any agent of the Issuers or the Trustee shall be affected by notice to the contrary.

Notwithstanding anything to the contrary in Section 2.08 of the Base Indenture:

(1) Each Global Security will be exchanged for Physical Securities if the Depository delivers notice to the Issuers that the Depository is unwilling, unable or no longer permitted under applicable law to continue to act as Depository, and, in each case, the Issuers promptly deliver a copy of such notice to the Trustee and the Issuers fail to appoint a successor Depository within 90 days after receiving notice from the Depository.

(2) If an Event of Default has occurred and is continuing, any owner of a beneficial interest in a Global Security may exchange such beneficial interest for Physical Securities by delivering a written request to the Registrar.

(3) If the Issuers notify the Trustee that it wishes to terminate and exchange all or part of a Global Security for Physical Securities and the beneficial owners of the majority of the Accreted Principal Amount of such Global Security (or portion thereof) to be exchanged consent to such exchange, the Issuers may exchange all beneficial interests in such Global Security (or portion thereof) for Physical Securities by delivering a written request to the Registrar.

In the case of an exchange for Physical Securities under clause (1) above:

(A) each Global Security will be deemed surrendered to the Trustee for cancellation;

(B) the Trustee will cause each Global Security to be cancelled in accordance with the Applicable Procedures; and

(C) the Issuers, in accordance with Section 2.04 of the Base Indenture, will promptly execute, and, upon receipt of an Issuer Request, the Trustee, in accordance with Section 2.04 of the Base Indenture, will promptly authenticate and deliver, for each beneficial interest in each Global Security so exchanged, an aggregate Original Principal Amount of Physical Securities equal to the aggregate Original Principal Amount of such beneficial interest, registered in such names and in such authorized denominations as the Depository specifies, and bearing any legends that such Physical Securities are required to bear under the Indenture.

In the case of an exchange for Physical Securities under clause (2) above:

(A) the Registrar will deliver notice of such request to the Issuers and the Trustee, which notice will identify the owner of the beneficial interest to be exchanged, the aggregate Original Principal Amount of such beneficial interest and the CUSIP of the relevant Global Security, in each case if and as such information is provided to the Registrar by the Depository;

(B) the Issuers, in accordance with Section 2.04 of the Base Indenture, will promptly execute, and, upon receipt of an Issuer Request, the Trustee, in accordance with Section 2.04 of the Base Indenture, will promptly authenticate and deliver to such owner, for the beneficial interest so exchanged by such owner, Physical Securities registered in such owner's name having an aggregate Original Principal Amount equal to the aggregate Original Principal Amount of such beneficial interest and bearing any legends that such Physical Securities are required to bear under the Indenture; and

(C) the Registrar, in accordance with the Applicable Procedures, will cause the Original Principal Amount of such Global Security to be decreased by the aggregate Original Principal Amount of the beneficial interest so exchanged. If all of the beneficial interests in a Global Security are so exchanged, such Global Security will be deemed surrendered to the Trustee for cancellation, and the Trustee will cause such Global Security to be cancelled in accordance with the Applicable Procedures.

In the case of an exchange for Physical Securities under clause (3) above:

(A) the Issuers will deliver notice of such request to the Registrar and the Trustee, which notice will identify each owner of a beneficial interest to be exchanged, the aggregate Original Principal Amount of each such beneficial interest and the CUSIP of the relevant Global Security;

(B) the Issuers, in accordance with Section 2.04 of the Base Indenture, will promptly execute, and, upon receipt of an Issuer Request, the Trustee, in accordance with Section 2.04 of the Base Indenture, will promptly authenticate and deliver to each such beneficial owner, Physical Securities registered in such beneficial owner's name having an aggregate Original Principal Amount equal to the aggregate Original Principal Amount of its exchanged beneficial interest and bearing any legends that such Physical Securities are required to bear under the Indenture and any applicable law; and

(C) the Registrar, in accordance with the Applicable Procedures, will cause the Original Principal Amount of each relevant Global Security to be decreased by the aggregate Original Principal Amount of the beneficial interests so exchanged. If all of the beneficial interests in a Global Security are so exchanged, such Global Security will be deemed surrendered to the Trustee for cancellation, and the Trustee will cause such Global Security to be cancelled in accordance with the Applicable Procedures.

In each of the cases described in clauses (1), (2) and (3) above, the Issuers may rely on the Depository to provide all names of beneficial owners and their respective Original Principal Amounts beneficially owned and may issue Physical Securities registered in the names and amounts so provided by the Depository.

(d) *Physical Securities*. Except to the extent otherwise provided in Section 2.03(a) hereof, Physical Securities may be transferred or exchanged in accordance with Section 2.08 of the Base Indenture.

(e) *Restricted Securities*. Every Security is required to bear the legend set forth in this Section 2.03(e) (together with any Common Stock issued upon exchange of the Security that is required to bear the legend set forth in Section 2.03(f), collectively, the "**Restricted Securities**") and shall be subject to the restrictions on transfer set forth in this Section 2.03(e) (including the legend set forth below), unless such restrictions on transfer shall be eliminated or otherwise waived by written consent of the Issuers, and the Holder of each such Restricted Security, by such Holder's acceptance thereof, agrees to be bound by all such restrictions on transfer. As used in this Section 2.03(e) and Section 2.03(f), the term "transfer" encompasses any sale, pledge, transfer or other disposition whatsoever of any Restricted Security.

Any certificate evidencing such Security (and all securities issued in exchange therefor or substitution thereof, other than shares of Common Stock, if any, deliverable upon exchange thereof, which shall bear the legend set forth in Section 2.03(f), if applicable) shall bear a legend in substantially the following form (unless otherwise agreed by Issuers in writing, with notice thereof to the Trustee):

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

- (1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT AND THAT IT AND ANY SUCH ACCOUNT IS NOT AN AFFILIATE OF HANNON ARMSTRONG SUSTAINABLE INFRASTRUCTURE CAPITAL, INC., AND
- (2) AGREES FOR THE BENEFIT OF HANNON ARMSTRONG SUSTAINABLE INFRASTRUCTURE CAPITAL, INC. ("HASI"), HAT HOLDINGS I LLC AND HAT HOLDINGS II LLC (COLLECTIVELY, "HAT HOLDINGS") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN, EXCEPT:
 - (A) TO HASI OR ANY SUBSIDIARY THEREOF (INCLUDING HAT HOLDINGS), OR
 - (B) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT THAT IS NOT AN AFFILIATE OF HASI.

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

No transfer of any Security will be registered by the Registrar unless the applicable box on the Form of Assignment and Transfer has been checked.

(f) *Underlying Securities.* Until the date (the "**Resale Restriction Termination Date**") that is the later of (1) the date that is one year after the delivery date of the relevant shares of Common Stock, or such other period of time as permitted by Rule 144 under the Securities Act or any successor provision thereto, and (2) such later date, if any, as may be required by applicable law, any stock certificate representing shares of Common Stock

delivered upon exchange of a Security shall bear a legend in substantially the following form (unless such shares of Common Stock have been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer or unless otherwise agreed by the Issuers in writing, with notice thereof to the Trustee and any transfer agent for the Common Stock):

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

- (1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT AND THAT IT AND ANY SUCH ACCOUNT IS NOT AN AFFILIATE OF HANNON ARMSTRONG SUSTAINABLE INFRASTRUCTURE CAPITAL, INC., AND
- (2) AGREES FOR THE BENEFIT OF HANNON ARMSTRONG SUSTAINABLE INFRASTRUCTURE CAPITAL, INC. ("HASI"), HAT HOLDINGS I LLC AND HAT HOLDINGS II LLC (COLLECTIVELY, "HAT HOLDINGS") THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN, EXCEPT:
 - (A) TO HASI OR ANY SUBSIDIARY THEREOF (INCLUDING HAT HOLDINGS), OR
 - (B) PURSUANT TO, AND IN ACCORDANCE WITH, AN EFFECTIVE REGISTRATION STATEMENT OF HASI THAT COVERS THE RESALE OF THIS SECURITY, OR
 - (C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT THAT IS NOT AN AFFILIATE OF HASI, OR
 - (D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 (IF AVAILABLE) UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

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

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

Any such Common Stock (i) as to which such restrictions on transfer shall have expired in accordance with their terms, (ii) that has been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer or (iii) that has been sold pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, may, upon surrender of the certificates representing such shares of Common Stock for exchange in accordance with the procedures of the transfer agent for the Common Stock, be exchanged for a new certificate or certificates for a like aggregate number of shares of Common Stock, which shall not bear the restrictive legend required by this 0.

Any share of Common Stock issued upon the exchange of a Security that is repurchased or owned by any Affiliate of the Parent Guarantor (or any Person who was an Affiliate of the Parent Guarantor at any time during the three months immediately preceding) may not be resold by such Affiliate (or such Person, as the case may be) unless registered under the Securities Act or resold pursuant to an exemption from the registration requirements of the Securities Act in a transaction that results in such share of Common Stock no longer being a "restricted security" (as defined under Rule 144).

Section 2.04 Payments on the Securities.

(a) *In General.* Each Security shall not bear regular interest. Special Interest on a Security, if any, will cease to accrue upon the earliest of the Maturity Date, subject to the provisions of Article 3 hereof, any Fundamental Change Purchase Date or Redemption Date for such Security, and subject to the provisions of Article 4 hereof, any Exchange Date for such Security. Special Interest on any Security, if any, will be payable semi-annually in arrears on each Special Interest Payment Date, beginning November 1, 2022, to the Holder of such Security as of the Close of Business on the Special Interest Record Date immediately preceding the applicable Special Interest Payment Date. Special Interest, if any, will be computed on the basis of a 360-day year comprised of twelve 30-day months.

The Securities will mature on the Maturity Date, and on the Maturity Date, each Holder of a then Outstanding Security will be entitled on such date to receive an amount in cash equal to the Accreted Principal Amount as of the Maturity Date for each \$1,000 in Original Principal Amount of then Outstanding Securities held, together with any accrued and unpaid Special Interest to, but not including, the Maturity Date on such then Outstanding Securities.

Notwithstanding anything to the contrary, if the Maturity Date or any Special Interest Payment Date, Fundamental Change Purchase Date, Redemption Date or any Exchange Date falls, or if any payment, delivery, notice or other action by the Issuers are otherwise due, on a day that is not a Business Day, then any action to be taken on such date need not be taken on such date, but may be taken on the immediately following Business Day with the same force and effect as if taken on such date, and no additional Special Interest will accrue and no Default shall occur on account of such delay.

(b) *Method of Payment.* The Issuers will pay the Accreted Principal Amount of, the Fundamental Change Purchase Price, REIT Redemption Price for, and any cash in lieu of fractional shares of Common Stock upon the exchange of, any Physical Security to the Holder of such Security in cash at the designated office of the Paying Agent in the borough of Manhattan in The City of New York, New York, prior to 10:00 a.m. on the relevant payment or settlement date, as the case may be. The Issuers will pay any Special Interest on any Physical Security to the Holder of such Security (i) if such Holder holds \$2,000,000 or less aggregate Accreted Principal Amount of Securities, by check mailed to such Holder's registered address, and (ii) if such Holder holds more than \$2,000,000 aggregate Accreted Principal Amount of Securities, (A) by check mailed to such Holder's registered address or, (B) if such Holder delivers to the Registrar a written request that the Issuers make such payments by wire transfer to an account of such Holder within the United States, for each Special Interest payment corresponding to each Special Interest Record Date occurring during the period beginning on the date on which such Holder delivered such request and ending on the date, if any, on which such Holder delivers to the Registrar a written instruction to the contrary, by wire transfer of immediately available funds to the account specified by such Holder.

The Issuers will pay the Accreted Principal Amount of, any Special Interest on, the Fundamental Change Purchase Price, REIT Redemption Price for, and any cash in lieu of fractional shares of Common Stock upon the exchange of, any Global Security to the Depository by wire transfer of immediately available funds on the relevant payment date in accordance with Applicable Procedures.

(c) *Defaulted Payments.* The Issuers shall pay any Special Interest on the Securities that is payable, but is not punctually paid or duly provided for, on the applicable Special Interest Payment Date, in accordance with Section 2.13 of the Base Indenture.

Section 2.05 *Accretion.* Schedule B hereto sets forth the Accreted Principal Amount per \$1,000 Original Principal Amount of Securities as of specified dates during the period from the Issue Date through the Maturity Date. To the extent that a calculation of the Accreted Principal Amount is required at any given time, the Issuers will make such calculation determined as set forth on Schedule B, and will provide such calculations to the Trustee and the Holders, and the Trustee is entitled to rely conclusively upon the accuracy of the Issuers' calculations without independent verification. The Trustee will have no responsibility for making such calculations.

ARTICLE 3

REPURCHASE OF SECURITIES AT OPTION OF HOLDERS

Section 3.01 *Amendments to the Base Indenture.*

(a) *No Redemption.* Article III of the Base Indenture shall not apply with respect to the Securities.

Section 3.02 *Purchase at Option of Holders upon a Fundamental Change.* (a) If a Fundamental Change occurs, then each Holder shall have the right, at such Holder's option, to require the Issuers to purchase for cash all of such Holder's Securities, or any portion thereof such that the remaining Original Principal Amount of each Security that is not purchased in full equals \$1,000 or an integral multiple of \$1,000 in excess thereof, on a date (the "**Fundamental Change Purchase Date**") specified by the Issuers that is not less than 20 calendar days or more than 35 calendar days following the date on which the Issuers deliver the Fundamental Change Issuer Notice, at a purchase price equal to 100% of the Accreted Principal Amount thereof, plus accrued and unpaid Special Interest thereon, if any, to, but excluding, the Fundamental Change Purchase Date (the "**Fundamental Change Purchase Price**"); *provided, however,* that if the Issuers purchase a Security on a Fundamental Change Purchase Date that is after a Special Interest Record Date and on or prior to the Special Interest Payment Date corresponding to such Special Interest Record Date, the Issuers shall instead pay such accrued and unpaid Special Interest, if any, on such Security on the Special Interest Payment Date to the Holder of record of such Security as of such Special Interest Record Date.

Purchases of Securities under this Section 3.02 shall be made, at the option of the Holder thereof, upon:

(1) if the Securities to be purchased are Physical Securities, delivery to the Paying Agent by the Holder of a duly completed notice (the "**Fundamental Change Purchase Notice**") in the form set forth in Attachment 2 to the Form of Security attached hereto as Exhibit A and of the Securities, duly endorsed for transfer, on or before the Close of Business on the Business Day immediately preceding the Fundamental Change Purchase Date, subject to extensions to comply with applicable law (the "**Fundamental Change Expiration Time**"); and

(2) if the Securities to be purchased are Global Securities, delivery of the Securities, by book-entry transfer, in compliance with the Applicable Procedures of the Depository and the satisfaction of any other requirements of the Depository in connection with tendering beneficial interests in a Global Security for purchase, by the Fundamental Change Expiration Time.

The Fundamental Change Purchase Notice in respect of any Securities to be purchased shall state:

(1) if certificated, the certificate numbers of such Securities;

(2) the portion of the Original Principal Amount of such Securities to be purchased, which must be such that the Original Principal Amount that is not to be purchased of each Security that is not to be purchased in full equals \$1,000 or an integral multiple of \$1,000 in excess thereof; and

(3) that such Securities are to be purchased by the Issuers pursuant to the applicable provisions of the Securities and the Indenture.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Fundamental Change Purchase Notice contemplated by this Section 3.02 shall have the right to withdraw, in whole or in part, such Fundamental Change Purchase Notice at any time prior to the Fundamental Change Expiration Time by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 3.04.

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

(b) On or before the 20th calendar day after the occurrence of a Fundamental Change, the Issuers shall provide to all Holders of the Securities, the Trustee and the Paying Agent (in the case of any Paying Agent other than the Trustee) a written notice (the “**Fundamental Change Issuer Notice**”) of the occurrence of such Fundamental Change and of the purchase right at the option of the Holders arising as a result thereof. Such notice shall be sent by first class mail or, in the case of any Global Securities, in accordance with the procedures of the Depository for providing notices. Simultaneously with providing such Fundamental Change Issuer Notice, the Issuers or the Parent Guarantor shall publish this information in a newspaper of general circulation in The City of New York or publish the information on the Issuers’ or the Parent Guarantor’s website or through such other public medium as the Issuers or the Parent Guarantor may use at that time.

Each Fundamental Change Issuer Notice shall specify:

- (1) the events causing the Fundamental Change;
- (2) the date of the Fundamental Change;
- (3) the last date on which a Holder of Securities may exercise the purchase right pursuant to this Article 3;
- (4) the Fundamental Change Purchase Price;
- (5) the Fundamental Change Purchase Date;
- (6) the name and address of the Paying Agent and the Exchange Agent, if applicable;
- (7) the applicable Exchange Rate and any adjustments to the applicable Exchange Rate;
- (8) that the Securities with respect to which a Fundamental Change Purchase Notice has been delivered by a Holder may be exchanged only if the Holder withdraws the Fundamental Change Purchase Notice in accordance with the Indenture;
- (9) that the Holder shall have the right to withdraw any Securities surrendered for purchase prior to the Fundamental Change Expiration Time; and
- (10) the procedures that Holders must follow to require the Issuers to purchase their Securities.

No failure of the Issuers to give the foregoing notices and no defect therein shall limit the purchase rights of the Holders of Securities or affect the validity of the proceedings for the purchase of the Securities pursuant to this Section 3.02.

(c) Notwithstanding the foregoing, there shall be no purchase of any Securities pursuant to this Section 3.02 if the Accreted Principal Amount of the Securities has been accelerated, and such acceleration has not been rescinded, on or prior to the Fundamental Change Purchase Date (except in the case of an acceleration resulting from a Default by the Issuers in the payment of the Fundamental Change Purchase Price with respect to such Securities). The Paying Agent will promptly return to the respective Holders thereof any Physical Securities held by it during the acceleration of the Securities (except in the case of an acceleration resulting from a Default by the Issuers in the payment of the Fundamental Change Purchase Price with respect to such Securities) and shall deem to be cancelled any instructions for book-entry transfer of the Securities in compliance with the procedures of the Depository, in which case, upon such return or cancellation, as the case may be, the Fundamental Change Purchase Notice with respect thereto shall be deemed to have been withdrawn.

(d) Notwithstanding the other provisions of this Article 3, the Issuers will not be required to make an offer to purchase the Securities upon a Fundamental Change if a third party makes such an offer in the manner, at the times and otherwise in compliance with the requirements in the Indenture and such third party purchases all Securities properly tendered and not validly withdrawn under its offer.

Section 3.03 *Effect of Fundamental Change Purchase Notice.* Upon receipt by the Paying Agent of a Fundamental Change Purchase Notice specified in Section 3.02, the Holder of the Security in respect of which such Fundamental Change Purchase Notice was given shall (unless such Fundamental Change Purchase Notice is withdrawn in accordance with Section 3.04) thereafter be entitled to receive solely the Fundamental Change Purchase Price in cash with respect to such Security (and any previously accrued and unpaid Special Interest, if any, on such Security). Such Fundamental Change Purchase Price shall be paid to such Holder, subject to receipt of funds by the Paying Agent, on the later of (x) the applicable Fundamental Change Purchase Date (provided the conditions in Section 3.02 have been satisfied) and (y) the time of delivery or book-entry transfer of such Security to the Paying Agent by the Holder thereof in the manner required by Section 3.02, subject in each case to extensions to comply with applicable law.

Section 3.04 *Withdrawal of Fundamental Change Purchase Notice.* A Fundamental Change Purchase Notice may be withdrawn (in whole or in part) by means of a written notice of withdrawal delivered to the Paying Agent in accordance with the Fundamental Change Issuer Notice at any time prior to the Fundamental Change Expiration Time, specifying:

- (1) the Original Principal Amount of the Securities with respect to which such notice of withdrawal is being submitted;
- (2) if Physical Securities have been issued, the certificate numbers of the withdrawn Securities; and

(3) the Original Principal Amount, if any, of each Security that remains subject to the Fundamental Change Purchase Notice, which must be such that the Original Principal Amount not to be purchased equals \$1,000 or an integral multiple of \$1,000 in excess thereof;

provided, however, that if the Securities are Global Securities, the notice must comply with Applicable Procedures of the Depository.

The Paying Agent will promptly return to the respective Holders thereof any Physical Securities with respect to which a Fundamental Change Purchase Notice has been withdrawn in compliance with the provisions of this Section 3.04.

Section 3.05 *Deposit of Fundamental Change Purchase Price.* Prior to 10:00 a.m., New York City time, on the Fundamental Change Purchase Date, the Issuers shall deposit with the Paying Agent (or, if the Issuers or a Subsidiary or an Affiliate of any of them is acting as the Paying Agent, shall segregate and hold in trust as provided herein) an amount of money (in immediately available funds if deposited on such Business Day) sufficient to pay the Fundamental Change Purchase Price of all the Securities or portions thereof that are to be purchased as of the Fundamental Change Purchase Date. If the Paying Agent holds cash sufficient to pay the Fundamental Change Purchase Price of the Securities for which a Fundamental Change Purchase Notice has been tendered and not withdrawn in accordance with the Indenture on the Fundamental Change Purchase Date, then as of such Fundamental Change Purchase Date, (a) such Securities will cease to be Outstanding and any Special Interest will cease to accrue thereon (whether or not book-entry transfer of such Securities is made or such Securities have been delivered to the Paying Agent) and (b) all other rights of the Holders in respect thereof will terminate (other than the right to receive the Fundamental Change Purchase Price upon delivery or book-entry transfer of such Securities).

Section 3.06 *Securities Purchased in Whole or in Part.* Any Security that is to be purchased, whether in whole or in part, shall be surrendered at the office of the Paying Agent (with, if the Issuers or the Trustee so requires in the case of Physical Securities, due endorsement by, or a written instrument of transfer in form satisfactory to the Issuers and the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing) and the Issuers shall execute and the Trustee shall authenticate and deliver to the Holder of such Security, without service charge, a new Security or Securities, of any authorized denomination as requested by such Holder in aggregate Original Principal Amount equal to, and in exchange for, the portion of the Original Principal Amount of the Security so surrendered that is not purchased.

