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

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the

Securities Exchange Act of 1934

Date of report (Date of earliest event reported): December 13, 2022

DIAMONDBACK ENERGY, INC.

(Exact Name of Registrant as Specified in Charter)

DE
(State or other jurisdiction of
incorporation)

001-35700
(Commission File Number)

45-4502447
(I.R.S. Employer
Identification Number)

**500 West Texas
Suite 100
Midland, TX**
(Address of principal
executive offices)

79701
(Zip code)

(432) 221-7400
(Registrant's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K 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 Securities Exchange Act of 1934:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock	FANG	The Nasdaq Stock Market LLC (NASDAQ Global Select Market)

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.

On December 13, 2022, Diamondback Energy, Inc. (the “Company”) completed its previously announced underwritten public offering (the “New Notes Offering”) of \$650,000,000 aggregate principal amount of the Company’s 6.250% Notes due 2053 (the “New Notes”).

The New Notes have been registered under the Securities Act of 1933, as amended (the “Act”), pursuant to a registration statement on Form S-3 (No. 333-268495), filed with the Securities and Exchange Commission (the “SEC”) and automatically effective on November 21, 2022 (the “Shelf Registration Statement”). The terms of the New Notes are further described in the Company’s prospectus supplement dated November 29, 2022, as filed with the SEC under Rule 424(b)(2) of the Act on December 1, 2022.

On December 13, 2022, the New Notes were issued pursuant to the Indenture (the “Base Indenture”), dated as of December 13, 2022, between the Company and Computershare Trust Company, National Association (the “Trustee”), as trustee, as supplemented by the First Supplemental Indenture, dated as of December 13, 2022 (the “First Supplemental Indenture” and, together with the Base Indenture, the “Indenture”), among the Company, Diamondback E&P LLC (the “Guarantor”), as guarantor, and the Trustee, setting forth specific terms applicable to the New Notes.

The New Notes are the Company’s general unsecured senior obligations and rank equally in right of payment with all of the Company’s existing and future senior indebtedness, including the Company’s outstanding senior notes and the Company’s guarantee of the obligations of the Guarantor under its revolving credit facility, and senior in right of payment to all of the Company’s future indebtedness that is subordinated in right of payment to the New Notes. The New Notes are effectively subordinated to the Company’s and the Guarantor’s existing and future secured indebtedness, if any, to the extent of the value of the collateral securing such indebtedness, and are structurally subordinated to all of the existing and future indebtedness and other liabilities (including trade payables) of each of the Company’s subsidiaries that is not a guarantor of the New Notes. The obligations under the New Notes are fully and unconditionally guaranteed on a senior unsecured basis by the Guarantor, except that in the future the guarantee may be released or terminated under certain circumstances as described in the Indenture.

The Company may redeem the New Notes in whole or in part at any time prior to September 15, 2052 (the “par call date”), at the redemption price calculated in the manner set forth in the Indenture. If the New Notes are redeemed on or after the par call date, the New Notes will be redeemed at a redemption price equal to 100% of the principal amount of the New Notes to be redeemed plus accrued and unpaid interest thereon to but not including the redemption date.

The Indenture contains customary terms and covenants, including limitations on the Company’s ability and the ability of certain of its subsidiaries to incur liens securing funded indebtedness and on the Company’s ability to consolidate or merge with or into, or sell, convey, transfer or lease all or substantially all of its properties and assets on a consolidated basis to, any person.

The foregoing description of the Indenture does not purport to be complete and is qualified in its entirety by reference to the full text of the Base Indenture and the Supplemental Indenture, which are set forth as Exhibit 4.1 and 4.2, respectively, hereto and are incorporated by reference herein.

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

The information set forth in Item 1.01 above with respect to the New Notes is incorporated by reference into this Item 2.03.

Item 8.01. Other Events

Legal Opinion Relating to the New Notes

In connection with closing of the New Notes Offering, the Company is filing a legal opinion of Akin Gump Strauss Hauer & Feld LLP regarding the legality of the New Notes issued in the New Notes Offering, attached as Exhibit 5.1 to this Current Report on Form 8-K, to incorporate such opinion by reference into the Shelf Registration Statement.