Section 3.07 *Covenant To Comply with Applicable Laws upon Purchase of Securities.* In connection with any offer to purchase Securities under Section 3.02, the Issuers shall, in each case if required by law, (i) comply with Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act that may then be applicable, (ii) file a Schedule TO or any other required schedule under the Exchange Act and (iii) otherwise comply with all federal and state securities laws applicable to the Issuers in connection with such purchase offer, in each case, so as to permit the rights and obligations under Section 3.02 to be exercised in the time and in the manner specified in Section 3.02.

Section 3.08 *Repayment to the Issuers.* To the extent that the aggregate amount of cash deposited by the Issuers pursuant to Section 3.05 exceeds the aggregate Fundamental Change Purchase Price of the Securities or portions thereof that the Issuers are obligated to purchase as of the Fundamental Change Purchase Date, then, following the Fundamental Change Purchase Date, the Paying Agent shall promptly return any such excess to the Issuers.

ARTICLE 4

EXCHANGE

Section 4.01 *Right To Exchange.* (a) (a) Upon compliance with the provisions of the Indenture, at any time prior to the Close of Business on the second Scheduled Trading Day immediately preceding the Maturity Date, unless such Securities have been redeemed in accordance with Sections 3.02 or 11.01(a), or repurchased by the Issuers, the Holder of any Securities not previously repurchased or redeemed shall have the right, at such Holder's option, to exchange its Securities, or any portion thereof the Original Principal Amount of

which is a multiple of \$1,000, into Common Stock, as provided in Section 4.03, by surrender of such Securities so to be exchanged in whole or in part, together with any required funds, under the circumstances and in the manner described in this Article 4. All references herein to an exchange of Securities refers to exchange of the Original Principal Amount thereof, and, for the avoidance of doubt, the amount of consideration deliverable upon exchange of the Securities shall not be affected by accretion of Accreted Principal Amount pursuant to Section 2.05.

(b) Notwithstanding any other provision of the Securities or the Indenture, no Holder of Securities will be entitled to receive Common Stock following exchange of such Securities to the extent that receipt of such Common Stock would cause such Holder (either directly or after application of certain constructive ownership rules) to exceed the ownership limits contained in the Parent Guarantor's charter. Any purported delivery of shares of Common Stock upon exchange of Securities shall be void and have no effect to the extent (but only to the extent) that such delivery would result in the exchanging holder violating the restrictions on ownership and transfer of the Common Stock contained in the Parent Guarantor's charter. Any attempted exchange of Securities that would result in the issuance of shares of Common Stock in violation of these charter restrictions shall be void to the extent of the number of shares of Common Stock that would cause such violation, and the related Securities, or portions, thereof shall be returned to the Holder as promptly as practical. The Issuers shall not have any further obligation to the Holder with respect to such voided exchange and such Securities shall be treated as if they had not been submitted for exchange.

(c) A Security in respect of which a Holder has delivered a Fundamental Change Purchase Notice exercising such Holder's right to require the Issuers to purchase such Security pursuant to Section 3.02 may be exchanged only if such Fundamental Change Purchase Notice is properly withdrawn in accordance with, and within the time periods set forth in, Section 3.04.

(d) If the Issuers deliver a Redemption Notice, a Holder may exchange all or any portion of its Securities called for REIT Redemption on or after the date of such Redemption Notice at any time prior to the Close of Business on the Business Day immediately preceding the Redemption Date.

Section 4.02 Exchange Procedures.

(a) Each Security shall be exchangeable at the office of the Exchange Agent and, if applicable, in accordance with the Applicable Procedures of the Depository.

(b) To exercise the exchange privilege with respect to a beneficial interest in a Global Security, the Holder must complete the appropriate instruction form for exchange pursuant to the Depository's book-entry exchange program, furnish appropriate endorsements and transfer documents if required by the Issuers or the Exchange Agent, and pay the funds, if any, required by Section 4.02(f) and any taxes or duties if required pursuant to Section 4.02(h), and the Exchange Agent must be informed of the exchange in accordance with the customary practice of the Depository.

To exercise the exchange privilege with respect to any Physical Securities, the Holder of such Physical Securities shall:

(1) complete and manually sign an exchange notice in the form set forth in the Form of Notice of Exchange (the **Exchange Notice**) or a facsimile of the Exchange Notice;

(2) deliver the Exchange Notice, which is irrevocable, and the Security to the Exchange Agent;

(3) if required, furnish appropriate endorsements and transfer documents,

(4) if required, make any payment required under Section 4.02(f); and

(5) if required, pay all transfer or similar taxes as set forth in Section 4.02(h).

If, upon exchange of a Security, any shares of Common Stock are to be issued to a person other than the Holder of such Security, the related Exchange Notice shall include such other person's name and address.

If a Security is subject to a Fundamental Change Purchase Notice, such Security may not be exchanged unless such Fundamental Change Purchase Notice is withdrawn in accordance with Section 3.04 hereof prior to the relevant Fundamental Change Expiration Time.

For any Security, the first Business Day on which the Holder of such Security satisfies all of the applicable requirements set forth above with respect to such Security and on which exchange of such Security is not otherwise prohibited under the Indenture shall be the "**Exchange Date**" with respect to such Security.

Each exchange shall be deemed to have been effected as to any such Securities (or portion thereof) surrendered for exchange at the Close of Business on the applicable Exchange Date, and the person in whose name the certificate for any shares of Common Stock delivered upon exchange is registered shall be treated as a stockholder of record as of the Close of Business on such Exchange Date.

(c) *Endorsement.* Any Securities surrendered for exchange shall, unless shares of Common Stock issuable on exchange are to be issued in the same name as the registration of such Securities, be duly endorsed by, or be accompanied by instruments of transfer in form satisfactory to the Issuers duly executed by, the Holder or its duly authorized attorney.

(d) *Physical Securities.* If any Securities in a denomination greater than \$1,000 Original Principal Amount shall be surrendered for partial exchange, the Issuers shall execute and the Trustee shall authenticate and deliver to the Holder of the Securities so surrendered, without charge, new Securities in authorized denominations in an aggregate Original Principal Amount equal to the unexchanged portion of the surrendered Securities.

(e) *Global Securities.* Upon the exchange of a beneficial interest in Global Securities, the Exchange Agent shall make a notation in its records as to the reduction in the Original Principal Amount represented thereby. The Issuers shall notify the Trustee in writing of any exchanges of Securities effected through any Exchange Agent other than the Trustee.

(f) *Special Interest Due Upon Exchange.* If a Holder exchanges a Security after the Close of Business on a Special Interest Record Date but prior to the Open of Business on the Special Interest Payment Date corresponding to such Special Interest Record Date, such Holder must accompany such Security with an amount of cash equal to the amount of any Special Interest that will be payable on such Security on the corresponding Special Interest Payment Date; *provided, however,* that a Holder need not make such payment (1) if the Exchange Date follows the Special Interest Record Date immediately preceding the Maturity Date; (2) if the Issuers have specified a Redemption Date that occurs following a Special Interest Record Date but occurs on or prior to the corresponding Special Interest Payment Date; (3) if the Issuers have specified a Fundamental Change Purchase Date that is after a Special Interest Record Date and on or prior to the corresponding Special Interest Payment Date and the Holder exchanges its Security after the Close of Business on such Special Interest Record Date and on or prior to the Open of Business on such Special Interest Payment Date; or (4) to the extent of any overdue Special Interest, if any overdue Special Interest exists at the time of exchange with respect to such Security.

(g) *[Reserved.]*

(h) *Taxes Due Upon Exchange.* If a Holder exchanges a Security, the Issuers will pay any documentary, stamp or similar issue or transfer tax due on the issue of any shares of the Common Stock upon the exchange, unless the tax is due because the Holder requests that any shares be issued in a name other than the Holder's name, in which case the Holder will pay that tax.

(i) *Cash Payments in Lieu of Fractional Shares.* No fractional shares of Common Stock or scrip certificates representing fractional shares shall be issued upon exchange of Securities. If more than one Security shall be surrendered for exchange at one time by the same Holder, the number of full shares that shall be issuable upon exchange shall be computed on the basis of the aggregate Original Principal Amount of the Securities (or specified portions thereof to the extent permitted hereby) so surrendered. If any fractional share of Common Stock would be issuable upon the exchange of any Security or Securities, the Issuers shall make a payment therefor in cash to the Holder of Securities equal to the product of (i) such fraction of a share and (ii) the Last Reported Sale Price of the Common Stock on the relevant Scheduled Trading Day (or, if the Scheduled Trading Day is not a Trading Day, the next following Trading Day).

Section 4.03 *Settlement Upon Exchange.*

(a) Upon exchange of any Securities, subject to Sections 4.01, 4.02 and this Section 4.03, the Issuers shall satisfy their obligation upon exchange (the "**Exchange Obligation**") by delivery of the shares (and, if applicable, payment of the cash) described under Section 4.03(b) below.

(b) Upon exchange of Securities, the Issuers shall deliver, in respect of each \$1,000 Original Principal Amount of Securities tendered for exchange in accordance with their terms:

(1) a number of shares of Common Stock equal to (a) (i) the aggregate Original Principal Amount of Securities to be exchanged divided by (ii) \$1,000, multiplied by (b) the applicable Exchange Rate on the date the exchanging Holder is treated as a record owner of the Common Stock pursuant to the last paragraph of Section 4.02(b); and

(2) an amount in cash in lieu of any fractional shares of Common Stock as provided in Section 4.02(i).

(c) Delivery of the shares of Common Stock (and, if applicable, payment of the cash) pursuant to Section 4.03(b) shall be made by the Issuers on or prior to the second Business Day immediately following the Exchange Date to the holder of a Security surrendered for exchange, or such holder's nominee or nominees, and the Issuers shall deliver to the Exchange Agent or to such holder, or such holder's nominee or nominees, certificates or a book-entry transfer through the Depository for the number of full shares of Common Stock to which such holder shall be entitled as part of such Exchange Obligation. Notwithstanding the foregoing, delivery of the shares of Common Stock (and, if applicable, payment of the cash) pursuant to Section 4.03(b) with respect to any Exchange Date that occurs on or after the Special Interest Record Date immediately preceding the Maturity Date shall be made by the Issuers on the Maturity Date.

(d) *Settlement of Accrued Special Interest and Deemed Payment of Accreted Principal Amount* If a Holder exchanges a Security, the Issuers will not adjust the Exchange Rate to account for any accrued and unpaid Special Interest on, or any accretion of the principal amount of, such Security, and the Issuers' delivery of shares of Common Stock (and cash in lieu of fractional shares, if any) for which a Security is exchangeable will be deemed to satisfy and discharge in full the Issuers' obligation to pay the Accreted Principal Amount of, and accrued and unpaid Special Interest, if any, on, such Security to, but excluding, the Exchange Date; *provided, however*, that if a Holder exchanges a Security after a Special Interest Record Date and prior to the Open of Business on the corresponding Special Interest Payment Date, the Issuers will still be obligated to pay any Special Interest due on such Special Interest Payment Date to the Holder of such Security on such Special Interest Record Date (provided the Holder makes the Special Interest payment upon exchange if so required by Section 4.02(f)).

As a result, except as otherwise provided in the proviso to the immediately preceding sentence, any accrued and unpaid Special Interest with respect to a exchanged Security will be deemed to be paid in full rather than cancelled, extinguished or forfeited. In no event will a Holder be entitled to receive any dividend or other distribution with respect to any Common Stock issued on exchange of such Holder's Securities if the applicable Exchange Date is after the Record Date for such dividend or distribution.

(e) *Notices*. Whenever an Exchange Date occurs with respect to a Security, the Exchange Agent will, as promptly as possible, and in no event later than the Business Day immediately following such Exchange Date, deliver to the Issuers and the Trustee, if it is not then the Exchange Agent, notice that an Exchange Date has occurred, which notice will state such Exchange Date, the Original Principal Amount of Securities exchanged on such Exchange Date and the names of the Holders that exchanged Securities on such Exchange Date.

Section 4.04 *Adjustment of Exchange Rate*. The Exchange Rate will be adjusted as described in this Section 4.04, except that the Issuers shall not make any adjustment to the Exchange Rate if Holders participate (other than in the case of (x) a share split or share combination or (y) a tender or exchange offer), at the same time and upon the same terms as holders of the Common Stock and as a result of holding the Securities, in any of the transactions described below without having to exchange their Securities, as if they held a number of shares of Common Stock equal to the applicable Exchange Rate, multiplied by the Original Principal Amount (expressed in thousands) of Securities held by such Holder.

(a) If the Parent Guarantor exclusively issues shares of Common Stock as a dividend or distribution on all or substantially all outstanding shares of the Common Stock, or if the Parent Guarantor effects a share split or share combination, the Exchange Rate will be adjusted based on the following formula:

$$CR1 = CR0 \times \frac{OS1}{OS0}$$

where,

- CR0 = the Exchange Rate in effect immediately prior to the Close of Business on the Record Date of such dividend or distribution, or immediately prior to the Open of Business on the effective date of such share split or share combination, as applicable;
- CR1 = the Exchange Rate in effect immediately after the Close of Business on such Record Date or immediately after the Open of Business on such effective date;
- OS0 = the number of shares of Common Stock outstanding immediately prior to the Close of Business on such Record Date or immediately prior to the Open of Business on such effective date, as applicable, before giving effect to such dividend, distribution, share split or share combination; and
- OS1 = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination, as applicable.

Any adjustment made pursuant to this Section 4.04(a) shall become effective immediately after the Close of Business on the Record Date for such dividend or distribution, or immediately after the Open of Business on the effective date for such share split or share combination. If any dividend or distribution of the type described in this Section 4.04(a) is declared but not so paid or made, the Exchange Rate shall be immediately readjusted, effective as of the date the Board of Directors of the Parent Guarantor determines not to pay such dividend or distribution to the Exchange Rate that would then be in effect if such dividend or distribution had not been declared.

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

$$CR1 = CR0 \times \frac{OS0 + X}{OS0 + Y}$$

where,

CR0 = the Exchange Rate in effect immediately prior to the Close of Business on the Record Date for such issuance;

CR1 = the Exchange Rate in effect immediately after the Close of Business on such Record Date;

OS0 = the number of shares of Common Stock outstanding immediately prior to the Close of Business on such Record Date;

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

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

Any increase made under this Section 4.04(b) will be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the Open of Business on the Record Date for such issuance. To the extent that such rights, options or warrants are not exercised prior to their expiration or shares of Common Stock are not delivered upon the expiration of such rights, options or warrants, the Exchange Rate shall be readjusted to the Exchange Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so issued, or if such rights, options or warrants are not exercised prior to their expiration, the Exchange Rate shall be decreased to be the Exchange Rate that would then be in effect if such Record Date for such issuance had not occurred.

For purposes of this Section 4.04(b), in determining whether any rights, options or warrants entitle the holders of the Common Stock to subscribe for or purchase shares of the Common Stock at a price per share less than such average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the date of announcement for such issuance, and in determining the aggregate offering price of such shares of the Common Stock, there shall be taken into account any consideration received by the Parent Guarantor for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors of the Parent Guarantor.

(c) If the Parent Guarantor distributes shares of its Capital Stock, evidences of its indebtedness, other assets or property of the Parent Guarantor or rights, options or warrants to acquire its Capital Stock or other securities, to all or substantially all holders of the outstanding Common Stock, excluding:

(1) dividends or distributions, rights options or warrants as to which an adjustment was effected pursuant to Section 4.04(a) hereof or Section 4.04(b) hereof;

(2) dividends or distributions paid exclusively in cash as to which the provisions set forth in Section 4.04(d) shall apply; and

(3) Spin-Offs described in Section 4.04(c);

then the Exchange Rate shall be increased based on the following formula:

$$CR1 = CR0 \times \frac{SP0}{SP0 - FMV}$$

where,

CR0 = the Exchange Rate in effect immediately prior to the Close of Business on the Record Date for such distribution;

CR1 = the Exchange Rate in effect immediately after the Close of Business on such Record Date;

SP0 = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

FMV = the fair market value (as determined by the Board of Directors of the Parent Guarantor) of the shares of the Parent Guarantor's Capital Stock, evidences of the Parent Guarantor's indebtedness, other assets, or property of the Parent Guarantor or rights, options or warrants to acquire the Parent Guarantor's Capital Stock or other securities distributed with respect to each outstanding share of the Common Stock on the Ex-Dividend Date for such distribution.

provided that if "FMV" (as defined above) is equal to or greater than "SP0" (as defined above), then in lieu of the foregoing increase, each Holder of a Security shall receive, in respect of each \$1,000 Original Principal Amount of a Security it holds, at the same time and upon the same terms as holders of the Common Stock, the amount and kind of the Parent Guarantor's Capital Stock, evidences of the Parent Guarantor's indebtedness, other assets or property of the Parent Guarantor or rights, options or warrants to acquire the Parent Guarantor's Capital Stock or other securities that such Holder would have received as if such Holder owned a number of shares of Common Stock equal to the Exchange Rate in effect on the Record Date for the distribution.

Any increase made under this portion of this Section 4.04(c) will become effective immediately after the Close of Business on the Record Date for such distribution. If such distribution is not so paid or made, the Exchange Rate shall be decreased to be the Exchange Rate that would then be in effect if such dividend or distribution had not been declared.

With respect to an adjustment pursuant to this Section 4.04(c) where there has been a payment of a dividend or other distribution on the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary of the Parent Guarantor or other business unit of the Parent Guarantor, and such Capital Stock or similar equity interest is listed or quoted (or will be listed or quoted upon the consummation of the distribution) on a United States national securities exchange (a "**Spin-Off**"), the Exchange Rate will be increased based on the following formula:

$$CR1 = CR0 \times \frac{FMV0 + MP0}{MP0}$$

where,

- CR0 = the Exchange Rate in effect immediately prior to the Close of Business on the Record Date for such Spin-Off;
- CR1 = the Exchange Rate in effect immediately after the Close of Business on the Record Date for such Spin-Off;
- FMV0 = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of outstanding Common Stock applicable to one share of Common Stock over the first ten consecutive Trading Day period after, and including, the Ex-Dividend Date of the Spin-Off (the “**Valuation Period**”); and
- MP0 = the average of the Last Reported Sale Prices of Common Stock over the Valuation Period.

The adjustment to the applicable Exchange Rate under the preceding paragraph of this Section 4.04(c) will be made immediately after the Open of Business on the day after the last Trading Day of the Valuation Period, but will be given effect as of the Open of Business on the Record Date for the Spin-Off. For purposes of determining the applicable Exchange Rate, in respect of any exchange during the ten Trading Days commencing on the Ex-Dividend Date for any Spin-Off, references within the portion of this Section 4.04(c) related to “Spin-Offs” to ten Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date for such Spin-Off to, and including, the relevant Exchange Date.

For purposes of the second adjustment set forth in this Section 4.04(c), (i) the Last Reported Sale Price of any Capital Stock or similar equity interest shall be calculated in a manner analogous to that used to calculate the Last Reported Sale Price of the Common Stock in the definition of “Last Reported Sale Price” set forth in Section 1.01 hereof, (ii) whether a day is a Trading Day (and whether a day is a Scheduled Trading Day and whether a Market Disruption Event has occurred) for such Capital Stock or similar equity interest shall be determined in a manner analogous to that used to determine whether a day is a Trading Day (or whether a day is a Scheduled Trading Day and whether a Market Disruption Event has occurred) for the Common Stock, and (iii) whether a day is a Trading Day to be included in a Valuation Period will be determined based on whether a day is a Trading Day for both the Common Stock and such Capital Stock or similar equity interest.

Subject to Section 4.04(f), for the purposes of this Section 4.04(c), rights, options or warrants distributed by the Parent Guarantor to all holders of the Common Stock entitling them to subscribe for or purchase shares of the Parent Guarantor’s Capital Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events (a “**Trigger Event**”): (1) are deemed to be

transferred with such shares of Common Stock; (2) are not exercisable; and (3) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this Section 4.04(c), (and no adjustment to the Exchange Rate under this Section 4.04(c) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Exchange Rate shall be made under this Section 4.04(c). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the Issue Date, is subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Record Date of such deemed distribution (in which case the original rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders). In addition, in the event of any distribution or deemed distribution of rights, options or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Exchange Rate under this Section 4.04(c) was made, (1) in the case of any such rights, options or warrants which shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or purchase (x) the Exchange Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Exchange Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or purchase price received by holders of Common Stock with respect to such rights, options or warrants (assuming each such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or purchase, and (2) in the case of such rights, options or warrants which shall have expired or been terminated without exercise by any holders thereof, the Exchange Rate shall be readjusted as if such rights and warrants had not been issued.

For purposes of Section 4.04(a) hereof, Section 4.04(b) hereof and this Section 4.04(c), if any dividend or distribution to which this Section 4.04(c) applies includes one or both of:

(1) a dividend or distribution of shares of Common Stock to which Section 4.04(a) hereof also applies (the **“Clause A Distribution”**);

or

(2) a dividend or distribution of rights, options or warrants to which Section 4.04(b) hereof also applies (the **“Clause B Distribution”**),

then, in either case, (i) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this Section 4.04(c) applies (the **“Clause C Distribution”**) and any Exchange Rate adjustment required to be made under this Section 4.04(c) with respect to such Clause C Distribution shall be made, (ii) the Clause B Distribution, if any, shall be deemed to immediately follow the Clause C Distribution and any Exchange Rate adjustment required by Section 4.04(b) hereof with respect thereto shall then be made, except that, if determined by the Parent Guarantor, (A) the “Record Date” of the Clause B Distribution and the Clause A Distribution, if any, shall be deemed to be the Record Date of the Clause C Distribution and (B) any shares of Common Stock included in the Clause A Distribution or the Clause B Distribution shall not be deemed to be “outstanding immediately prior to the Open of Business on such Record Date” within the meaning of Section 4.04(b) hereof, and (iii) the

Clause A Distribution, if any, shall be deemed to immediately follow the Clause C Distribution or the Clause B Distribution, as the case may be, except that, if determined by the Parent Guarantor, (A) the "Record Date" of the Clause A Distribution and the Clause B Distribution, if any, shall be deemed to be the Record Date of the Clause C Distribution, and (B) any shares of Common Stock included in the Clause A distribution shall not be deemed to be "outstanding immediately prior to the Open of Business on such Record Date or such effective date" within the meaning of Section 4.04(a) hereof.

(d) If any cash dividend or distribution is made to all or substantially all holders of the outstanding Common Stock to the extent that the aggregate of all such cash dividends or distributions paid in any quarter exceeds the dividends threshold amount (the "DTA") for such quarter, the Exchange Rate shall be adjusted based on the following formula:

$$CR1 = CR0 \times \frac{SP0 - DTA}{SP0 - C}$$

where,

- CR0 = the Exchange Rate in effect immediately prior to the Close of Business on the Record Date for such dividend or distribution;
- CR1 = the Exchange Rate in effect immediately after the Close of Business on the Record Date for such dividend or distribution;
- SP0 = the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution;
- DTA = the dividend threshold amount, which shall initially be \$0.375 per quarter *provided, however*, that the DTA with respect to any date shall be reduced by the aggregate per share cash dividends or distributions that were paid to all or substantially all holders of the outstanding Common Stock during the applicable dividend period prior to such payment and *provided further* that if the result of such reduction is a negative number, the DTA shall be deemed to be zero; and
- C = the amount in cash per share that the Parent Guarantor distributes to holders of the outstanding Common Stock.

The DTA is subject to adjustment on an inversely proportional basis whenever the Exchange Rate is adjusted, other than adjustments made pursuant to this Section 4.04(d).

If "C" (as defined above) is equal to or greater than "SP0" (as defined above), in lieu of the foregoing increase, each Holder shall receive, for each \$1,000 Original Principal Amount of Securities it holds, at the same time and upon the same terms as holders of shares of the outstanding Common Stock, the amount of cash that such Holder would have received if such Holder had owned a number of shares of Common Stock equal to the Exchange Rate on the Record Date for such cash dividend or distribution. Such increase shall become effective immediately after the Close of Business on the Record Date for such dividend or distribution. If such dividend or distribution is not so paid, the Exchange Rate shall be decreased to be the Exchange Rate that would then be in effect if such dividend or distribution had not been declared.

(e) If the Parent Guarantor or any of its Subsidiaries make a payment in respect of a tender offer or exchange offer for the Common Stock, to the extent that the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the Last Reported Sale Price of the Common Stock on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (the “Offer Expiration Date”), the Exchange Rate shall be increased based on the following formula:

$$CR1 = CR0 \times \frac{AC + (SP1 \times OS1)}{OS0 \times SP1}$$

where,

CR0 = the Exchange Rate in effect immediately prior to the Close of Business on the Offer Expiration Date;

CR1 = the Exchange Rate in effect immediately after the Close of Business on the Offer Expiration Date;

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

OS0 = the number of shares of Common Stock outstanding immediately prior to the expiration time of the tender or exchange offer on the Offer Expiration Date (prior to giving effect to the purchase of all shares accepted for purchase or exchange in such tender offer or exchange offer);

OS1 = the number of shares of Common Stock outstanding immediately after the expiration time of the tender or exchange offer on the Offer Expiration Date (after giving effect to the purchase of all shares accepted for purchase or exchange in such tender or exchange offer); and

SP1 = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the Offer Expiration Date.

The adjustment to the applicable Exchange Rate under the preceding paragraph of this Section 4.04(e) will be given effect at the Open of Business on the Trading Day next succeeding the Offer Expiration Date. For purposes of determining the applicable Exchange Rate, in respect of any exchange during the ten Trading Days commencing on the Trading Day next succeeding the Offer Expiration Date, references within this Section 4.04(e) to ten Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the Offer Expiration Date to, and including, the relevant Exchange Date.

(f) *Poison Pill.* Whenever a Holder exchanges a Security, to the extent that the Parent Guarantor has a rights plan in effect, the Holder exchanging such Security will receive, in addition to any shares of Common Stock otherwise received in connection with such exchange, the rights under the rights plan unless, prior to exchange the rights have expired, terminated or been redeemed or unless the rights have separated from the Common Stock, in which case, and only in such case, the Exchange Rate will be adjusted at the time of separation (and not at the time of the issuance of the rights) as if the Parent Guarantor distributed to all holders of the Common Stock, shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants as described in Section 4.04(c) hereof, subject to readjustment in the event of the expiration, termination or redemption of such rights.

(g) *Limitation on Adjustments.* Except as stated in this Section 4.04, the Issuers will not adjust the Exchange Rate for the issuance of shares of Common Stock or any securities convertible into or exchangeable for shares of Common Stock or the right to purchase shares of the Common Stock or such convertible or exchangeable securities. If, however, the application of the formulas in Sections 4.04(a) through (e) hereof would result in a decrease in the Exchange Rate, then, except to the extent of any readjustment to the Exchange Rate, no adjustment to the Exchange Rate will be made (other than as a result of a reverse share split, share combination or readjustment).

In addition, notwithstanding anything to the contrary herein, the Exchange Rate will not be adjusted:

(1) on account of stock repurchases that are not tender offers referred to in Section 4.04(e) hereof, including structured or derivative transactions, or transactions pursuant to a stock repurchase program approved by the Board of Directors of the Parent Guarantor or otherwise;

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

(3) upon the issuance of any shares of Common Stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan, program or agreement (including issuances to the personnel of the Parent Guarantor's external manager pursuant to any such plan, program or agreement) of or assumed by the Parent Guarantor or any of its Subsidiaries;

(4) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in the preceding clause (3) and outstanding as of the date the Securities were first issued;

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

(6) for accrued and unpaid Special Interest on the Securities, if any; or

(7) for an event otherwise requiring an adjustment under the Indenture if such event is not consummated.

(h) For purposes of this Section 4.04, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Parent Guarantor so long as the Parent Guarantor does not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Parent Guarantor, but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

(i) *Withholding on Adjustments.* If, in connection with any adjustment to the Exchange Rate as set forth in this Section 4.04 a Holder shall be deemed for U.S. federal tax purposes to have received a distribution, the Issuers (or their withholding agent) may withhold any withholding tax it (or such withholding agent) reasonably believes it (or such withholding agent) is required to collect with respect to any such deemed distribution from cash payments of any Special Interest in accordance with the provisions of Section 2.04 hereof or from cash and Common Stock, if any, otherwise deliverable to a Holder upon an exchange of Securities in accordance with the provisions of Section 4.03 hereof, a repurchase of a Security in accordance with the provisions of Article 3 hereof or a redemption of a Security in accordance with the provisions of Article 11 hereof.

Section 4.05 Adjustments of Prices and Voluntary Adjustments.

(a) *Adjustments of Prices.* Whenever any provision of the Indenture requires the Issuers to calculate the Last Reported Sale Prices or any function thereof over a span of multiple days, the Issuers will make appropriate adjustments to each to account for any adjustment to the Exchange Rate that becomes effective, or any event requiring an adjustment to the Exchange Rate where the Effective Date, Record Date or Offer Expiration Date of the event occurs, at any time during the period when such Last Reported Sale Prices or function thereof is to be calculated.

(b) *Voluntary Adjustments.* To the extent permitted by applicable law and the rules of the New York Stock Exchange or any other securities exchange or market on which the Common Stock is then listed, the Issuers are permitted to increase the Exchange Rate of the Securities by any amount for a period of at least 20 Business Days if the Board of Directors of the Parent Guarantor determines that such increase would be in the Issuers' and/or the Parent Guarantor's best interest. The Issuers may also (but is not required to) increase the Exchange Rate to avoid or diminish income tax to holders of Common Stock or rights to purchase shares of Common Stock in connection with a dividend or distribution of shares (or rights to acquire shares) or similar event.

Section 4.06 Adjustment to Exchange Rate Upon Exchange in Connection with a Make-Whole Fundamental Change.

(a) *Increase in the Exchange Rate.* If a Make-Whole Fundamental Change occurs and a Holder elects to exchange its Securities in connection with such Make-Whole Fundamental Change, the Issuers shall, under certain circumstances, increase the Exchange Rate for the Securities so surrendered for exchange by a number of additional shares of Common Stock (the "**Additional Shares**"), as described in this Section 4.06. An exchange of Securities shall be deemed for these purposes to be "in connection with" a Make-Whole Fundamental Change if the relevant Exchange Notice is received by the Exchange Agent during the period from, and including, the Effective Date of the Make-Whole Fundamental Change up to, and including, the Close of Business on the Business Day immediately prior to the related Fundamental Change Purchase Date or, if such Make-Whole Fundamental Change is not a Fundamental Change, the 35th Business Day immediately following the Effective Date for such Make-Whole Fundamental Change.

(b) *Determining the Number of Additional Shares.* The number of Additional Shares, if any, by which the Exchange Rate will be increased for a Holder that exchanges its Securities in connection with a Make-Whole Fundamental Change shall be determined by reference to the table attached as Schedule A hereto, based on the date on which the Make-Whole Fundamental Change occurs or becomes effective (the “**Effective Date**”) and the price (the “**Stock Price**”) paid (or deemed paid) per share of the Common Stock in the Make-Whole Fundamental Change. If the holders of the Common Stock receive only cash in a Make-Whole Fundamental Change described in clause (2) of the definition of Fundamental Change, the Stock Price shall be the cash amount paid per share. Otherwise, the Stock Price shall be the average of the Last Reported Sale Prices of the Common Stock over the ten consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Effective Date of the Make-Whole Fundamental Change.

(c) *Interpolation and Limits.* The exact Stock Prices and Effective Dates may not be set forth in the table in Schedule A, in which case:

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

(2) If the Stock Price is greater than \$125.00 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table in Schedule A pursuant to Section 4.06(c)(4) hereof), the Exchange Rate shall not be increased.

(3) If the Stock Price is less than \$42.67 per share (subject to adjustments in the same manner as the Stock Prices set forth in the column headings of the table in Schedule A pursuant to Section 4.06(c)(4) hereof), the Exchange Rate shall not be increased.

Notwithstanding the foregoing, in no event will the Exchange Rate be increased on account of a Make-Whole Fundamental Change to exceed 25.8568 shares of Common Stock per \$1,000 Original Principal Amount of Securities, subject to adjustments in the same manner as the Exchange Rate is required to be adjusted as set forth in Section 4.04 hereof.

(4) The Stock Prices set forth in the column headings of the table in Schedule A hereto shall be adjusted as of any date on which the Exchange Rate of the Securities is otherwise required to be adjusted. The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, *multiplied* by a fraction, the numerator of which is the Exchange Rate immediately prior to such adjustment giving rise to the Stock Price adjustment and the denominator of which is the Exchange Rate as so adjusted. The number of Additional Shares set forth in such table shall be adjusted in the same manner and at the same time as the Exchange Rate is required to be adjusted as set forth in Section 4.04.

(d) *Notices.* The Issuers shall notify the Trustee and the Holders of the Effective Date of any Make Whole Fundamental Change announcing such Effective Date no later than five Business Days after such Effective Date. Such notice shall be sent by first class mail or, in the case of any Global Securities, in accordance with the procedures of the Depository for providing notices. Simultaneously with providing such notice, the Issuers or the Parent Guarantor shall publish this information in a newspaper of general circulation in The City of New York or publish the information on the Issuers’ or the Parent Guarantor’s website or through such other public medium as the Issuers or the Parent Guarantor may use at that time.

(a) *Merger Events.* In the case of:

(1) any recapitalization, reclassification or change of the outstanding Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a split, subdivision or combination for which an adjustment was made pursuant to Section 4.04(a) hereof);

(2) any consolidation, merger or combination involving the Parent Guarantor;

(3) any sale, lease or other transfer to a third party of the consolidated assets of the Parent Guarantor and its Subsidiaries substantially as an entirety; or

(4) any statutory share exchange;

and, in each case, as a result of which the outstanding Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any such event, a “**Merger Event**,” any such stock, other securities, other property or assets, “**Reference Property**,” and the amount of kind of Reference Property that a holder of one share of Common Stock (i) is entitled to receive in the applicable Merger Event or (ii) if as a result of the applicable Merger Event, each share of Common Stock is converted into the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), the per-share of Common Stock weighted average of the types and amounts of Reference Property received by the holders of Common Stock that affirmatively make such an election, a “**Unit of Reference Property**”) then, at the effective time of such Merger Event, the right to exchange each \$1,000 Original Principal Amount of Securities into a number of shares of the Common Stock equal to the applicable Exchange Rate will, without the consent of the Holders, be changed into a right to exchange each \$1,000 Original Principal Amount of Securities into a number of Units of Reference Property equal to the applicable Exchange Rate and, prior to or at the effective time of such Merger Event, the Issuers, the Parent Guarantor or the successor or purchasing Person, as the case may be, shall execute with the Trustee a supplemental indenture providing for such change in the right to exchange each \$1,000 Original Principal Amount of Securities. With respect to any such Reference Property, the Last Reported Sale Price will, to the extent reasonably possible, be calculated based on the value of a Unit of Reference Property and the definitions of Trading Day and Market Disruption Event shall be determined by reference to the components of a Unit of Reference Property.

If the Merger Event causes the outstanding Common Stock to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election) as contemplated by the preceding paragraph such that a Unit of Reference Property is comprised of the per-share of Common Stock weighted average of the types and amounts of consideration received by the holders of the Common Stock in the Merger Event that affirmatively make such an election, the Issuers shall notify Holders of the weighted average as soon as practicable after such determination is made.

The Parent Guarantor shall not become a party to any Merger Event unless its terms are consistent with this Section 4.07. Such supplemental indenture described in the second immediately preceding paragraph shall provide for adjustments which shall be as nearly equivalent to the adjustments provided for in this Article 4 in the judgment of the Board of Directors of the Parent Guarantor or the board of directors of the successor Person. If, in the case of any such Merger Event, the Reference Property receivable thereupon by a holder of Common Stock includes shares of stock, securities or other property or assets (including cash or any combination thereof) of a Person other than the successor or purchasing Person, as the case may be, in such Merger Event, then such supplemental indenture shall also be executed by such other Person and shall contain such additional provisions to protect the interests of the Holders of the Securities as the Board of Directors of the Parent Guarantor shall reasonably consider necessary.

(b) *Notice of Supplemental Indentures.* The Issuers shall cause notice of the execution of such supplemental indenture to be mailed to each Holder, at the address of such Holder as it appears on the register of the Securities maintained by the Registrar, within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture. The above provisions of this Section 4.07 shall similarly apply to successive Merger Events and the provisions of this Section 4.07 and Article IX of the Base Indenture (as modified by Article 8 of this Supplemental Indenture) shall apply to any such successive Merger Events.

Section 4.08

Section 4.08 *Stock Issued Upon Exchange.*

(a) *Reservation of Shares.* To the extent necessary to satisfy the Issuers' obligations under the Indenture, prior to issuing any shares of Common Stock, the Parent Guarantor will reserve out of its authorized but unissued shares of Common Stock a sufficient number of shares of Common Stock to permit the exchange of the Securities.

(b) *Certain other Covenants.* The Parent Guarantor covenants that all shares of Common Stock that may be issued upon exchange of Securities shall be newly issued shares or treasury shares, shall be duly authorized, validly issued, fully paid and non-assessable and shall be free from preemptive rights and free from any tax, lien or charge (other than those created by the Holder or due to a change in registered owner).

(c) *Stock Transfer Agent.* American Stock Transfer & Trust Company is, as of the date of this Supplemental Indenture, the Stock Transfer Agent for the Common Stock and the Issuers shall notify the Trustee if the Stock Transfer Agent for the Common Stock is changed. The Issuers and the Trustee (as Exchange Agent) agree to cooperate with the Stock Transfer Agent for the Common Stock in connection with any exchanges of the Securities.

The Parent Guarantor shall list or cause to have quoted any shares of Common Stock to be issued upon exchange of Securities on each national securities exchange or over-the-counter or other domestic market on which the Common Stock is then listed or quoted.

Section 4.09 *Responsibility of Trustee.* The Trustee and any Exchange Agent shall not at any time be under any duty or responsibility to any Holder of Securities to determine or calculate the Exchange Rate (or any adjustments thereto), to determine whether any facts exist which may require any adjustment of the Exchange Rate, or to confirm the accuracy of

any such adjustment when made or the appropriateness of the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Exchange Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock or of any other securities or property that may at any time be issued or delivered upon the exchange of any Securities; and the Trustee and the Exchange Agent make no representations with respect thereto. Neither the Trustee nor any Exchange Agent shall be responsible for any failure of the Issuers or the Parent Guarantor to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Securities for the purpose of exchange or to comply with any of the duties, responsibilities or covenants of the Issuers or the Parent Guarantor contained in this Article 4. The rights, privileges, protections, immunities and benefits given to the Trustee, including without limitation its right to be compensated, reimbursed, and indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, including its capacity as Exchange Agent.

Section 4.10 *Notice to Holders.*

(a) *Notice to Holders Prior to Certain Actions.* The Issuers shall deliver notices of the events specified below at the times specified below and containing the information specified below unless, in each case, (i) pursuant to the Indenture, the Issuers are already required to deliver notice of such event containing at least the information specified below at an earlier time or, (ii) the Issuers, at the time they are required to deliver a notice, do not have knowledge of all of the information required to be included in such notice, in which case, the Issuers shall (A) deliver notice at such time containing only the information that they have knowledge of at such time (if they have knowledge of any such information at such time), and (B) promptly upon obtaining knowledge of any such information not already included in a notice delivered by the Issuers, deliver notice to each Holder containing such information. In each case, the failure by the Issuers to give such notice, or any defect therein, shall not affect the legality or validity of such event. Any notices sent to Holders shall also be sent to the Trustee.

(b) *Issuances, Distributions, and Dividends and Distributions.* If the Parent Guarantor (A) announces any issuance of any rights, options or warrants that would require an adjustment in the Exchange Rate pursuant to Section 4.04(b) hereof; (B) authorizes any distribution that would require an adjustment in the Exchange Rate pursuant to Section 4.04(c) hereof (including any separation of rights from the Common Stock described in Section 4.04(g) hereof); or (C) announces any dividend or distribution that would require an adjustment in the Exchange Rate pursuant to Section 4.04(d) hereof, then the Issuers shall deliver to the Holders, as promptly as possible, but in any event at least 15 calendar days prior to the applicable Record Date, notice describing such issuance, distribution, dividend or distribution, as the case may be, and stating the expected Ex-Dividend Date and Record Date for such issuance, distribution, dividend or distribution, as the case may be. In addition, the Issuers shall deliver to the Holders notice if the consideration included in such issuance, distribution, dividend or distribution, or the Ex-Dividend Date or Record Date of such issuance, distribution, dividend or distribution, as the case may be, changes.

(c) *Voluntary Increases.* If the Issuers increase the Exchange Rate pursuant to Section 4.05(b), the Issuers shall deliver notice to the Holders at least 15 calendar days prior to the date on which such increase will become effective, which notice shall state the date on which such increase will become effective and the amount by which the Exchange Rate will be increased.

(d) *Dissolutions, Liquidations and Winding-Ups.* If there is a voluntary or involuntary dissolution, liquidation or winding-up of the Parent Guarantor, the Issuers shall deliver notice to the Holders at promptly as possible, but in any event at least 15 calendar days prior to the earlier of (i) the date on which such dissolution, liquidation or winding-up, as the case may be, is expected to become effective or occur, and (ii) the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such dissolution, liquidation or winding-up, as the case may be, which notice shall state the expected effective date and Record Date for such event, as applicable, and the amount and kind of property that a holder of one share of the Common Stock is expected to be entitled, or may elect, to receive in such event. The Issuers shall deliver an additional notice to Holders, as promptly as practicable, whenever the expected effective date or Record Date, as applicable, or the amount and kind of property that a holder of one share of the Common Stock is expected to be entitled to receive in such event, changes.

(e) *Notices After Certain Actions and Events.* Whenever an adjustment to the Exchange Rate becomes effective pursuant to Sections 4.04, 4.05 or 4.06 hereof, the Issuers will (i) file with the Trustee an Officers' Certificate stating that such adjustment has become effective, the Exchange Rate, and the manner in which the adjustment was computed and (ii) deliver notice to the Holders stating that such adjustment has become effective and the Exchange Rate or exchange privilege as adjusted. Failure to give any such notice, or any defect therein, shall not affect the validity of any such adjustment.

ARTICLE 5

PARTICULAR COVENANTS OF THE ISSUERS

Section 5.01 *Payment of the Accreted Principal Amount, Special Interest, Fundamental Change Purchase Price and REIT Redemption Price.* This Section 5.01 shall replace Section 4.01 of the Base Indenture in its entirety.

The Issuers covenant and agree that they will jointly and severally cause to be paid the Accreted Principal Amount of (including any of the Fundamental Change Purchase Price or the REIT Redemption Price, if applicable), and accrued and unpaid Special Interest, if any, on each of the Securities at the places, at the respective times and in the manner provided herein and in the Securities.

Section 5.02 *Maintenance of Office or Agency.* The Issuers will maintain an office of the Paying Agent, an office of the Registrar and an office or agency where Securities may be surrendered for exchange ("**Exchange Agent**") and where notices and demands to or upon the Issuers in respect of the Securities and the Indenture may be served. The Issuers will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Issuers shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office or the office or agency of the Trustee.

The Issuers may also from time to time designate core registrars one or more other offices or agencies where the Securities may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided* that no such designation or rescission shall in any manner relieve the Issuers of their obligation to maintain an office or agency for such purposes. The Issuers will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency. The terms "Paying Agent" and "Exchange Agent" include any such additional or other offices or agencies, as applicable.

The Issuers hereby initially designate the Trustee as the Paying Agent, Registrar, Custodian, Exchange Agent and the Corporate Trust Office, which shall be in the continental United States, shall be considered as one such office or agency of the Issuers for each of the aforesaid purposes.

With respect to any Global Security, the Corporate Trust Office of the Trustee or any Paying Agent shall be the Place of Payment where such Global Security may be presented or surrendered for payment or exchange or for registration of transfer or exchange, or where successor Securities may be delivered in exchange therefor; *provided, however*, that any such payment, exchange, presentation, surrender or delivery effected pursuant to the Applicable Procedures of the Depository for such Global Security shall be deemed to have been effected at the Place of Payment for such Global Security in accordance with the provisions of the Indenture.

Section 5.03 *Appointments to Fill Vacancies in Trustee's Office*. The Issuers, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 7.08 of the Base Indenture, a Trustee, so that there shall at all times be a Trustee hereunder.

Section 5.04 *Provisions as to Paying Agent*. (a) If the Issuers shall appoint a Paying Agent other than the Trustee, the Issuers shall cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 5.04:

(1) that it will hold all sums held by it as such agent for the payment of the Accreted Principal Amount of, accrued and unpaid Special Interest, if any, on, and the Fundamental Change Purchase Price, REIT Redemption Price for, the Securities in trust for the benefit of the holders of the Securities;

(2) that it will give the Trustee prompt notice of any failure by the Issuers to make any payment of the Accreted Principal Amount of, accrued and unpaid Special Interest, if any, on, or the Fundamental Change Purchase Price, REIT Redemption Price for, the Securities when the same shall be due and payable; and

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

The Issuers shall, on or before each due date of the Accreted Principal Amount of, accrued and unpaid Special Interest, if any, on, and the Fundamental Change Purchase Price, the REIT Redemption Price for, the Securities, deposit with the Paying Agent a sum sufficient to pay such Accreted Principal Amount, accrued and unpaid Special Interest, the Fundamental Change Purchase Price or the REIT Redemption Price, and (unless such Paying Agent is the Trustee) the Issuers will promptly notify the Trustee of any failure to take such action, provided that, if such deposit is made on the due date, such deposit must be received by the Paying Agent by 10:00 a.m., New York City time, on such date.

(b) If the Issuers shall act as their own Paying Agent, they will, on or before each due date of the Accreted Principal Amount of, accrued and unpaid Special Interest, if any, on, or Fundamental Change Purchase Price, REIT Redemption Price for, the Securities, set aside, segregate and hold in trust for the benefit of the holders of the Securities a sum sufficient to pay such Accreted Principal Amount, accrued and unpaid Special Interest, if any, the Fundamental Change Purchase Price or REIT Redemption Price so becoming due and will promptly notify the Trustee in writing of any failure to take such action and of any failure by the Issuers to make any payment of the Accreted Principal Amount of, accrued and unpaid Special Interest on, or Fundamental Change Purchase Price, REIT Redemption Price for, the Securities when the same shall become due and payable.

(c) Anything in this Section 5.04 to the contrary notwithstanding, but subject to Article 7, the Issuers may, at anytime, for the purpose of obtaining a satisfaction and discharge of the Indenture, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust by the Issuers or any Paying Agent hereunder as required by this Section 5.04, such sums to be held by the Trustee upon the trusts herein contained and upon such payment by the Issuers or any Paying Agent to the Trustee, the Issuers or such Paying Agent shall be released from all further liability with respect to such sums.

Section 5.05 *Rule 144A Information Requirement; Reporting; and Registration Default Additional Interest.* This Section 5.05 will replace Section 4.02 of the Base Indenture in its entirety.

(a) For as long as any Securities are Outstanding hereunder, at any time the Parent Guarantor is not subject to Section 13 and 15(d) of the Exchange Act, the Issuers and the Parent Guarantor shall, as long as any of the Securities or any shares of Common Stock deliverable upon exchange of the Securities shall, at such time, constitute “restricted securities” within the meaning of Rule 144(a)(3) under the Securities Act, promptly provide to the Trustee and shall, upon written request, provide to any Holder, beneficial owner or prospective purchaser of such Securities or any shares of Common Stock deliverable upon exchange of such Securities, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of such Securities or such shares of Common Stock, as the case may be, pursuant to Rule 144A (as such rule may be amended from time to time).

(b) The Issuers will file with the Trustee, within 15 days after the Parent Guarantor is required to file the same with the SEC, copies of the quarterly and annual reports and of the information, documents and other reports, if any, that the Parent Guarantor is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act. Any such report, information or document that the Parent Guarantor files with the SEC through the EDGAR system (or any successor thereto) will be deemed to be delivered to the Trustee for the purposes of this Section 5.05(b) at the time of such filing through the EDGAR system (or such successor thereto).

(c) Delivery of any such reports, information and documents described in Section 5.05(b) to the Trustee shall be for informational purposes only, and the Trustee’s receipt of such reports, information and documents shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Issuers’ compliance with any of their covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers’ Certificates).

(d) If a Registration Default occurs under the Registration Rights Agreement, the Issuers shall pay the Registration Default Additional Interest in accordance with the Registration Rights Agreement.

(e) Registration Default Additional Interest shall be payable in arrears on each Special Interest Payment Date following accrual in the manner set forth in Section 2.04 and shall be in addition to any Special Interest that may accrue, at the Issuers' election, as the sole remedy relating to a Reporting Event of Default pursuant to Section 6.04(a).

Section 5.06 *Statements as to Defaults*. The Issuers shall deliver to the Trustee, as soon as possible, and in any event within thirty days after the Issuers become aware of the occurrence of any Default or Event of Default, an Officers' Certificate setting forth the details of such Default or Event of Default, its status and the action that the Issuers propose to take with respect thereto. Such Officers' Certificate shall also comply with any additional requirements set forth in Section 12.05 of the Base Indenture.

Section 5.07 *Special Interest Notice*. If any Special Interest is payable by the Issuers pursuant to section 5.05(d) or Section 6.04 hereof, the Issuers shall deliver to the Trustee an Officers' Certificate to that effect stating (a) the amount of such Special Interest (in aggregate and per \$1,000 Original Principal Amount of Securities) and (b) the date on which such Special Interest is payable. Unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office such a certificate, the Trustee may assume without inquiry that no such Special Interest is payable. If the Issuers have paid any Special Interest directly to the Persons entitled to them, the Issuers shall deliver to the Trustee an Officers' Certificate setting forth the particulars of such payment.

Section 5.08 *Covenant to Take Certain Actions*. Before taking any action which would cause an adjustment to the Exchange Rate such that the Exchange Price per share of Common Stock issuable upon exchange of the Securities would be less than the par value of the Common Stock, the Parent Guarantor shall take all corporate actions that may, in the opinion of its counsel, be necessary so it may validly and legally issue shares of Common Stock at such adjusted Exchange Rate.

ARTICLE 6 REMEDIES

Section 6.01 *Amendments to the Base Indenture*.

(a) The Holders shall not have the benefit of Article VI of the Base Indenture and, with respect to the Securities, this Article 6 supersedes Article VI of the Base Indenture in its entirety.

(b) The references to Section 6.05 in Section 7.01(c)(i) and (g) of the Base Indenture are, with respect to the Securities, hereby deemed replaced by references to Section 6.06 of this Supplemental Indenture.

(c) The references to Section 6.01(d) and (e) in the third paragraph of Section 7.07 of the Base Indenture are, with respect to the Securities, hereby deemed replaced by references to Section 6.02(h) and (i) of this Supplemental Indenture.

(d) The reference to Section 6.04 in Section 9.02 of the Base Indenture is, with respect to the Securities, hereby deemed replaced by reference to Section 6.05 of this Supplemental Indenture.

(e) The reference to Section 6.08 in Section 9.02 of the Base Indenture is, with respect to the Securities, hereby deemed replaced by a reference to Section 6.08 of this Supplemental Indenture.

Section 6.02 *Events of Default*. Each of the following events (and only the following events) shall be an “**Event of Default**” wherever used with respect to the Securities:

(a) default in any payment of Special Interest on any Security when due and payable, and the default continues for a period of 30 days;

(b) default in the payment of the Accreted Principal Amount of any Security (including the Fundamental Change Purchase Price or REIT Redemption Price) when due and payable on the Maturity Date, upon required repurchase, upon declaration of acceleration or otherwise;

(c) failure by the Issuers to comply with their obligations under Article 4 hereof to exchange the Securities into shares of Common Stock determined in accordance with Article 4 hereof upon exercise of a Holder’s exchange right and that failure continues for three Business Days;

(d) failure by the Issuers or the Parent Guarantor to comply with their obligations under Article 9 hereof;

(e) failure by the Issuers to issue a notice in accordance with the provisions of Section 3.02(b) hereof or a notice of a Make-Whole Fundamental Change in accordance with the provisions of Section 4.06(d) hereof, in each case when due;

(f) failure by the Issuers or any Guarantor for 60 days after written notice from the Trustee or the Holders of at least 25% in Accreted Principal Amount of the Securities then Outstanding (a copy of which notice, if given by Holders, must also be given to the Trustee) has been received by the Issuers to comply with any of the Issuers’ or such Guarantor’s other agreements contained in the Securities or the Indenture (other than a covenant or warranty a default in whose performance or whose breach is elsewhere in this Section 6.02 specifically provided for or that is not applicable to the Securities), which notice shall state that it is a “**Notice of Default**” hereunder;

(g) default following the failure by the Parent Guarantor to pay beyond any applicable grace period, or resulting in the acceleration of, indebtedness (other than Non-Recourse Indebtedness) of the Issuers, the Parent Guarantor or any other Subsidiary of the Parent Guarantor where the aggregate principal amount with respect to which the default has occurred is greater than \$50,000,000 (or its foreign currency equivalent at the time);

(h) either Issuer, the Parent Guarantor, any Issue Date Subsidiary Guarantor or any Significant Subsidiary of the Parent Guarantor shall commence a voluntary case or other proceeding seeking the liquidation, reorganization or other relief with respect to such Person or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official

of such Person or any substantial part of such Person's property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against such Person, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay such Person's debts as they become due;

(i) an involuntary case or other proceeding shall be commenced against either Issuer, the Parent Guarantor, any Issue Date Subsidiary Guarantor or any Significant Subsidiary of the Parent Guarantor seeking liquidation, reorganization or other relief with respect to such Person or such Person's debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of such Person or any substantial part of such Person's property, and such involuntary case or other proceeding shall remain undismitted and unstayed for a period of thirty consecutive days; or

(j) the Guarantee by the Parent Guarantor or any Issue Date Subsidiary Guarantor that is a Significant Subsidiary of the Parent Guarantor shall be held in any judicial proceeding to be unenforceable or invalid or shall cease for any reason to be in full force and effect or any such Guarantor, or any Person acting on behalf of any such Guarantor, shall deny or disaffirm its obligations under its Guarantee.

Section 6.03 Acceleration; Rescission and Annulment. If one or more Events of Default shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), then, and in each and every such case (other than an Event of Default specified in Section 6.02(h) or Section 6.02(i) with respect to the Issuers or the Parent Guarantor), unless the Accreted Principal Amount of all of the Securities shall have already become due and payable, either the Trustee or the holders of at least 25% in aggregate Accreted Principal Amount of the Securities then Outstanding, by notice in writing to the Issuers (and to the Trustee if given by the Holders), may declare 100% of the Accreted Principal Amount of, and accrued and unpaid Special Interest, if any, on all the Securities to be due and payable immediately. If an Event of Default specified in Section 6.02(h) or Section 6.02(i) with respect to the Issuers or the Parent Guarantor occurs and is continuing, the Accreted Principal Amount of, and accrued and unpaid Special Interest, if any, on all Securities shall be immediately due and payable.

Section 6.04 Special Interest.

(a) Notwithstanding any provisions of the Indenture to the contrary, if the Issuers so elect, the sole remedy for an Event of Default relating to the Issuers' failure to comply with Section 5.05(b) hereof (a "**Reporting Event of Default**"), will consist exclusively of the right to receive Special Interest on the Securities at a rate per year equal to 0.50% per annum of the Outstanding Accreted Principal Amount of the Securities for each day during such 180-day period as long as such Event of Default is continuing (and neither waived nor cured). If the Issuers so elect, such Special Interest will be payable in the manner and on the dates as set forth in Section 2.04. Any Special Interest payable pursuant to this Section 6.04(a) shall be in addition to any Registration Default Additional Interest that may accrue pursuant to Section 5.05(d). On the 181st day after such Event of Default (if the Reporting Event of Default is not cured or waived prior to such 181st day), the Securities will be subject to acceleration pursuant to Section 6.03. The provisions of this Section 6.04 will not affect the rights of Holders of Securities in the event of the occurrence of any Event of Default that is not a Reporting Event of Default. In the event the Issuers do not elect to pay the Special Interest following an Event of Default in accordance with this Section 6.04 or the Issuers elect to make such payment but does not pay the Special Interest when due, the Securities will be immediately subject to acceleration as provided in Section 6.03.

(b) In order to elect to pay the Special Interest as the sole remedy during the first 180 days after the occurrence of a Reporting Event of Default, the Issuers must notify all Holders of Securities, the Trustee and the Paying Agent of such election prior to the beginning of such 180-day period. Upon the Issuers' failure to timely give such notice, the Securities will be immediately subject to acceleration as provided in Section 6.03.

Section 6.05 *Waiver of Past Defaults*. The Holders of a majority in aggregate Accreted Principal Amount of the Securities then Outstanding, by written notice to the Issuers and to the Trustee, may waive (including by way of consents obtained in connection with a repurchase of, or tender or exchange offer for, the Securities) all past Defaults or Events of Default with respect to the Securities (other than a Default or an Event of Default resulting from nonpayment of the Accreted Principal Amount or any Special Interest, a failure to deliver consideration due upon exchange or any other provisions that requires the consent of each affected Holder to amend) and rescind any such acceleration with respect to the Securities and its consequences if (i) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (ii) all existing Events of Default, other than the nonpayment of the Accreted Principal Amount of, and any Special Interest on, the Securities that have become due solely by such declaration of acceleration have been cured or waived.

Section 6.06 *Control by Majority*. At anytime, the Holders of a majority of the aggregate Accreted Principal Amount of the then Outstanding Securities may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or for exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or the Indenture or, subject to the Trustee's duties under Article VII of the Base Indenture, that the Trustee determines to be unduly prejudicial (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not any such directions are unduly prejudicial) to the rights of a Holder or to the Trustee, or that would potentially involve the Trustee in personal liability unless the Trustee is offered indemnity and/or security satisfactory to it against any loss, liability or expense to the Trustee that may result from the Trustee's instituting such proceeding as the Trustee. Prior to taking any action hereunder, the Trustee will be entitled to indemnification and/or security satisfactory to it against all losses and expenses caused by taking or not taking such action.

Section 6.07 *Limitation on Suits*. Subject to Section 6.08 hereof, no Holder may pursue a remedy with respect to the Indenture or the Securities unless:

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

(b) the Holders of at least 25% of the aggregate Accreted Principal Amount of the then Outstanding Securities request that the Trustee pursue a remedy with respect to such Event of Default;

(c) such Holder or Holders have offered and, if requested, provided to the Trustee indemnity and/or security satisfactory to the Trustee against any loss, liability or other expense of compliance with such written request;

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

(e) during such 60-day period, the Holders of a majority of the aggregate Accreted Principal Amount of the then Outstanding Securities did not deliver to the Trustee a direction inconsistent with such request.

Section 6.08 *Rights of Holders to Receive Payment and to Exchange.* Notwithstanding anything to the contrary elsewhere in the Indenture, the right of any Holder to receive payment of the Accreted Principal Amount of, any Special Interest on, Fundamental Change Purchase Price, REIT Redemption Price for, its Securities, on or after the respective due date, and to exchange its Securities and receive payment or delivery of the consideration due with respect to such Securities in accordance with Article 4 hereof, or to bring suit for the enforcement of any such payment or exchange rights, will not be impaired or affected without the consent of such Holder and will not be subject to the requirements of Section 6.07 hereof.

Section 6.09 *Collection of Indebtedness; Suit for Enforcement by Trustee.* If an Event of Default specified in Section 6.02(a), 6.02(b) or 6.02(c) hereof occurs and is continuing, the Trustee is authorized to recover judgment in its own name and as trustee of an express trust against the Issuers and Guarantors for the whole amount of Accreted Principal Amount of, any Special Interest on, Fundamental Change Purchase Price, REIT Redemption Price for, and the consideration due upon the exchange of, the Securities, as the case may be, and such further amount as is sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, as well as any other amounts that may be due under Section 7.07 of the Base Indenture.

Section 6.10 *Trustee May Enforce Claims Without Possession of Securities.* All rights of action and claims under the Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders in respect of which such judgment has been recovered.

Section 6.11 *Trustee May File Proofs of Claim.* The Trustee is authorized to file such proofs of claim and other papers or documents as may be necessary or advisable to have the claims of the Trustee and the Holders allowed in any judicial proceedings relative to the Issuers and the Guarantors, their creditors or their property and, unless prohibited by law or applicable regulations, will be entitled to collect, receive and distribute any money or other property payable or deliverable on any such claims, and any custodian in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee, and, in the event that the Trustee consents to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts

due the Trustee under the Base Indenture (including Section 7.07 of the Base Indenture) and this Supplemental Indenture. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07 of the Base Indenture out of the estate in any such proceeding, will be denied for any reason, payment of the same will be secured by a lien on, and is paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding, whether in liquidation or under any plan of reorganization or arrangement or otherwise. Nothing herein contained will be deemed to authorize the Trustee to authorize or consent to, or to accept or to adopt on behalf of any Holder, any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.12 *Restoration of Rights and Remedies*. If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under the Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Issuers, the Guarantors, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

Section 6.13 *Rights and Remedies Cumulative*. Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in Section 2.09 of the Base Indenture, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 6.14 *Delay or Omission Not a Waiver*. No delay or omission of the Trustee or of any Holder to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article 6 or by law to the Trustee or to the Holders may be exercised from time to time and as often as may be deemed expedient by the Trustee (subject to the limitations contained in the Indenture) or by the Holders, as the case may be.

Section 6.15 *Priorities*. If the Trustee collects any money pursuant to this Article 6, it will pay out the money in the following order:

FIRST: to the Trustee, its agents and attorneys for amounts due under Section 7.07 of the Base Indenture and this Supplemental Indenture, including payment of all compensation, expenses and liabilities incurred, and all advances made, by the Trustee and the costs and expenses of collection;

SECOND: to the Holders, for any amounts due and unpaid on the Accreted Principal Amount of, accrued and unpaid Special Interest on, Fundamental Change Purchase Price, REIT Redemption Price for, and any cash due upon exchange of, any Security, without preference or priority of any kind, according to such amounts due and payable on all of the Securities; and

THIRD: the balance, if any, to the Issuers, the Guarantors or to such other party as a court of competent jurisdiction directs.

The Trustee may fix a record date and payment date for any payment to the Holders pursuant to this Section 6.15. If the Trustee so fixes a record date and a payment date, at least 15 days prior to such record date, the Issuers will deliver to each Holder and the Trustee a written notice, which notice will state such record date, such payment date and the amount of such payment.

Section 6.16 *Undertaking for Costs*. All parties to the Indenture agree, and each Holder, by such Holder's acceptance of a Security, shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under the Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; provided, however, that the provisions of this Section 6.16 shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in aggregate Accreted Principal Amount of the Securities then Outstanding, or to any suit instituted by any Holder for the enforcement of the payment of the Accreted Principal Amount of, accrued and unpaid Special Interest, if any, on, or Fundamental Change Purchase Price, REIT Redemption Price for, any Security on or after the due date expressed or provided for in the Indenture or to any suit for the enforcement of the right to exchange any Security in accordance with the provisions of Article 4 hereof.

Section 6.17 *Waiver of Stay, Extension and Usury Laws*. The Issuers and Guarantors covenant that, to the extent that they may lawfully do so, they will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law wherever enacted, now or at any time hereafter in force, that may affect the covenants or the performance of the Indenture; and the Issuers and Guarantors, to the extent that they may lawfully do so, hereby expressly waives all benefit or advantage of any such law, and covenant that they will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will instead suffer and permit the execution of every such power as though no such law has been enacted.

Section 6.18 *Notices from the Trustee*. Notwithstanding anything to the contrary in the Base Indenture, whenever a Default occurs and is continuing and a Responsible Officer of the Trustee has received written notice of such Default, the Trustee must deliver notice of such Default to the Holders within 90 days after the date on which such Default first occurred. Except in the case of a Default in the payment of the Accreted Principal Amount of, any Special Interest on, or Fundamental Change Purchase Price, REIT Redemption Price for, any Security or of a Default in the payment or delivery, as the case may be, of the consideration due upon exchange of a Security, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the interests of the Holders.

ARTICLE 7

SATISFACTION AND DISCHARGE

Section 7.01 *Inapplicability of Provisions of Base Indenture; Satisfaction and Discharge of the Indenture.* Article VIII of the Base Indenture shall not apply with respect to the Securities. The provisions set forth in this Article 7 shall, with respect to the Securities, supersede in their entirety Article VIII of the Base Indenture.

When (a) the Issuers shall deliver to the Registrar for cancellation all Securities theretofore authenticated (other than any Securities that have been destroyed, lost or stolen and in lieu of or in substitution for which other Securities shall have been authenticated and delivered) and not theretofore cancelled, or (b) all the Securities not theretofore cancelled or delivered to the Trustee for cancellation shall have become due and payable (whether on the Maturity Date, on any Fundamental Change Purchase Date or REIT Redemption Price, upon exchange or otherwise) and the Issuers or Guarantors shall deposit with the Trustee, in trust, or deliver to the Holders, as applicable, an amount of cash and shares of Common Stock, if any, as the case may be (solely to settle amounts due with respect to outstanding exchanges), sufficient to pay all amounts due on all of such Securities (other than any Securities that shall have been mutilated, destroyed, lost or stolen and in lieu of or in substitution for which other Securities shall have been authenticated and delivered) not theretofore cancelled or delivered to the Trustee for cancellation, including the Accreted Principal Amount and any Special Interest due, accompanied, except in the event the Securities are due and payable solely in cash at the Maturity Date or upon an earlier Fundamental Change Purchase Date or REIT Redemption Price, by a verification report as to the sufficiency of the deposited amount from an independent certified accountant or other financial professional reasonably satisfactory to the Trustee, and if Issuers or Guarantors shall also pay or cause to be paid all other sums payable hereunder by the Issuers and the Guarantors, then the Indenture shall cease to be of further effect (except as to (i) rights hereunder of Holders to receive all amounts owing upon the Securities and the other rights, duties and obligations of Holders, as beneficiaries hereof with respect to the amounts, if any, so deposited with the Trustee and (ii) the rights, obligations and immunities of the Trustee hereunder), and the Trustee, on written demand of the Issuers accompanied by an Officers' Certificate and an Opinion of Counsel and at the cost and expense of the Issuers, shall execute proper instruments acknowledging satisfaction and discharge of the Indenture; the Issuers, however, hereby agrees to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred by the Trustee, including the fees and expenses of its counsel, and to compensate the Trustee for any services thereafter reasonably and properly rendered by the Trustee in connection with the Indenture or the Securities.

Section 7.02 *Deposited Monies to Be Held in Trust by Trustee.* Subject to Section 7.04 hereof, all monies and shares of Common Stock, if any, deposited with the Trustee pursuant to Section 7.01 hereof shall be held in trust for the sole benefit of the Holders of the Securities, and such monies and shares of Common Stock shall be applied by the Trustee to the payment, either directly or through any Paying Agent (including the Issuers if acting as their own Paying Agent), to the Holders of the particular Securities for the payment or settlement of which such monies or shares of Common Stock have been deposited with the Trustee, of all sums or amounts due and to become due thereon for the Accreted Principal Amount and Special Interest, if any.

Section 7.03 *Paying Agent to Repay Monies Held.* Upon the satisfaction and discharge of the Indenture, all monies and shares of Common Stock, if any, then held by any Paying Agent (if other than the Trustee) shall, upon written request of the Issuers, be repaid to it or paid to the Trustee, and thereupon such Paying Agent shall be released from all further liability with respect to such monies and shares of Common Stock.

Section 7.04 *Return of Unclaimed Monies*. Subject to the requirements of applicable law, any monies and shares of Common Stock deposited with or paid to the Trustee for payment of the Accreted Principal Amount of or Special Interest, if any, on the Securities and not applied but remaining unclaimed by the Holders of the Securities for two years after the date upon which the Accreted Principal Amount of or Special Interest, if any, on such Securities, as the case may be, shall have become due and payable, shall be repaid to the Issuers by the Trustee on written demand, and all liability of the Trustee shall thereupon cease with respect to such monies and shares of Common Stock; and the Holder shall thereafter look only to the Issuers for any payment or delivery that such Holder may be entitled to collect unless an applicable abandoned property law designates another Person.

Section 7.05 *Reinstatement*. If the Trustee or the Paying Agent is unable to apply any money or shares of Common Stock in accordance with Section 7.02 by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Issuers' obligations and the Guarantors' obligations under the Indenture, the Guarantees and the Securities shall be revived and reinstated as though no deposit had occurred pursuant to Section 7.01 until such time as the Trustee or the Paying Agent is permitted to apply all such money and shares of Common Stock in accordance with Section 7.02; provided, however, that if the Issuers make any payment of Special Interest on, the Accreted Principal Amount of or payment or delivery in respect of any Security following the reinstatement of their obligations, the Issuers shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money or shares of Common Stock, if any, held by the Trustee or Paying Agent.

ARTICLE 8

SUPPLEMENTAL INDENTURES

Section 8.01 *Supplemental Indentures Without Consent of Holders*. Section 9.01 of the Base Indenture shall not apply with respect to the Securities, and this Section 8.01 shall replace Section 9.01 of the Base Indenture in its entirety.

Without the consent of any Holder, the Issuers and the Guarantors (each when authorized by a Board Resolution) and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(a) to conform the terms of the Indenture, the Guarantees or the Securities to the description thereof in the Preliminary Offering Memorandum, as supplemented by the related pricing term sheet;

(b) to evidence the succession by a Successor Issuer or Successor Parent Guarantor and to provide for the assumption by a Successor Issuer or a Successor Parent Guarantor of the Issuers' or the Parent Guarantor's obligations under the Indenture or the relevant Guarantee;

(c) to add guarantees with respect to the Securities;

(d) to secure the Securities;

(e) to issue additional Securities pursuant to Section 2.01(c);

(f) to add to the Issuers' or the Guarantors' covenants such further covenants, restrictions or conditions for the benefit of the Holders (or any other holders) or surrender any right or power conferred upon the Issuers or Guarantors by the Indenture;

(g) to cure any ambiguity, defect or inconsistency in the Indenture, the Guarantees or the Securities, including to make any other change that does not adversely affect the rights of any Holder in any material respect;

(h) to provide for a successor Trustee; or

(i) to comply with the Applicable Procedures of the Depository.

Section 8.02 *Supplemental Indentures With Consent of Holders*. Section 9.02 of the Base Indenture shall not apply with respect to the Securities, and this Section 8.02 shall replace Section 9.02 of the Base Indenture in its entirety.

With the consent of the Holders of not less than a majority in Accreted Principal Amount of the Outstanding Securities affected by such supplemental indenture, including without limitation, consents obtained in connection with a purchase of, or tender or exchange offer for, Securities and by consent of said Holders delivered to the Issuers and the Trustee, the Issuers and the Guarantors, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of modifying in any manner the rights of the Holders under the Indenture; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby:

(a) reduce the percentage in aggregate Accreted Principal Amount of Securities Outstanding necessary to waive any past Default or Event of Default;

(b) reduce the rate of Special Interest on any Security or change the time for payment of Special Interest on any Security;

(c) reduce the Accreted Principal Amount of any Security or change the Maturity Date;

(d) change the place or currency of payment on any Security;

(e) make any change that impairs or adversely affects the exchange rights of any Securities;

(f) reduce the Fundamental Change Purchase Price or REIT Redemption Price of any Security or amend or modify in any manner adverse to the rights of the Holders of the Securities the Issuers' obligation to pay the Fundamental Change Purchase Price or REIT Redemption Price, whether through an amendment or waiver of provisions in the covenants, definitions related thereto or otherwise;

(g) impair the right of any Holder of Securities to receive payment of the Accreted Principal Amount of, and Special Interest, if any, on, its Securities, or the right to receive the consideration due upon exchange of its Securities on or after the due dates therefore or to institute suit for the enforcement of any such payment or delivery, as the case may be, with respect to such Holder's Securities;

(h) modify the ranking provisions of the Indenture in a manner that is adverse to the rights of the Holders of the Securities;

(i) make any change to the provisions of this Article 8 that requires each Holder's consent or in the waiver provisions in Section 6.05 of this Supplemental Indenture if such change is adverse to the rights of Holders of the Securities;

(j) release the Parent Guarantor from any of its obligations under its Guarantee or the Indenture, except in accordance with the terms of the Indenture; or

(k) release all or substantially all of the value of the Guarantees, except in accordance with the terms of the Indenture.

It shall not be necessary for the consent of Holders under this Section 8.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof. The Issuers may, but shall not be obligated to, fix a record date for the purpose of determining the Persons entitled to consent to any indenture supplemental hereto. If a record date is fixed, the Holders on such record date, or their duly designated proxies, and only such Persons, shall be entitled to consent to such supplemental indenture, whether or not such Holders remain Holders after such record date; provided that, unless such consent shall have become effective by virtue of the requisite percentage having been obtained prior to the date which is 90 days after such record date, any such consent previously given shall automatically and without further action by any Holder be cancelled and of no further effect.

For the avoidance of doubt, the provisions of Article IX of the Base Indenture other than Sections 9.01 and 9.02 shall remain in effect and continue to apply with respect to the Securities.

Section 8.03 *Notice of Amendment or Supplement*. After an amendment or supplement under this Article 8 becomes effective, the Issuers shall mail to the Holders a notice briefly describing such amendment or supplement. However, the failure to give such notice to all the Holders, or any defect in the notice, shall not impair or affect the validity of the amendment or supplement.

ARTICLE 9

SUCCESSORS TO ISSUERS AND PARENT GUARANTOR

Section 9.01 *Consolidation, Merger and Sale of Assets*.

(a) The provisions in Article V of the Base Indenture shall not apply with respect to the Securities, and this Article 9 supersedes the entirety thereof.

(b) In addition, the reference to Article V in Section 4.03 of the Base Indenture is, with respect to the Securities, deemed replaced with a reference to this Article 9.

Section 9.02 *Issuers and Parent Guarantor May Consolidate, Etc. on Certain Terms*. Subject to the provisions of Section 9.04, the Issuers and the Parent Guarantor shall not amalgamate or consolidate with, merge with or into or convey, transfer or lease the Issuers' or the Parent Guarantor's properties and assets substantially as an entirety to another Person, unless:

(a) the relevant Issuer or Parent Guarantor, as applicable, shall be the surviving Person or the resulting, surviving or transferee Person (if not the relevant Issuer, the "**Successor Issuer**", or if not the Parent Guarantor, the "**Successor Parent Guarantor**") is a Person, or in the case of the Parent Guarantor, a corporation, organized and existing under the laws of the United States of America, any State thereof or the District of Columbia, and such Successor Issuer or Successor Parent Guarantor (if not the relevant Issuer or the Parent Guarantor) shall expressly assume, by supplemental indenture, executed and delivered to the Trustee, in form satisfactory to the Trustee, all of the obligations of such Issuer or the Parent Guarantor under the Securities, the Parent Guarantor's Guarantee and the Indenture;

(b) in the case of either Issuer, if the surviving Person is not the same Person, each Issue Date Subsidiary Guarantor (unless any such Issue Date Subsidiary Guarantor is the surviving Person referred to in clause (a) above) shall have by supplemental indenture confirmed that such Issue Date Subsidiary Guarantor's Guarantee shall apply to such surviving Person's obligations under the Indenture and the Securities; and

(c) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing under the Indenture.

Section 9.03 *Successor Corporation to Be Substituted*. In case of any such amalgamation, consolidation, merger, conveyance, transfer or lease and upon the assumption by such Successor Issuer or such Successor Parent Guarantor, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the Accreted Principal Amount of (including any Fundamental Change Purchase Price or REIT Redemption Price), accrued and unpaid Special Interest, if any, on all of the Securities, the due and punctual delivery or payment, as the case may be, of any consideration due upon exchange of the Securities and the due and punctual performance of all of the covenants and conditions of the Indenture to be performed by such Issuer or the Parent Guarantor, as applicable, under the Indenture, such Successor Issuer or Successor Parent Guarantor, as applicable, shall succeed to and be substituted for, and may exercise every right and power of, such Issuer or the Parent Guarantor, as applicable, under the Indenture, with the same effect as if it had been named herein as the party of the first part. Such Successor Issuer thereupon may cause to be signed, and may issue either in its own name or in the name of such Issuer, any or all of the Securities issuable hereunder which theretofore shall not have been signed by such Issuer and delivered to the Trustee; and, upon the order of such Successor Issuer instead of such Issuer and subject to all the terms, conditions and limitations in the Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Securities that previously shall have been signed and delivered by the officers of such Issuer to the Trustee for authentication, and any Securities that such Successor Issuer thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Securities so issued shall in all respects have the same legal rank and benefit under the Indenture as the Securities theretofore or thereafter issued in accordance with the terms of the Indenture as though all of such Securities had been issued at the date of the execution hereof. In the event of any such amalgamation, consolidation, merger, conveyance or transfer (but not in the case of a lease), the Persons named as the

“Issuers” or “Parent Guarantor” in the first paragraph of this Supplemental Indenture or any successor that shall thereafter have become such in the manner prescribed in this Article 9 may be dissolved, wound up and liquidated at any time thereafter and, except in the case of a lease, such Person shall be released from its liabilities as obligor and maker of the Securities and from its obligations under the Indenture and the relevant Guarantee, as applicable.

In case of any such amalgamation, consolidation, merger, conveyance, transfer or lease, such changes in phraseology and form (but not in substance) may be made in the Securities thereafter to be issued as may be appropriate.

Section 9.04 *Opinion of Counsel to Be Given to Trustee.* In the case of an such amalgamation, merger, consolidation, conveyance, transfer or lease the Trustee shall receive an Officers’ Certificate and an Opinion of Counsel stating that any such amalgamation, consolidation, merger, conveyance, transfer or lease and any such assumption and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture complies with the provisions of this Article 9 and constitutes the legal, valid and binding obligations of such Issuer or the Parent Guarantor, as applicable (subject to customary exceptions and assumptions).

ARTICLE 10

MEETING OF HOLDERS OF SECURITIES

Section 10.01 *Purposes for Which Meetings May Be Called.*

(a) A meeting of Holders of Securities may be called at any time and from time to time pursuant to this Article 10 to make, give or take any request, demand, authorization, direction, notice, consent, waiver or other action provided by the Indenture to be made, given or taken by Holders of Securities.

Section 10.02 *Call, Notice and Place of Meetings.*

(a) The Trustee may at any time call a meeting of Holders of Securities for any purpose specified in Section 10.01, to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of Holders of Securities, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given, in the manner provided in Section 12.03 of the Base Indenture, not less than 20 nor more than 180 days prior to the date fixed for the meeting.

(b) In case at any time the Issuers, pursuant to a Board Resolution, or the Holders of at least 25% in Accreted Principal Amount of the outstanding Securities shall have requested the Trustee to call a meeting of the Holders of Securities for any purpose specified in Section 10.01, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have made the first publication of the notice of such meeting within 20 days after receipt of such request or shall not thereafter proceed to cause the meeting to be held as provided herein, then the Issuers or the Holders of Securities in the amount above specified, as the case may be, may determine the time and the place for such meeting and may call such meeting for such purposes by giving notice thereof as provided in subsection (a) of this Section 10.02.

Section 10.03 *Persons Entitled to Vote at Meetings*

(a) To be entitled to vote at any meeting of Holders of Securities, a Person shall be

(1) a Holder of one or more outstanding Securities, or

(2) a Person appointed by an instrument in writing as proxy for a Holder or Holders of one or more outstanding Securities by such Holder or Holders. The only Persons who shall be entitled to be present or to speak at any meeting of Holders of Securities shall be the Persons entitled to vote at such meeting and their counsel, any representatives of the Trustee and its counsel and any representatives of the Issuers and their respective counsel.

Section 10.04 *Quorum; Action.*

(a) The Persons entitled to vote a majority in Accreted Principal Amount of the outstanding Securities shall constitute a quorum for a meeting of Holders of Securities; *provided, however*, that if any action is to be taken at such meeting with respect to a consent or waiver which the Indenture expressly provides may be given by the Holders of not less than a specified percentage in Accreted Principal Amount of the outstanding Securities, the Persons entitled to vote such specified percentage in Accreted Principal Amount of the outstanding Securities shall constitute a quorum. In the absence of a quorum within 30 minutes after the time appointed for any such meeting, the meeting shall, if convened at the request of Holders of Securities, be dissolved. In any other case the meeting may be adjourned for a period of not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such meeting. In the absence of a quorum at the reconvening of any such adjourned meeting, such adjourned meeting may be further adjourned for a period of not less than 10 days; at the reconvening of any meeting adjourned or further adjourned for lack of a quorum, the Persons entitled to vote 25% in aggregate Accreted Principal Amount of the then outstanding Securities shall constitute a quorum for the taking of any action set forth in the notice of the original meeting. Notice of the reconvening of any adjourned meeting shall be given as provided in Section 10.02(a), except that such notice need be given only once not less than five days prior to the date on which the meeting is scheduled to be reconvened.

(b) Except as limited by the proviso to Section 8.02, any resolution presented to a meeting or adjourned meeting duly reconvened at which a quorum is present as aforesaid may be adopted by the affirmative vote of the Persons entitled to vote a majority in aggregate Accreted Principal Amount of the outstanding Securities; *provided, however*, that, *except* as limited by the proviso to Section 8.02, any resolution with respect to any request, demand, authorization, direction, notice, consent, waiver or other action which the Indenture expressly provides may be made, given or taken by the Holders of a specified percentage, which is less than a majority in Accreted Principal Amount of the outstanding Securities may be adopted at a meeting or an adjourned meeting duly reconvened and at which a quorum is present as aforesaid by the affirmative vote of the Holders of such specified percentage in Accreted Principal Amount of the outstanding Securities.

Any resolution passed or decision taken at any meeting of Holders of Securities duly held in accordance with this Section 10.04 shall be binding on all the Holders of Securities, whether or not present or represented at the meeting.

Notwithstanding the foregoing provisions of this Section 10.04, if any action is to be taken at a meeting of Holders of Securities with respect to any request, demand, authorization, direction, notice, consent, waiver or other action that the Indenture expressly provides may be made, given or taken by the Holders of a specified percentage in principal amount of all outstanding Securities affected thereby:

(1) there shall be no minimum quorum requirement for such meeting; and

(2) the Accreted Principal Amount of the outstanding Securities that vote in favor of such request, demand, authorization, direction, notice, consent, waiver or other action shall be taken into account in determining whether such request, demand, authorization, direction, notice, consent, waiver or other action has been made, given or taken under the Indenture.

Section 10.05 Determination of Voting Rights; Conduct and Adjournment of Meetings.

(a) Notwithstanding any provisions of the Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders of Securities in regard to proof of the holding of Securities and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate.

(b) The Trustee shall, by an instrument in writing appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Issuers or by Holders of Securities as provided in Section 10.02(b), in which case the Issuers or the Holders of Securities calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Persons entitled to vote a majority in Accreted Principal Amount of the outstanding Securities represented at the meeting.

(c) At any meeting each Holder of such Securities or proxy shall be entitled to one vote for each \$1,000 Accreted Principal Amount of the outstanding Securities held or represented by him; *provided, however*, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote, *except* as a Holder of Securities or proxy.

(d) Any meeting of Holders of Securities duly called pursuant to Section 10.02 at which a quorum is present may be adjourned from time to time by Persons entitled to vote a majority in Accreted Principal Amount of the outstanding Securities represented at the meeting, and the meeting may be held as so adjourned without further notice.

Section 10.06 Counting Votes and Recording Action of Meetings.

The vote upon any resolution submitted to any meeting of Holders of Securities shall be by written ballots on which shall be subscribed the signatures of the Holders of Securities or of their representatives by proxy and the Accreted Principal Amounts and serial numbers of the outstanding Securities held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record, at

least in duplicate, of the proceedings of each meeting of Holders of Securities shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the fact, setting forth a copy of the notice of the meeting and showing that said notice was given as provided in Section 10.02 and, if applicable, Section 10.04. Each copy shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one such copy shall be delivered to the Issuers and another to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

ARTICLE 11

REDEMPTION

Section 11.01 *Redemption.*

(a) The Issuers may redeem the Securities (a "**REIT Redemption**") in an Original Principal Amount that is an integral multiple of \$1,000, for cash, in whole or from time to time in part, at the Issuers' option, at a redemption price (the "**REIT Redemption Price**") equal to the sum of (i) 100% of the Accreted Principal Amount of the Securities to be redeemed and (ii) any accrued and unpaid Special Interest thereon to, but excluding, the Redemption Date, to the extent the Board of Directors of the Parent Guarantor determines such REIT Redemption is reasonably necessary to preserve the Parent Guarantor's qualification as a real estate investment trust for U.S. federal income tax purposes.

(b) If the Redemption Date falls after a Special Interest Record Date and on or prior to the Special Interest Payment Date to which such Special Interest Record Date relates, the Issuers will pay, on or before such Special Interest Payment Date, the full amount of accrued and unpaid Special Interest, if any, to the Holder of record on such Special Interest Record Date and the REIT Redemption Price will instead be equal to 100% of the Accreted Principal Amount of the Securities to be redeemed.

Section 11.02 *Notice of Redemption; Selection of Securities.*

(a) If the Issuers wish to exercise its right to redeem all or, as the case may be, any part of the Securities pursuant to Section 11.01(a), it shall fix a date for Redemption (each, a "**Redemption Date**"), and it or, at its written request received by the Trustee at least five Business Days prior to the date such notice is to be sent to Holders (unless a shorter period shall be acceptable to the Trustee), the Trustee, in the name of and at the expense of the Issuers, shall provide notice specifying whether the Issuers are effecting a REIT Redemption (a "**Redemption Notice**") not less than 15 nor more than 30 calendar days prior to the Redemption Date to each Holder of Securities so to be redeemed as a whole or in part at its last address as the same appears on the Register. The Redemption Date must be a Business Day. The Issuers shall not send a Redemption Notice so long as a Registration Default exists and is continuing.

(b) The Redemption Notice, if mailed in the manner herein provided, shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, failure to give such Redemption Notice by mail to the Holder of any Security designated for a REIT Redemption, as a whole or in part, or any defect in the Redemption Notice, shall not affect the validity of the proceedings for the redemption of any other Security.

(c) Each Redemption Notice shall specify:

- (1) the Redemption Date;
- (2) the REIT Redemption Price;
- (3) the Accreted Principal Amount;

(4) that on the Redemption Date, the REIT Redemption Price will become due and payable upon each Security to be redeemed, and that, unless the Issuers default in the payment of the REIT Redemption Price, Special Interest thereon, if any, shall cease to accrue on and after the Redemption Date and that the Accreted Principal Amount on the Securities called for redemption shall cease to accrete on and after the Redemption Date;

(5) the place or places where such Securities are to be surrendered for payment of the REIT Redemption Price;

(6) that Holders may surrender their Securities for exchange at any time prior to the Close of Business on the Business Day immediately preceding the Redemption Date;

(7) the procedures a exchanging Holder must follow to exchange its Securities;

(8) the then-current Exchange Rate;

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

(10) in case any Security is redeemed in part only, the portion of the Original Principal Amount thereof to be redeemed and that on and after the Redemption Date, upon surrender of such Security, a new Security in Original Principal Amount equal to the unredeemed portion thereof shall be issued.

(d) A Redemption Notice shall be irrevocable.

(e) If fewer than all of the outstanding Securities are to be redeemed, the Securities shall be selected for REIT Redemption (in Original Principal Amount of \$1,000 or multiples thereof) in accordance with the applicable procedures of DTC, in the case of Global Securities, and by lot, in the case of Physical Securities.

(f) If a Holder exchanges a Security a portion of which has been selected for REIT Redemption, the exchanged portion will be deemed to be from the portion selected for REIT Redemption.

(g) In the event of any REIT Redemption in part, the Issuers shall not be required to register the transfer of or exchange any Security so selected for REIT Redemption, in whole or in part, except the unredeemed portion of any Security being redeemed in part.

Section 11.03 *Payment of Securities Called for Redemption.*

(a) If any Redemption Notice has been given in respect of the Securities in accordance with Section 11.02, the Securities shall become due and payable on the Redemption Date at the place or places stated in the Redemption Notice and at the REIT Redemption Price. On presentation and surrender of the Securities at the place or places stated in the Redemption Notice, the Securities shall be paid and redeemed by the Issuers at the REIT Redemption Price.

(b) Prior to the Open of Business on the Redemption Date, the Issuers shall deposit with the Paying Agent or, if either Issuer or a Subsidiary of such Issuer is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 2.06 of the Base Indenture an amount of cash (in immediately available funds if deposited on the Redemption Date), sufficient to pay the REIT Redemption Price of all of the Securities to be redeemed on such Redemption Date. Subject to receipt of funds by the Paying Agent, payment for the Securities to be redeemed shall be made on the Redemption Date for such Securities. The Paying Agent shall, promptly after such payment and upon written demand by the Issuers, return to the Issuers any funds in excess of the REIT Redemption Price.

Section 11.04 *Restrictions on Redemption.*

(a) The Issuers may not redeem any Securities on any date if the Accreted Principal Amount of the Securities has been accelerated in accordance with the terms of the Indenture, and such acceleration has not been rescinded, on or prior to the Redemption Date (except in the case of an acceleration resulting from a Default by the Issuers in the payment of the REIT Redemption Price with respect to such Securities).

ARTICLE 12

MISCELLANEOUS

Section 12.01 *Effect on Successors and Assigns.* All agreements of the Issuers, the Guarantors, the Trustee, the Registrar, the Paying Agent and the Exchange Agent in the Indenture and the Securities will bind their respective successors.

Section 12.02 *Governing Law; Jurisdiction; Waiver of Jury Trial.* THE INTERNAL LAWS OF THE STATE OF NEW YORK SHALL GOVERN AND BE USED TO CONSTRUE THE INDENTURE, THE GUARANTEES AND THE SECURITIES, INCLUDING WITHOUT LIMITATION, SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW AND NEW YORK CIVIL PRACTICE LAWS AND RULES 327(B).

The Issuers, the Guarantors, the Trustee and, by acceptance of the Securities, each Holder agrees that any suit, action or proceeding arising out of or based upon this Supplemental Indenture or the transactions contemplated hereby may be instituted in any State or Federal court in The City of New York, New York, and waives any objection which it may now or hereafter have to the laying of venue of any such proceeding, and irrevocably submits to the nonexclusive jurisdiction of such courts in any suit, action or proceeding.

THE ISSUERS, THE GUARANTORS, THE TRUSTEE AND EACH HOLDER OF THE SECURITIES BY HIS ACCEPTANCE THEREOF HEREBY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE INDENTURE, THE GUARANTEES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 12.03 *No Security Interest Created*. Nothing in the Indenture or in the Securities, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

Section 12.04 *[Reserved]*.

Section 12.05 *Benefits of Supplemental Indenture*. Nothing in this Supplemental Indenture or in the Securities, expressed or implied, will give to any Person, other than the parties hereto, any Paying Agent, any Exchange Agent, any Registrar or their successors hereunder or the Holders of the Securities, any benefit or any legal or equitable right, remedy or claim under this Supplemental Indenture.

Section 12.06 *Calculations*. Except as otherwise provided in the Indenture, the Issuers shall be responsible for making all calculations called for under the Securities. These calculations include, but are not limited to, determinations of the Stock Price, the Last Reported Sale Prices of the Common Stock, the Accreted Principal Amount of any Security, any accrued Special Interest (including Registration Default Additional Interest) payable on the Securities and the Exchange Rate (including adjustments thereto). The Issuers shall make all these calculations in good faith and, absent manifest error, the Issuers' calculations shall be final and binding on Holders of Securities. The Issuers shall provide a schedule of its calculations to each of the Trustee and the Exchange Agent, and each of the Trustee and Exchange Agent is entitled to rely conclusively upon the accuracy of the Issuers' calculations without independent verification. The Trustee will forward the Issuers' calculations to any Holder upon the request of that Holder at the sole cost and expense of the Issuers. Neither the Trustee or the Exchange Agent will have any responsibility for making such calculations.

Whenever the Issuers are required to calculate the Exchange Rate, or any adjustment thereto, the Issuers will do so to the nearest 1/10,000th of a share of Common Stock.

Section 12.07 *Execution in Counterparts*. This Supplemental Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 12.08 *Notices*. The Issuers, the Guarantors or the Trustee, by notice given to the other in the manner provided in Section 12.03 of the Base Indenture, may designate additional or different addresses for subsequent notices or communications.

Notwithstanding anything to the contrary in Section 12.03 of the Base Indenture, whenever the Issuers are required to deliver notice to the Holders, the Issuers will, by the date it is required to deliver such notice to the Holders, deliver a copy of such notice to the Trustee, the Paying Agent, the Registrar and the Exchange Agent. Each notice to the Trustee, the Paying Agent, the Registrar and the Exchange Agent shall be sufficiently given if in writing and mailed, first-class postage prepaid to the address most recently sent by the Trustee, the Paying Agent, the Registrar or the Exchange Agent, as the case may be, to the Issuers.

Section 12.09 *Ratification of Base Indenture*. The Base Indenture, as supplemented by this Supplemental Indenture, is in all respects ratified and confirmed, and this Supplemental Indenture shall be deemed part of the Base Indenture in the manner and to the extent herein provided. For the avoidance of doubt, each Issuer, each Guarantor and each Holder of Securities, by its acceptance of such Securities, acknowledges and agrees that all of the rights, privileges, protections, immunities and benefits afforded to the Trustee under the Base Indenture, including, without limitation, its right to be indemnified, are deemed to be incorporated herein, and shall be enforceable by the Trustee hereunder, in each of its capacities hereunder as if set forth herein in full.

Section 12.10 *The Trustee*. The recitals in this Supplemental Indenture are made by the Issuers or Guarantors only and not by the Trustee, and all of the provisions contained in the Base Indenture in respect of the rights, privileges, immunities, indemnities powers and duties of the Trustee shall be applicable in respect of the Securities and of this Supplemental Indenture as fully and with like effect as set forth in full herein.

Section 12.11 *No Recourse Against Others*. No director, officer, employee, incorporator or stockholder of the Issuers or Guarantors shall have any liability for any obligations of the Issuers or Guarantors under the Securities, the Guarantees, the Indenture or any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder, by accepting a Security, waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Securities.

Section 12.12 *Use of Electronic Communications*. For the avoidance of doubt, all notices, approvals, consents, requests and any communications hereunder or with respect to the Securities must be in writing (provided that any communication sent to Trustee hereunder must be in the form of a document that is signed manually or by way of a digital signature provided by DocuSign or Adobe (or such other digital signature provider as specified in writing to Trustee by the authorized representative), in English. The Issuers and Guarantors agree to assume all risks arising out of the use of using digital signatures and electronic methods to submit communications to Trustee, including without limitation the risk of Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

ARTICLE 13

GUARANTEES

Section 13.01 *Guarantees*.

(a) The provisions in Section 13.01(a) of the Base Indenture shall not apply with respect to the Securities, and Section 13.01(b) hereunder shall supersede the entirety thereof.

(b) Each Guarantor hereby, jointly and severally, fully and unconditionally guarantees to each Holder of a Security authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of the Indenture, the Securities held thereby and the obligations of the Issuers hereunder and thereunder, that: (i) the Accreted Principal Amount of and any Special Interest on the Securities will be promptly paid in full when due, subject to any applicable grace period, whether at the Maturity Date, by acceleration, in connection with a Fundamental Change, upon REIT Redemption or otherwise, and interest on the overdue Accreted Principal Amount of and (to the extent permitted by law) any Special Interest on the Securities, and the shares

of Common Stock deliverable upon exchange of the Securities and any cash in lieu of fractional shares will be promptly paid and/or delivered in full when due, and all other obligations of the Issuers to the Holders or the Trustee hereunder or thereunder will be promptly paid in full and performed, all in accordance with the terms hereof and thereof; and (ii) in case of any extension of time of payment or renewal of any Securities or any of such other obligations, the same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, subject to any applicable grace period, whether at the Maturity Date, by acceleration, in connection with a Fundamental Change, upon REIT Redemption or otherwise. Failing payment or performance when so due of any amount or obligation so guaranteed for whatever reason, the Guarantors will be jointly and severally obligated to pay or perform the same immediately. An Event of Default with respect to the Securities under the Indenture shall constitute an event of default under the Guarantees, and shall entitle the Holders of Securities to accelerate the obligations of the Guarantors hereunder in the same manner and to the same extent as the obligations of the Issuers.

[Remainder of the page intentionally left blank]

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

HAT HOLDINGS I LLC, as Issuer

By: /s/ Jeffrey A. Lipson
Name: Jeffrey A. Lipson
Title: Executive Vice President

HAT HOLDINGS II LLC, as Issuer

By: /s/ Jeffrey A. Lipson
Name: Jeffrey A. Lipson
Title: Executive Vice President

HANNON ARMSTRONG SUSTAINABLE
INFRASTRUCTURE CAPITAL, INC., as Guarantor

By: /s/ Jeffrey A. Lipson
Name: Jeffrey A. Lipson
Title: Executive Vice President, Chief Financial
Officer and Chief Operating Officer

HANNON ARMSTRONG SUSTAINABLE
INFRASTRUCTURE, L.P., as Guarantor

By: /s/ Jeffrey A. Lipson
Name: Jeffrey A. Lipson
Title: Executive Vice President, Chief Financial
Officer and Chief Operating Officer

HANNON ARMSTRONG CAPITAL, LLC, as Guarantor

By: /s/ Jeffrey A. Lipson
Name: Jeffrey A. Lipson
Title: Executive Vice President, Chief Financial
Officer and Chief Operating Officer

[Signature Page to First Supplemental Indenture]

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

By: /s/ Kathy L. Mitchell
Name: Kathy L. Mitchell
Title: Vice President

SCHEDULE A

The following table sets forth the number of Additional Shares by which the Exchange Rate shall be increased pursuant to Section 4.06 based on the Stock Price and Effective Date set forth below.

Date	Share Price and Additional Shares											
	\$42.67	\$50.00	\$56.54	\$65.00	\$73.50	\$81.00	\$88.00	\$95.00	\$102.00	\$109.00	\$116.00	\$125.00
April 13, 2022	5.7483	3.8342	2.6838	1.6842	1.0351	0.6536	0.4077	0.2383	0.1251	0.0539	0.0150	0.0000
May 1, 2023	6.5550	3.7740	2.5465	1.5142	0.8735	0.5157	0.2974	0.1564	0.0697	0.0218	0.0019	0.0000
May 1, 2024	7.3492	3.4630	2.1357	1.1011	0.5287	0.2505	0.1065	0.0324	0.0031	0.0000	0.0000	0.0000
May 1, 2025	8.1695	4.3789	1.8264	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

Schedule A - 1

SCHEDULE B

The following table sets forth the Accreted Principal Amount per \$1,000 Original Principal Amount of Securities as of the specified dates during the period from the Issue Date through the Maturity Date.

<u>Accretion Date</u>	<u>Accreted Principal Amount</u>
April 13, 2022	\$ 1,000.00
November 1, 2022	\$ 1,017.88
May 1, 2023	\$ 1,034.42
November 1, 2023	\$ 1,051.22
May 1, 2024	\$ 1,068.31
November 1, 2024	\$ 1,085.67
May 1, 2025	\$ 1,103.31

The Accreted Principal Amount for Securities between the dates listed above will include an amount reflecting the principal that has accreted as of such date since the immediately preceding date in the table at an accretion rate of 3.25% per annum.

[FORM OF FACE OF SECURITY]

[For Global Securities, include the following legend:

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

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

- (1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT AND THAT IT AND ANY SUCH ACCOUNT IS NOT AN AFFILIATE OF HANNON ARMSTRONG SUSTAINABLE INFRASTRUCTURE CAPITAL, INC. ("HASI"), AND**
- (2) AGREES FOR THE BENEFIT OF HAT HOLDINGS I LLC, HAT HOLDINGS II LLC (COLLECTIVELY, "HAT HOLDINGS") AND HASI THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN, EXCEPT:**
 - (A) TO HASI OR ANY SUBSIDIARY THEREOF (INCLUDING HAT HOLDINGS), OR**
 - (B) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT THAT IS NOT AN AFFILIATE OF HASI.**

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

[For Physical Securities, include the following legend:

THIS SECURITY WILL BE TREATED AS ISSUED WITH ORIGINAL ISSUE DISCOUNT (“OID”) FOR PURPOSES OF SECTION 1271 ET SEQ. OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED. FOR INFORMATION REGARDING THE CLOSING DATE, ISSUE PRICE, YIELD TO MATURITY AND THE AMOUNT OF OID, PLEASE CONTACT THE CHIEF ACCOUNTING OFFICER OF THE ISSUERS AT 1906 TOWNE CENTRE BLVD., ANNAPOLIS, MARYLAND 21401 OR 410-571-9860.]

Exhibit A - 2

No: []
CUSIP: 418751 AG8
ISIN: US418751AG80

Original Principal Amount \$[]
[as revised by the Schedule of Increases
and Decreases in the Global Security attached hereto]

HAT Holdings I LLC and HAT Holdings II LLC
0.00% Green Exchangeable Senior Notes due 2025

HAT Holdings I LLC and HAT Holdings II LLC, each a Maryland limited liability company, jointly and severally promises to pay to [] [include "Cede & Co." for Global Security] or registered assigns, the Accreted Principal Amount of \$[] on May 1, 2025 (the "**Maturity Date**").

Special Interest Payment Dates: May 1 and November 1, beginning on November 1, 2022.

Special Interest Record Dates: April 15 and October 15.

Additional provisions of this Security are set forth on the other side of this Security.

¹ Include for Global Securities only.

IN WITNESS WHEREOF, HAT HOLDINGS I LLC and HAT HOLDINGS II LLC have caused this instrument to be duly signed.

HAT HOLDINGS I LLC

By: _____
Name:
Title:

Dated: _____

HAT HOLDINGS II LLC

By: _____
Name:
Title:

Dated: _____

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

U.S. Bank Trust Company, National Association, as Trustee, certifies that this is one of the Securities referred to in the within-mentioned Indenture.

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

By: _____
Authorized Signatory

Dated: _____

HAT HOLDINGS I LLC AND HAT HOLDINGS II LLC

0.00% Green Exchangeable Senior Notes due 2025

This Security is one of a duly authorized issue of securities of the Issuers (herein called the “**Securities**”), issued under a Indenture dated as of April 13, 2022 (herein called the “**Base Indenture**”), and as further supplemented by the First Supplemental Indenture, dated as of April 13, 2022 (herein called the “**Supplemental Indenture**” and the Base Indenture, as supplemented by the Supplemental Indenture, the “**Indenture**”) by and among the Issuers, the Guarantors and U.S. Bank Trust Company, National Association, herein called the “**Trustee**”, and reference is hereby made to the Indenture for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Issuers, the Guarantors, the Trustee and the Holders of the Securities and of the terms upon which the Securities are, and are to be, authenticated and delivered. This Security does not benefit from a sinking fund.

This Security is subject to redemption in accordance with Section 11.01(a) of the Supplemental Indenture.

As provided in and subject to the provisions of the Indenture, upon the occurrence of a Fundamental Change, the Holder of this Security will have the right, at such Holder’s option, to require the Issuers to purchase this Security, or any portion of this Security such that the Original Principal Amount of this Security that is not purchased equals \$1,000 or an integral multiple of \$1,000 in excess thereof, on the Fundamental Change Purchase Date at a price equal to the Fundamental Change Purchase Price for such Fundamental Change Purchase Date.

As provided in and subject to the provisions of the Indenture, the Holder hereof has the right, at any time prior to the Close of Business on the second Scheduled Trading Day immediately preceding the Maturity Date, to exchange this Security or a portion of this Security unless earlier repurchased or redeemed by the Issuers, such that the Original Principal Amount of this Security that is not exchanged equals \$1,000 or an integral multiple of \$1,000 in excess thereof, into shares of Common Stock in accordance with Article 4 of the Supplemental Indenture.

As provided in and subject to the provisions of the Indenture, the Issuers will jointly and severally make all payments in respect of the Fundamental Change Purchase Price, the REIT Redemption Price, and the Accreted Principal Amount of, this Security to the Holder that surrenders this Security to the Paying Agent to collect such payments in respect of this Security. The Issuers will pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Issuers and the Guarantors and the rights of the Holders of the Securities to be effected under the Indenture at any time by the Issuers, the Guarantors and the Trustee with the consent of the Holders of a majority in Accreted Principal Amount of the Securities at the time Outstanding. The Indenture also contains provisions permitting the Holders of specified percentages in Accreted Principal

Amount of the Securities at the time Outstanding, on behalf of the Holders of all Securities, to waive compliance by the Issuers or Guarantors with certain provisions of the Indenture and certain past Defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange hereof or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

As provided in and subject to the provisions of the Indenture, the Holder of this Security shall not have the right to institute any proceeding with respect to the Indenture, or for the appointment of a receiver or trustee, or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default with respect to the Security, the Holders of not less than 25% in Accreted Principal Amount of the Securities at the time Outstanding shall have made written request to the Trustee to institute proceedings in respect of such Event of Default as Trustee and offered the Trustee indemnity, and the Trustee shall not have received from the Holders of a majority in Accreted Principal Amount of Securities at the time Outstanding a direction inconsistent with such request, and shall have failed to institute any such proceeding, for 60 days after receipt of such notice, request and offer of indemnity. The foregoing shall not apply to any suit instituted by the Holder of this Security for the enforcement of any payment of Accreted Principal Amount hereof or Special Interest hereon, if any, or amounts due upon exchange on or after the respective due dates expressed herein.

No reference herein to the Indenture and no provision of this Security or of the Indenture or of the Guarantees shall alter or impair the obligation of the Issuers or Guarantors, which is absolute and unconditional, to pay or deliver, as the case may be, the Accreted Principal Amount of (including the Fundamental Change Purchase Price or the REIT Redemption Price, if applicable), any Special Interest on and the consideration due upon exchange of, this Security at the time, place and rate, and in the coin and currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Register, upon surrender of this Security for registration of transfer at the office or agency of the Issuers in any place where the Accreted Principal Amount of and any Special Interest on this Security are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Issuers and the Registrar duly executed by, the Holder hereof or its attorney duly authorized in writing, and thereupon one or more new Securities of this series and of like tenor, of authorized denominations and for the same aggregate Original Principal Amount, will be issued to the designated transferee or transferees.

The Securities shall be unconditionally guaranteed by the Guarantors pursuant to the terms and conditions set forth in the Indenture.

The Securities are issuable only in registered form without coupons in denominations of \$1,000 Original Principal Amount and integral multiples of \$1,000 in excess thereof. As provided in the Indenture and subject to certain limitations therein set forth, the Securities are exchangeable for a like aggregate Original Principal Amount of Securities and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

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

In addition to the rights provided to Holders of Securities under the Indenture, Holders shall have all the rights set forth in the Registration Rights Agreement.

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

All defined terms used in this Security that are defined in the Indenture shall have the meanings assigned to them in the Indenture. If any provision of this Security limits, qualifies or conflicts with a provision of the Indenture, such provision of the Indenture shall control.

ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Security, shall be construed as though they were written out in full.

TEN COM - as tenants in common	UNIF GIFT MIN ACT (Cust)	Custodian
TEN ENT - as tenants by the entireties	(Minor)	
JT TEN - as joint tenants with right of Survivorship and not as tenants in common	Uniform Gifts to Minors Act	(State)

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

Exhibit A - 9

[Include for Global Security]

SCHEDULE OF INCREASES AND DECREASES OF GLOBAL SECURITY

Original Principal Amount of Global Security:

<u>Date</u>	<u>Amount of Increase in Original Principal Amount of Global Security</u>	<u>Amount of Decrease in Original Principal Amount of Global Security</u>	<u>Original Principal Amount of Global Security after Increase or Decrease</u>	<u>Notation by Security Registrar</u>

Annex A - 1

[FORM OF NOTICE OF EXCHANGE]

To: HAT Holdings I LLC and HAT Holdings II LLC

The undersigned Holder of this Security hereby irrevocably exercises the option to exchange this Security, or a portion hereof (which is such that the Original Principal Amount of the portion of this Security that will not be exchanged equals \$1,000 or an integral multiple of \$1,000 in excess thereof) below designated shares of Common Stock (and cash in lieu of fractional shares of Common Stock) in accordance with the terms of the Indenture referred to in this Security, and directs that any cash payable and any shares of Common Stock issuable and deliverable upon exchange, together with any Securities representing any unexchanged Original Principal Amount hereof, be paid and/or issued and/or delivered, as the case may be, to the registered Holder hereof unless a different name is indicated below.

Subject to certain exceptions set forth in the Indenture, if this notice is being delivered on a date after the Close of Business on a Special Interest Record Date and prior to the Open of Business on the Special Interest Payment Date corresponding to such Special Interest Record Date, this notice must be accompanied by payment of an amount equal to the Special Interest payable on such Special Interest Payment Date, if any, on the Accreted Principal Amount of this Security to be exchanged. If any shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect to such issuance and transfer as set forth in the Indenture.

Original Principal Amount to be exchanged (in an integral multiple of \$1,000, if less than all):

Signature(s)

Signature(s) must be guaranteed by an institution which is a member of one of the following recognized signature Guarantee Programs:

(i) The Securities Transfer Agent Medallion Program (STAMP); (ii) The New York Stock Exchange Medallion Program (MNSP); (iii) The Stock Exchange Medallion Program (SEMP); or (iv) another guarantee program acceptable to the Trustee.

Signature Guarantee

The following information must be provided to complete the exchange of your Securities to Common Stock.

(Name)

(Address)

Please print Name and Address
(including zip code number)
Social Security or other Taxpayer

Identifying Number _____

Attachment 1 - 2

[FORM OF FUNDAMENTAL CHANGE PURCHASE NOTICE]

To: HAT Holdings I LLC and HAT Holdings II LLC

The undersigned registered owner of this Security hereby acknowledges receipt of a notice from HAT Holdings I LLC and HAT Holdings II LLC (the “**Issuers**”) as to the occurrence of a Fundamental Change with respect to Hannon Armstrong Sustainable Infrastructure Capital, Inc. and specifying the Fundamental Change Purchase Date and requests and instructs the Issuers to pay to the registered holder hereof in accordance with the applicable provisions of the Indenture referred to in this Security (i) the entire Accreted Principal Amount of this Security, or the portion thereof (that is such that the portion not to be purchased has an Original Principal Amount equal to \$1,000 or an integral multiple of \$1,000 in excess thereof) below designated, and (ii) if such Fundamental Change Purchase Date does not occur during the period after a Special Interest Record Date and on or prior to the Special Interest Payment Date corresponding to such Special Interest Record Date, accrued and unpaid Special Interest, if any, thereon to, but excluding, such Fundamental Change Purchase Date.

In the case of certificated Securities, the certificate numbers of the Securities to be purchased are as set forth below:

Dated:

Signature(s)

Social Security or Other Taxpayer Identification Number

Original Principal Amount to be repaid (if less than all):

\$ _____,000

NOTICE: The signature on the Fundamental Change Purchase Notice must correspond with the name as written upon the face of the Security in every particular without alteration or enlargement or any change whatever.

[FORM OF ASSIGNMENT AND TRANSFER]

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

In connection with any transfer of the within Security, the undersigned confirms that such Security is being transferred:

- To Hannon Armstrong Sustainable Infrastructure Capital, Inc. or a Subsidiary thereof (including HAT Holdings I LLC and HAT Holdings II LLC); or
- Pursuant to and in compliance with Rule 144A under the Securities Act of 1933, as amended.

Signature(s)

Signature(s) must be guaranteed by an institution which is a member of one of the following recognized signature Guarantee Programs:

- (i) The Securities Transfer Agent Medallion Program (STAMP); (ii) The New York Stock Exchange Medallion Program (MNSP); (iii) The Stock Exchange Medallion Program (SEMP); or (iv) another guarantee program

Hannon Armstrong Sustainable Infrastructure Capital, Inc.
HAT Holdings I LLC
HAT Holdings II LLC
0.00% Green Exchangeable Senior Notes due 2025

REGISTRATION RIGHTS AGREEMENT

April 13, 2022

Morgan Stanley & Co. LLC
Oppenheimer & Co. Inc.,
as representatives of
the several Initial Purchasers
referred to below

c/o Morgan Stanley & Co. LLC
1585 Broadway
New York, New York 10036

c/o Oppenheimer & Co. Inc.
85 Broad Street
New York, NY 10004

Ladies and Gentlemen:

HAT Holdings I LLC, a Maryland limited liability company, and HAT Holdings II LLC, a Maryland limited liability company (HAT Holdings I LLC and HAT Holdings II LLC, each, an “**Issuer**” and, together, the “**Issuers**”), proposes to issue and sell to the initial purchasers listed in Exhibit A to the Purchase Agreement referred to below (the “**Initial Purchasers**”), for whom Morgan Stanley & Co. LLC and Oppenheimer & Co. Inc. are acting as representatives (the “**Representatives**”), its 0.00% Green Exchangeable Senior Notes due 2025 (the “**Notes**”), guaranteed by Hannon Armstrong Sustainable Infrastructure Capital, Inc., a Maryland corporation and an indirect parent of the Issuers, (the “**Company**”), and the other guarantors listed in Exhibit B to the Purchase Agreement referred to below (collectively with the Company, the “**Guarantors**”), upon the terms set forth in the Purchase Agreement, dated April 7, 2022 (the “**Purchase Agreement**”), by and among the Issuers, the Guarantors and the Representatives, relating to the initial placement (the “**Initial Placement**”) of the Notes. Upon an exchange of Notes at the option of the holder thereof, the Issuers shall deliver shares of common stock, \$0.01 par value per share, of the Company (the “**Company Common Stock**”). The obligations of the Issuers in respect of the Notes will be fully and unconditionally guaranteed on a senior unsecured basis by each of the Guarantors pursuant to the terms of the Indenture and the guarantees included in the Indenture. To induce the Initial Purchasers to enter into the Purchase Agreement and in satisfaction of a condition to the obligations of the Initial Purchasers thereunder, the holders of the Notes will have the benefit of this registration rights agreement (this “**Agreement**”) by and among the Issuers,

the Company and the Representatives, on behalf of the Initial Purchasers, whereby each of the Issuers and the Company agrees with you for your benefit and the benefit of the holders from time to time of the Notes and the Registrable Securities (as defined below) (including any person that has a beneficial interest in any Registrable Security in book-entry form and, if applicable, the Initial Purchasers) (each a “**Holder**” and, collectively, the “**Holders**”), as follows:

1. *Definitions.* As used in this Agreement, the following capitalized defined terms shall have the following meanings:

“**Accreted Principal Amount**” shall have the meaning specified in the Supplemental Indenture.

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

“**Additional Interest**” shall have the meaning set forth in Section 7 hereof.

“**Affiliate**” shall have the meaning specified in Rule 405 under the Act.

“**Base Indenture**” shall mean the Base Indenture, dated as of April 13, 2022, by and among the Issuers, the Guarantors and U.S. Bank Trust Company, National Association, as trustee, as the same may be amended from time to time in accordance with the terms thereof.

“**Broker-Dealer**” shall mean any broker or dealer registered as such under the Exchange Act.

“**Business Day**” shall have the meaning specified in the Supplemental Indenture.

“**Close of Business**” shall have the meaning specified in the Supplemental Indenture.

“**Closing Date**” shall mean the date of this Agreement.

“**Commission**” shall mean the Securities and Exchange Commission.

“**Company**” shall have the meaning set forth in the preamble hereto.

“**Company Common Stock**” shall have the meaning set forth in the preamble hereto.

“**Control**” shall have the meaning specified in Rule 405 under the Act and the terms “**controlling**” and “**controlled**” shall have meanings correlative thereto.

“**Deferral Period**” shall have the meaning set forth in Section 3(i) hereof.

“**Depository**” shall have the meaning specified in the Supplemental Indenture.

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

“**Final Memorandum**” shall mean the offering memorandum, dated April 7, 2022, relating to the Notes, including any and all annexes thereto and any information incorporated by reference therein as of such date.

“**FINRA Rules**” shall mean the Conduct Rules and the By-Laws of the Financial Industry Regulatory Authority.

“**Guarantors**” shall have the meaning set forth in the preamble hereto.

“**Holder**” shall have the meaning set forth in the preamble hereto.

“**Indenture**” shall mean the Base Indenture, as originally executed and as supplemented by the Supplemental Indenture, each as may be amended or supplemented from time to time.

“**Initial Placement**” shall have the meaning set forth in the preamble hereto.

“**Initial Purchasers**” shall have the meaning set forth in the preamble hereto.

“**Issuers**” shall have the meaning set forth in the preamble hereto.

“**Losses**” shall have the meaning set forth in Section 5(d) hereof.

“**Majority Holders**” shall mean, on any date, Holders of a majority of the shares of Company Common Stock that are registered under the Shelf Registration Statement.

“**Maturity Date**” shall have the meaning specified in the Supplemental Indenture.

“**Notes**” shall have the meaning set forth in the preamble hereto.

“**Notice and Questionnaire**” shall mean a written notice delivered to the Company substantially in the form attached as Annex A to the Final Memorandum.

“**Notice Holder**” shall mean, on any date, any Holder that has delivered a properly completed Notice and Questionnaire to the Company on or prior to such date.

“**Prospectus**” shall mean a prospectus included in the Shelf Registration Statement (including, without limitation, a prospectus that discloses information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A or Rule 430B under the Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the shares of Company Common Stock covered by the Shelf Registration Statement, and all amendments and supplements thereto, including any and all exhibits thereto and any information incorporated by reference therein.

“**Purchase Agreement**” shall have the meaning set forth in the preamble hereto.

“**Registrable Securities**” shall mean the shares of Company Common Stock, if any, deliverable by the Issuers upon exchange of the Notes sold to the Initial Purchasers pursuant to the Purchase Agreement, other than shares of Company Common Stock that have (i) been registered under the Shelf Registration Statement and disposed of in accordance therewith, (ii) become eligible to be transferred without condition as contemplated by Rule 144 under the Act or any successor rule or regulation thereto that may be adopted by the Commission, (iii) ceased to be outstanding or (iv) been sold to the public pursuant to Rule 144 under the Act.

“**Registration Default**” shall have the meaning set forth in Section 7 hereof.

“**Representatives**” shall have the meaning set forth in the preamble hereto.

“**Scheduled Trading Day**” shall have the meaning specified in the Supplemental Indenture.

“**Shelf Registration Period**” shall have the meaning set forth in Section 2(b) hereof.

“**Shelf Registration Statement**” shall mean a “shelf” registration statement of the Company filed under the Securities Act on Form S-3, or if not then available to the Company, on another appropriate form, pursuant to the provisions of Section 2 hereof, providing for the registration of, and the sale on a continuous or delayed basis by the Holders of, some or all of the Registrable Securities pursuant to Rule 415 under the Act, or any similar rule that may be adopted by the Commission, amendments and supplements to such registration statement, including post-effective amendments, in each case including the Prospectus contained therein, all exhibits thereto and all material incorporated by reference therein.

“**Supplemental Indenture**” shall mean the Supplemental Indenture relating to the Notes, dated as of April 13, 2022, by and among the Issuers, the Guarantors and U.S. Bank Trust Company, National Association, as trustee, as the same may be amended from time to time in accordance with the terms thereof.

“**Trading Day**” shall have the meaning set forth in the Supplemental Indenture.

2. Shelf Registration.

(a) The Company shall file with the Commission a Shelf Registration Statement providing for the registration of, and the sale on a continuous or delayed basis by the Holders of, all of the Registrable Securities, from time to time in accordance with the methods of distribution elected by such Holders, pursuant to Rule 415 under the Act or any similar rule that may be adopted by the Commission and shall use its commercially reasonable efforts to cause such Shelf Registration Statement to be filed and become effective on or prior to the 120th day after the Closing Date.

(b) The Company shall, subject to Section 3(i) below, use its commercially reasonable efforts to keep the Shelf Registration Statement continuously effective, supplemented and amended as required by the Act, in order to permit the Prospectus forming part thereof to be usable by Holders for a period (the “**Shelf Registration Period**”) from the date the Shelf Registration Statement becomes effective or is declared effective

by the Commission, as the case may be, to and including the earliest of (i) the 40th Trading Day immediately following the Maturity Date (subject to extension for any suspension of the effectiveness of the Shelf Registration Statement during such 40-Trading Day period immediately following the Maturity Date), (ii) the 40th Trading Day immediately following the date on which there are no longer outstanding any Notes and (iii) the date on which there are no longer outstanding any Registrable Securities.

(c) The Company shall cause the Shelf Registration Statement and the related Prospectus and any amendment or supplement thereto, as of the effective date of the Shelf Registration Statement or such amendment or supplement, (i) to comply in all material respects with the applicable requirements of the Act and (ii) not to contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein (in the case of the Prospectus, in the light of the circumstances under which they were made) not misleading.

(d) Subject to applicable law, the Company shall provide written notice to the Holders of the Notes of the anticipated effective date of the Shelf Registration Statement at least 15 Business Days prior to such anticipated effective date. Each Holder, in order to be named as a selling securityholder in the Shelf Registration Statement at the time of its initial effectiveness, shall complete and deliver a Notice and Questionnaire and such other information as the Company and the Issuers may reasonably request in writing, if any, to the Company and the Issuers at least 10 Business Days prior to the anticipated effective date of the Shelf Registration Statement as provided in the notice to the Holders. If a Holder does not timely complete and deliver a Notice and Questionnaire or provide the other information the Company and the Issuers may reasonably request in writing, that Holder will not be named as a selling securityholder in the Prospectus forming a part of the Shelf Registration Statement and will not be permitted to sell its Registrable Securities under the Shelf Registration Statement. From and after the effective date of the Shelf Registration Statement and until June 1, 2025, the Company shall use its commercially reasonable efforts (i) on the first Business Day of each month if required by applicable law, to file with the Commission a post-effective amendment to the Shelf Registration Statement or to prepare and, if permitted or required by applicable law, to file a supplement to the Prospectus or an amendment or supplement to any document incorporated therein by reference or file any other required document so that the Holder that delivered a Notice and Questionnaire prior to the 20th day of the prior month is named as a selling securityholder in the Shelf Registration Statement and the related Prospectus, and so that such Holder is permitted to deliver such Prospectus to purchasers of the Registrable Securities in accordance with applicable law (*provided* that the Company shall not be required to file more than one supplement or post-effective amendment in any calendar month in accordance with this Section 2(d)(i)) and, if the Company shall file a post-effective amendment to the Shelf Registration Statement, use its commercially reasonable efforts to cause such post-effective amendment to be declared effective under the Act as promptly as is practicable; (ii) provide such Holder, upon request, copies of any documents filed pursuant to Section 2(d)(i) hereof; and (iii) notify such Holder as promptly as practicable after the effectiveness under the Act of any post-effective amendment filed pursuant to Section 2(d)(i) hereof; *provided* that if such Notice and Questionnaire is delivered during a Deferral Period, the Company shall so inform the Holder delivering such Notice and

Questionnaire and shall take the actions set forth in clauses (i), (ii) and (iii) above upon expiration of the Deferral Period in accordance with Section 3(i) hereof. Notwithstanding the foregoing, if the Notes are exchanged as provided for in Article 4 of the Supplemental Indenture, then, within 5 Business Days of the applicable Exchange Date (as defined in the Supplemental Indenture), the Company shall use its commercially reasonable efforts to file the post-effective amendment or supplement naming as a selling securityholder each Notice Holder exchanging such Notes; *provided* that if the Exchange Date occurs during a Deferral Period, the Company shall use its commercially reasonable efforts to file such post-effective amendment or supplement upon expiration of the Deferral Period. Notwithstanding anything contained herein to the contrary, the Company shall be under no obligation to name any Holder that is not a Notice Holder as a selling securityholder in the Shelf Registration Statement or Prospectus; *provided, however*, that any Holder that becomes a Notice Holder pursuant to the provisions of this Section 2(d) (whether or not such Holder was a Notice Holder at the effective date of the Shelf Registration Statement) shall be named as a selling securityholder in the Shelf Registration Statement or Prospectus in accordance with the requirements of this Section 2(d).

(e) If at any time the Notes, pursuant to Section 4.07 of the Supplemental Indenture, are exchangeable for securities of the Company other than the Company Common Stock, the Company and the Issuers agree to cause such securities to be included in the Shelf Registration Statement or a replacement shelf registration statement no later than the date on which the Notes become exchangeable for such securities.

3. *Registration Procedures.* The following provisions shall apply in connection with the Shelf Registration Statement.

(a) The Company shall:

(i) furnish to the Representatives and the Notice Holders, not less than five Business Days prior to the filing thereof with the Commission, a copy of the Shelf Registration Statement and each amendment thereto and each amendment or supplement, if any, to the Prospectus (other than amendments and supplements that do nothing more than name Notice Holders and provide information with respect thereto and other than filings by the Company under the Exchange Act) and shall use its commercially reasonable efforts to reflect in each such document, when so filed with the Commission, such comments as the Representatives reasonably propose within three Business Days of the delivery of such copies to the Representatives; and

(ii) include information regarding the Notice Holders and the methods of distribution they have elected for their Registrable Securities provided to the Company in Notices and Questionnaires as necessary to permit such distribution by the methods specified therein.

(b) The Company shall ensure that:

(i) the Shelf Registration Statement and any amendment thereto, and any Prospectus and any amendment or supplement thereto, comply in all material respects with the Act; and

(ii) the Shelf Registration Statement and any amendment thereto do not, when each becomes effective, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

(c) The Company shall advise the Representatives and the Notice Holders and confirm such advice in writing, if requested (which notice pursuant to clauses (ii)-(v) below shall be accompanied by an instruction to suspend the use of the Prospectus until the Company shall have remedied the basis for such suspension):

(i) when the Shelf Registration Statement and any amendment thereto have been filed with the Commission and when the Shelf Registration Statement or any post-effective amendment thereto has become effective;

(ii) of any request by the Commission for any post-effective amendment or supplement to the Shelf Registration Statement or the Prospectus or for additional information;

(iii) of the issuance by the Commission of any stop order suspending the effectiveness of the Shelf Registration Statement or the initiation or threatening of any proceeding for that purpose;

(iv) of the receipt by the Company of any notification with respect to the suspension of the qualification of the Company Common Stock included therein for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; and

(v) of the happening of any event that requires any change in the Shelf Registration Statement or the Prospectus so that, as of such date, they (A) do not contain any untrue statement of a material fact and (B) do not omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of the Prospectus, in the light of the circumstances under which they were made) not misleading.

(d) Subject to Section 3(i) below, the Company shall use its commercially reasonable efforts to prevent the issuance of any order suspending the effectiveness of the Shelf Registration Statement or the qualification of the securities therein for sale in any jurisdiction and, if issued, to obtain as soon as possible the withdrawal thereof.

(e) Upon request, the Company shall furnish, in electronic or physical form, to each Notice Holder, without charge, at least one copy of the Shelf Registration Statement and any post-effective amendment thereto, including all material incorporated therein by reference, and, if a Notice Holder so requests in writing, all exhibits thereto (including exhibits incorporated by reference therein).

(f) During the Shelf Registration Period, the Company shall promptly deliver to each Initial Purchaser and each Notice Holder, without charge, as many copies of the Prospectus (including the preliminary Prospectus, if any) included in the Shelf Registration Statement and any amendment or supplement thereto as any such person may reasonably request. Subject to the restrictions set forth in this Agreement, the Company consents to the use of the Prospectus or any amendment or supplement thereto by each of the foregoing in connection with the offering and sale of the Registrable Securities.

(g) Prior to any offering of Registrable Securities pursuant to the Shelf Registration Statement, the Company shall arrange for the qualification of the Registrable Securities for sale under the laws of such U.S. jurisdictions as any Notice Holder shall reasonably request and shall maintain such qualification in effect so long as required; *provided* that in no event shall the Company be obligated by this Agreement to qualify to do business or as a dealer of securities in any jurisdiction where it is not then so qualified or to take any action that would subject it to taxation or service of process in suits in any jurisdiction where it is not then so subject.

(h) Upon the occurrence of any event contemplated by subsections (c)(ii) through (v) above, the Company shall promptly (or within the time period provided for by Section 3(i) hereof, if applicable) prepare a post-effective amendment to the Shelf Registration Statement or an amendment or supplement to the Prospectus or file any other required document so that, as thereafter delivered to subsequent purchasers of the securities included therein, the Prospectus will not include an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(i) Upon the occurrence or existence of any pending corporate development, public filings with the Commission or any other material event that, in the good faith judgment of the Company, makes it appropriate to suspend the availability of the Shelf Registration Statement and the Prospectus, the Company shall give notice (without notice of the nature or details of such events) to the Notice Holders that the availability of the Shelf Registration Statement is suspended and, upon receipt of any such notice, each Notice Holder agrees: (i) not to sell any Registrable Securities pursuant to the Shelf Registration Statement until such Notice Holder receives copies of the supplemented or amended Prospectus provided for in Section 3(h) hereof, or until it is advised in writing by the Company that the Prospectus may be used, and has received copies of any additional or supplemental filings that are incorporated or deemed incorporated by reference in such Prospectus; and (ii) to hold such notice strictly confidential. Except in the case of a suspension of the availability of the Shelf Registration Statement and the Prospectus solely as the result of the filing of a post-effective amendment or supplement to the Prospectus to add additional selling securityholders therein, the period during which the availability of the Shelf Registration Statement and any Prospectus is suspended (the “**Deferral Period**”) shall not exceed 30 days in any calendar quarter or 60 days in any calendar year; *provided*

that if the suspension relates to a proposed or pending material business transaction, the disclosure of which the board of directors of the Company (or an authorized committee thereof) determines in good faith would be reasonably likely to impede the ability to consummate such transaction or would otherwise be detrimental to the Company and its subsidiaries, taken as a whole, the Company may extend the Deferral Period from 30 days to 45 days in any calendar quarter and from 60 days to 90 days in any calendar year.

(j) The Company shall comply with all applicable rules and regulations of the Commission and shall make generally available to its securityholders an earnings statement (which need not be audited) satisfying the provisions of Section 11(a) of the Act as soon as practicable after the effective date of the Shelf Registration Statement and in any event no later than 45 days after the end of the 12-month period (or 90 days, if such period is a fiscal year) beginning with the first month of the Company's first fiscal quarter commencing after the effective date of the Shelf Registration Statement.

(k) The Company may require each Holder of Registrable Securities to be sold pursuant to the Shelf Registration Statement to furnish to the Company such information regarding the Holder and the distribution of such Registrable Securities as the Company may from time to time reasonably require for inclusion in the Shelf Registration Statement. The Company may exclude from the Shelf Registration Statement the Registrable Securities of any Holder that unreasonably fails to furnish such information within 10 Business Days after receiving such request.

(l) Subject to Section 6 hereof, the Company shall enter into customary agreements (including, in the event of an underwritten offering conducted pursuant to Section 6, an underwriting agreement in customary form, customary legal opinions, customary comfort letters and other customary documents and certifications by the Company and by the selling securityholders) and take all other necessary actions in order to expedite or facilitate the registration or the disposition of the Registrable Securities, and in connection therewith, if an underwriting agreement is entered into, cause the same to contain customary indemnification provisions and procedures.

(m) Subject to Section 6 hereof, in the event that any Broker-Dealer shall underwrite any Company Common Stock or participate as a member of an underwriting syndicate or selling group or "participate in an offering" (within the meaning of the FINRA Rules) thereof, whether as a Holder of such Company Common Stock or as an underwriter, a placement or sales agent or a broker or dealer in respect thereof, or otherwise, the Company shall, upon the reasonable request of such Broker-Dealer, comply with any such reasonable request of such Broker-Dealer in complying with the applicable FINRA Rules.

(n) The Company shall use its commercially reasonable efforts to take all other steps necessary to effect the registration of the Company Common Stock covered by the Shelf Registration Statement.

4. *Registration Expenses.* The Company shall bear all expenses incurred in connection with the performance of their obligations under Sections 2 and 3 hereof and the Holders of shares of Company Common Stock and the Representatives shall bear all expenses incurred by them in connection with any sale of shares of Company Common Stock pursuant to the Shelf Registration Statement.

5. *Indemnification and Contribution.*

(a) The Company agrees to indemnify and hold harmless each Holder covered by the Shelf Registration Statement and the directors, officers, employees, Affiliates and agents of each such Holder and each person who controls any such Holder within the meaning of either the Act or the Exchange Act against any and all losses, claims, damages or liabilities, joint or several, to which they or any of them may become subject under the Act, the Exchange Act or other federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Shelf Registration Statement as originally filed or in any amendment thereof, or in any preliminary Prospectus or the Prospectus, or in any amendment thereof or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of any preliminary Prospectus or the Prospectus, in the light of the circumstances under which they were made) not misleading, and agrees to reimburse each such indemnified party, as incurred, for any legal or other expenses reasonably incurred by it in connection with investigating or defending any such loss, claim, damage, liability or action; *provided, however*, that the Company will not be liable (x) in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to the Company by or on behalf of the party claiming indemnification specifically for inclusion therein or (y) to any Holder from whom the person asserting any such losses, claims, damages or liabilities purchased the Company Common Stock concerned, to the extent that a Prospectus relating to such Company Common Stock was required to be delivered (including through satisfaction of the conditions of Commission Rule 172) by such Holder by the Securities Act in connection with such purchase and any such loss, claim, damage or liability of such Holder results from the fact that there was not conveyed to such person, at or prior to the time of the sale of such Company Common Stock to such person, an amended or supplemented prospectus or a free writing prospectus of the Company, in each case, correcting such untrue statement or omission or alleged untrue statement or omission if the Company had furnished copies thereof to such Holder prior to the time of the sale of such Company Common Stock to such person. This indemnity agreement shall be in addition to any liability that the Company and the Issuers may otherwise have to the indemnified party.

The Company also agrees to provide customary indemnities to, and to contribute as provided in Section 5(d) hereof to Losses of, any underwriters of the Registrable Securities, their officers, directors, employees, Affiliates and agents and each Person who controls such underwriters (within the meaning of Section 15 of the Act) to the same extent as provided above with respect to the indemnification of the Holders of Registrable Securities. The obligations of the Company under this Section 5 shall be in addition to any liability which the Company or the Issuers may otherwise have to any indemnified party.

(b) Each Holder of securities covered by the Shelf Registration Statement (including each Initial Purchaser that is a Holder, in such capacity) severally and not jointly agrees to indemnify and hold harmless the Company, each of the Company's directors, each of the Company's officers who signs the Shelf Registration Statement and each person who controls the Company within the meaning of either the Act or the Exchange Act, to the same extent as the foregoing indemnity from the Company to each such Holder, but only with reference to written information relating to such Holder furnished to the Company by or on behalf of such Holder specifically for inclusion in the documents referred to in the foregoing indemnity.

This indemnity agreement shall be acknowledged by each Notice Holder that is not an Initial Purchaser in such Notice Holder's Notice and Questionnaire and shall be in addition to any liability that any such Notice Holder may otherwise have.

(c) Promptly after receipt by an indemnified party under this Section 5 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 5, notify the indemnifying party in writing of the commencement thereof; but the failure so to notify the indemnifying party (i) will not relieve it from liability under paragraph (a) or (b) above unless and to the extent it has been materially prejudiced through the forfeiture by the indemnifying party of substantial rights and defenses; and (ii) will not, in any event, relieve the indemnifying party from any obligations to any indemnified party other than the indemnification obligation provided in paragraph (a) or (b) above. If any action shall be brought against an indemnified party and it shall have notified the indemnifying party thereof, the indemnifying party shall be entitled to appoint counsel (including local counsel) of the indemnifying party's choice at the indemnifying party's expense to represent the indemnified party in any action for which indemnification is sought (in which case the indemnifying party shall not thereafter be responsible for the fees and expenses of any separate counsel, other than local counsel if not appointed by the indemnifying party, retained by the indemnified party or parties except as set forth below); *provided, however*, that such counsel shall be reasonably satisfactory to the indemnified party. Notwithstanding the indemnifying party's election to appoint counsel (including local counsel) to represent the indemnified party in an action, the indemnified party shall have the right to employ separate counsel (including local counsel), and the indemnifying party shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the use of counsel chosen by the indemnifying party to represent the indemnified party would present such counsel with a conflict of interest; (ii) the actual or potential defendants in, or targets of, any such action include both the indemnified party and the indemnifying party and the indemnified party shall have reasonably concluded that there may be legal defenses available to it and/or other indemnified parties that are different from or additional to those available to the indemnifying party; (iii) the indemnifying party shall not have employed counsel reasonably satisfactory to the indemnified party to represent the indemnified party within a reasonable time after notice of the initiation of such action; or (iv) the indemnifying party shall authorize the indemnified party to employ separate counsel at the expense of the indemnifying party. It is understood and agreed that the indemnifying party shall not, in connection with any proceeding or related proceeding in the same jurisdiction, be liable for the fees and expenses of more than one separate law firm (in addition to any

local counsel) for all indemnified persons. An indemnifying party will not, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each indemnified party from all liability arising out of such claim, action, suit or proceeding and does not include an admission of fault, culpability or a failure to act, by or on behalf of such indemnified party.

(d) In the event that the indemnity provided in paragraph (a) or (b) of this Section 5 is unavailable to or insufficient to hold harmless an indemnified party for any reason, then each applicable indemnifying party shall have a joint and several obligation to contribute to the aggregate losses, claims, damages and liabilities (including legal or other expenses reasonably incurred in connection with investigating or defending any loss, claim, liability, damage or action) (collectively “Losses”) to which such indemnified party may be subject in such proportion as is appropriate to reflect the relative benefits received by such indemnifying party, on the one hand, and such indemnified party, on the other hand, from the Initial Placement and the Shelf Registration Statement which resulted in such Losses; *provided, however*, that in no case shall any Initial Purchaser be responsible, in the aggregate, for any amount in excess of the purchase discount or commission applicable to the Notes, as set forth in the Final Memorandum, nor shall any underwriter be responsible for any amount in excess of the underwriting discount or commission applicable to the securities purchased by such underwriter under the Shelf Registration Statement which resulted in such Losses. If the allocation provided by the immediately preceding sentence is unavailable for any reason, the indemnifying party and the indemnified party shall contribute in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of such indemnifying party, on the one hand, and such indemnified party, on the other hand, in connection with the statements or omissions which resulted in such Losses as well as any other relevant equitable considerations. Benefits received by the Company shall be deemed to be equal to the total net proceeds from the Initial Placement (before deducting expenses) as set forth in the Final Memorandum. Benefits received by the Initial Purchasers shall be deemed to be equal to the total purchase discounts and commissions as set forth in the Final Memorandum, and benefits received by any other Holders shall be deemed to be equal to the value of receiving shares of Company Common Stock registered under the Act. Benefits received by any underwriter shall be deemed to be equal to the total underwriting discounts and commissions, as set forth on the cover page of the Prospectus forming a part of the Shelf Registration Statement which resulted in such Losses. Relative fault shall be determined by reference to, among other things, whether any untrue or any alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information provided by the indemnifying party, on the one hand, or by the indemnified party, on the other hand, the intent of the parties and their relative knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The parties agree that it would not be just and equitable if contribution were determined by pro rata allocation (even if the Holders were treated as one entity for such purpose) or any other method of allocation which does not take account of the equitable considerations referred to above.

Notwithstanding the provisions of this paragraph (d), no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this Section 5, each person who controls a Holder within the meaning of either the Act or the Exchange Act and each director, officer, employee and agent of such Holder shall have the same rights to contribution as such Holder, and each person who controls the Company within the meaning of either the Act or the Exchange Act, each officer of the Company who shall have signed the Shelf Registration Statement and each director of the Company shall have the same rights to contribution as the Company, subject in each case to the applicable terms and conditions of this paragraph (d).

(e) The provisions of this Section 5 shall remain in full force and effect, regardless of any investigation made by or on behalf of any Holder or the Company or any of the indemnified persons referred to in this Section 5, and shall survive the sale by a Holder of securities covered by the Shelf Registration Statement.

6. *Underwritten Registrations.*

(a) In no event will the method of distribution of Registrable Securities take the form of an underwritten offering without the prior written consent of the Company. Consent may be conditioned on waivers of any of the obligations in Section 3, Section 4 or Section 5 hereof.

(b) If any Registrable Securities are to be sold in an underwritten offering, the underwriters shall be selected by the Company.

(c) No person may participate in any underwritten offering pursuant to the Shelf Registration Statement unless such person: (i) agrees to sell such person's Registrable Securities on the basis reasonably provided in any underwriting arrangements approved by the Company; and (ii) completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements and other documents reasonably required under the terms of such underwriting arrangements.

7. *Registration Defaults.* If any of the following events shall occur as a result of the Company's failure to satisfy its obligations hereunder (each, a "**Registration Default**"), then the Issuers shall pay additional interest on the Notes ("**Additional Interest**") to the Holders of the Notes as follows:

(a) if the Shelf Registration Statement has not been filed with the Commission and become or declared effective, as the case may be, on or prior to the 120th day after the Closing Date, then commencing on the 121st day after the Closing Date, Additional Interest shall accrue on the aggregate outstanding Accreted Principal Amount of the Notes at a rate of (I) 0.25% per annum for the first 60 days from and including the 121st day after the Closing Date, (II) 0.50% per annum for the 60 days from and excluding the last day of the 60-day period described in clause (I) above, and (III) 0.75% per annum thereafter; or

(b) if the Shelf Registration Statement has been declared or becomes effective but ceases to be effective or usable for the offer and sale of the Registrable Securities, other than (i) in connection with a Deferral Period or (ii) as a result of the filing of a post-effective amendment or supplement to the Prospectus to make changes to the information regarding selling securityholders or the plan of distribution provided for therein, at any time during the Shelf Registration Period and the Company does not cure the lapse of effectiveness or usability within 10 Business Days (or, if a Deferral Period is then in effect and subject to the 10-Business Day filing requirement and the proviso regarding the filing of post-effective amendments in Section 2(d) with respect to any Notice and Questionnaire received during such period, within 10 Business Days following the expiration of such Deferral Period or period permitted pursuant to Section 2(d)), then Additional Interest shall accrue on the aggregate outstanding Accreted Principal Amount of the Notes at a rate of (I) 0.25% per annum for the first 60 days from and including the day following such 10th Business Day, (II) 0.50% per annum for the 60 days from and excluding the last day of the 60-day period described in clause (I) above, and (III) 0.75% per annum thereafter; or

(c) if the Company through its omission fails to name a Holder as a selling securityholder and such Holder had complied timely with its obligations hereunder in a manner to entitle such Holder to be so named in (i) the Shelf Registration Statement at the time it first became effective or (ii) any Prospectus at the later of time of filing thereof or the time the Shelf Registration Statement of which the Prospectus forms a part becomes effective, then Additional Interest shall accrue, on the aggregate outstanding Accreted Principal Amount of the Notes held by such Holder, at a rate of (I) 0.25% per annum for the first 60 days from and including the day following the effective date of such Shelf Registration Statement or the time of filing of such Prospectus, as the case may be, (II) 0.50% per annum for the 60 days from and excluding the last day of the 60-day period described in clause (I) above, and (III) 0.75% per annum thereafter, which Additional Interest shall be payable separately to such Holder at the account specified in writing by such Holder to the Company; or

(d) if the aggregate duration of Deferral Periods in any period exceeds the number of days permitted in respect of such period pursuant to Section 3(i) hereof, then commencing on the day the aggregate duration of Deferral Periods in any period exceeds the number of days permitted in respect of such period, Additional Interest shall accrue on the aggregate outstanding Accreted Principal Amount of the Notes at a rate of (I) 0.25% per annum for the first 60 days from and including such date, (II) 0.50% per annum for the 60 days from and excluding the last day of the 60-day period described in clause (I) above, and (III) 0.75% per annum thereafter;

provided, however, that (1) upon the filing and effectiveness (whether upon such filing or otherwise) of the Shelf Registration Statement (in the case of paragraph (a) above), (2) upon such time as the Shelf Registration Statement which had ceased to remain effective or usable for resales again becomes effective and usable for resales (in the case of paragraph (b) above), (3) upon the time such Holder is permitted to sell its Registrable Securities pursuant to any Shelf Registration Statement and Prospectus in accordance with applicable law (in the case of paragraph (c) above), (4) upon the termination of the Deferral Period that caused the limit on the aggregate duration of Deferral Periods in a period set forth in Section 3(i) to be exceeded (in the case of paragraph (d) above), or (5) in any case, notwithstanding the preceding clauses (1) through (4), upon the earlier of the two dates provided in clauses (i) and (ii) of Section 2(b), Additional Interest shall cease to accrue.

Any amounts of Additional Interest due pursuant to this Section 7 will be payable in arrears on each Special Interest Payment Date (as defined in the Supplemental Indenture) following accrual in the manner as set forth in Section 2.04 of the Supplemental Indenture and shall be in addition to any remedy relating to the failure to comply with the Issuers' obligations under Section 5.06(b) of the Supplemental Indenture. If any Note ceases to be outstanding during any period for which Additional Interest is accruing (other than as a result of the Holder exercising its exchange rights pursuant to Article 4 of the Supplemental Indenture), the Issuers will prorate the Additional Interest payable with respect to such Note.

The Additional Interest rate on the Notes payable under this Agreement shall not exceed in the aggregate 0.75% per annum and shall not be payable under more than one clause above for any given period of time, except that if Additional Interest would be payable because of more than one Registration Default, then the Additional Interest rate shall be the rate applicable to the Registration Default with the highest Additional Interest rate. Other than the Issuers' obligation to pay Additional Interest in accordance with this Section 7, neither the Company nor the Issuers will have any liability for damages with respect to a Registration Default.

Notwithstanding any provision in this Agreement, if a Registration Default occurs after a Holder has exchanged its Notes for Company Common Stock, such Holder shall not be entitled to any Additional Interest with respect to such Company Common Stock.

8. *No Inconsistent Agreements.* Neither the Company nor the Issuers have entered into, and agree not to enter into, any agreement with respect to its securities that conflicts with the registration rights granted to the Holders herein.

9. *Rule 144A and Rule 144.* So long as any Registrable Securities remain outstanding, the Company shall use its commercially reasonable efforts to file the reports required to be filed by it under Rule 144A(d)(4) under the Act and the Exchange Act in a timely manner and, if at any time the Company is not required to file such reports, it will, upon the written request of any Holder of Registrable Securities, make publicly available other information so long as necessary to permit sales of such Holder's Registrable Securities pursuant to Rules 144 and 144A of the Act. The Company covenants that it will take such further action as any Holder of Registrable Securities may reasonably request, all to the extent required from time to time to enable such Holder to sell Registrable Securities without registration under the Act within the limitation of the exemptions provided by Rules 144 and 144A (including, without limitation, the requirements of Rule 144A(d)(4)). Upon the written request of any Holder of Registrable Securities, the Company shall deliver to such Holder a written statement as to whether it has complied with such requirements. Notwithstanding the foregoing, nothing in this Section 9 shall be deemed to require the Company or the Issuers to register any of its securities pursuant to the Exchange Act.

10. *Amendments and Waivers.* The provisions of this Agreement may not be amended, qualified, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the Company and the Issuers have obtained the written consent of the Majority Holders; *provided that*, with respect to any matter that directly or indirectly affects

the rights of any Initial Purchaser hereunder, the Company and the Issuers shall obtain the written consent of each such Initial Purchaser against which such amendment, qualification, modification, supplement, waiver or consent is to be effective; *provided, further*, that no amendment, qualification, modification, supplement, waiver or consent with respect to Section 7 hereof shall be effective as against any Holder of Registrable Securities unless consented to in writing by such Holder; and *provided, further*, that the provisions of this Section 11 may not be amended, qualified, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the Company has obtained the written consent of the Initial Purchasers and each Holder.

11. *Notices.* All notices and other communications provided for or permitted hereunder shall be made in writing by hand-delivery, first class mail, telecopier or air courier guaranteeing overnight delivery:

(a) if to a Holder, at the most current address given by such holder to the Company in accordance with the provisions of the Notice and Questionnaire; *provided*, that notices and other communications to Holders of Notes held in global form may be provided through the applicable procedures of the Depository.

(b) if to the Initial Purchasers or the Representatives, initially at the address or addresses set forth in the Purchase Agreement; and

(c) if to the Company or the Issuers, initially at its address set forth in the Purchase Agreement.

All such notices and communications shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; five Business Days after being deposited in the mail, postage prepaid, if mailed; when receipt is acknowledged, if telecopied; and on the next Business Day if timely delivered to an air courier guaranteeing overnight delivery.

The Initial Purchasers, the Company or the Issuers by notice to the other parties may designate additional or different addresses for subsequent notices or communications.

Notwithstanding the foregoing, notices given to Holders holding in book-entry form may be given through the facilities of the Depository.

12. *Remedies.* Each Holder, in addition to being entitled to exercise all rights provided to it herein, in the Indenture or in the Purchase Agreement or granted by law, including recovery of liquidated or other damages, will be entitled to specific performance of its rights under this Agreement. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by them of the provisions of this Agreement and hereby agrees to waive in any action for specific performance the defense that a remedy at law would be adequate.

13. *Successors.* This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns, including, without the need for an express assignment or any consent by the Company and the Issuers thereto, subsequent Holders, and the indemnified persons referred to in Section 5 hereof. Each of the Company and the Issuers hereby agrees to extend the benefits of this Agreement to any Holder, and any such Holder may specifically enforce the provisions of this Agreement as if an original party hereto.

14. *Counterparts.* This Agreement may be signed in one or more counterparts (which may include counterparts delivered by any standard form of telecommunication), each of which shall constitute an original and all of which together shall constitute one and the same agreement.

15. *Headings.* The section headings used herein are for convenience only and shall not affect the construction or interpretation hereof.

16. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of New York. The parties hereto each hereby waive any right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

17. *Severability.* In the event that any one or more of the provisions contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired or affected thereby, it being intended that all of the rights and privileges of the parties shall be enforceable to the fullest extent permitted by law.

18. *Company Common Stock Held by the Company, etc.* Whenever the consent or approval of Holders of a specified percentage of shares of Company Common Stock is required hereunder, the shares of Company Common Stock held by the Company's Affiliates (other than subsequent Holders of such shares of Company Common Stock if such subsequent Holders are deemed to be Affiliates solely by reason of their holdings of such shares of Company Common Stock) shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

19. *Electronic Signatures.* The words "execution," "signed," "signature," and words of like import in this Agreement or in any other certificate, agreement or document related to this Agreement shall include images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, "pdf", "tif" or "jpg") and other electronic signatures (including, without limitation, DocuSign and AdobeSign). The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system 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 and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code.

If the foregoing is in accordance with your understanding of our agreement, please sign and return to us the enclosed duplicate hereof, whereupon this Agreement and your acceptance shall represent a binding agreement by and among the Company, the Issuers and the several Initial Purchasers.

Very truly yours,

HAT HOLDINGS I LLC

By: /s/ Jeffrey A. Lipson
Name: Jeffrey A. Lipson
Title: Executive Vice President

HAT HOLDINGS II LLC

By: /s/ Jeffrey A. Lipson
Name: Jeffrey A. Lipson
Title: Executive Vice President

HANNON ARMSTRONG SUSTAINABLE
INFRASTRUCTURE CAPITAL, INC.

By: /s/ Jeffrey A. Lipson
Name: Jeffrey A. Lipson
Title: Executive Vice President, Chief Financial
Officer and Chief Operating Officer

[Signature Page to Registration Rights Agreement]

The foregoing Agreement is hereby confirmed and accepted as of the date first above written.

For themselves and as Representatives
of the Initial Purchasers

MORGAN STANLEY & CO. LLC

By: /s/ Giulia Caterini
Name: Giulia Caterini
Title: Vice President

OPPENHEIMER & CO. INC.

By: /s/ John R. Book
Name: John R. Book
Title: Managing Director

[Signature Page to Registration Rights Agreement]