Item 9.01. Financial Statements and Exhibits

Exhibit Number	Description
<u>4.1*</u>	<u>Indenture, dated as of December 13, 2022, between Diamondback Energy, Inc. and Computershare Trust Company, National Association, as trustee.</u>
<u>4.2*</u>	<u>First Supplemental Indenture, dated as of December 13, 2022, among Diamondback Energy, Inc., Diamondback E&P LLC and Computershare Trust Company, National Association, as trustee (including the form of the New Notes).</u>
<u>5.1*</u>	<u>Opinion of Akin Gump Strauss Hauer & Feld LLP.</u>
<u>23.1*</u>	<u>Consent of Akin Gump Strauss Hauer & Feld LLP (included in Exhibit 5.1 hereto).</u>
104	Cover Page Interactive Data File (formatted as Inline XBRL).

* Filed herewith.

SIGNATURE

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.

DIAMONDBACK ENERGY, INC.

Date: December 13, 2022

By: /s/ Teresa L. Dick

Name: Teresa L. Dick

Title: Executive Vice President and Chief Accounting Officer

DIAMONDBACK ENERGY, INC.

and

ANY GUARANTORS PARTY HERETO

to

COMPUTERSHARE TRUST COMPANY, NATIONAL ASSOCIATION

Trustee

INDENTURE

Dated as of December 13, 2022

DEBT SECURITIES

DIAMONDBACK ENERGY, INC.
 Certain Sections of this Indenture relating to Sections 310
 through 318, inclusive, of the Trust Indenture Act of 1939

Trust Indenture Act Section	Indenture Section
Section 310(a)(1)	609
(a)(2)	609
(a)(3)	Not Applicable
(a)(4)	Not Applicable
(b)	608
Section 311(a)	613
(b)	613
Section 312(a)	701
	702
(b)	702
(c)	702
Section 313(a)	703
(b)	703
(c)	106, 703
(d)	703
Section 314(a)	704
(a)(4)	101
(b)	Not Applicable
(c)(1)	102
(c)(2)	102
(c)(3)	Not Applicable
(d)	Not Applicable
(e)	102
Section 3.15(a)	601
(b)	602
(c)	601
(d)	601
(e)	514
Section 316(a)	101
(a)(1)(A)	502
	512
(a)(1)(B)	513
(a)(2)	Not Applicable
(b)	508
(c)	104
Section 317(a)(1)	503
(a)(2)	504
(b)	1003
Section 318(a)	107

Note: This reconciliation and tie shall not, for any purpose, be deemed to be a part of the Indenture.

Table of Contents

ARTICLE I DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION	1
Section 101 Definitions	1
Section 102 Compliance Certificates and Opinions	8
Section 103 Form of Documents Delivered to Trustee	9
Section 104 Acts of Holders; Record Dates	10
Section 105 Notices, Etc., to Trustee, Company and Guarantors	12
Section 106 Notice to Holders; Waiver	12
Section 107 Trust Indenture Act Matters	13
Section 108 Effect of Headings and Table of Contents	13
Section 109 Successors and Assigns	14
Section 110 Separability Clause	14
Section 111 Benefits of Indenture	14
Section 112 Governing Law	14
Section 113 Legal Holidays	14
Section 114 No Adverse Interpretation of Other Agreements	14
Section 115 No Personal Liability of Directors, Officers, Employees and Stockholders	14
Section 116 Language of Notices, Etc.	15
Section 117 Force Majeure	15
Section 118 Waiver of Jury Trial	15
Section 119 Counterparts and E-signatures	15
Section 120 U.S.A. PATRIOT Act	16
ARTICLE II SECURITY FORMS	16
Section 201 Forms Generally	16
Section 202 Form of Face of Security	17
Section 203 Form of Reverse of Security	19
Section 204 Form of Legend for Global Securities	23
Section 205 Form of Trustee's Certificate of Authentication	23
ARTICLE III THE SECURITIES	24
Section 301 Amount Unlimited; Issuable in Series	24
Section 302 Denominations	28
Section 303 Execution, Authentication, Delivery and Dating	28
Section 304 Temporary Securities	30
Section 305 Registration, Registration of Transfer and Exchange	31
Section 306 Mutilated, Destroyed, Lost and Wrongfully Taken Securities	33
Section 307 Payment of Interest; Interest Rights Preserved	34
Section 308 Persons Deemed Owners	35
Section 309 Cancellation	35
Section 310 Computation of Interest	36
Section 311 CUSIP Numbers	36
ARTICLE IV SATISFACTION AND DISCHARGE	36
Section 401 Satisfaction and Discharge of Indenture	36
Section 402 Application of Trust Money	37

ARTICLE V REMEDIES	38
Section 501 Events of Default	38
Section 502 Acceleration of Maturity; Rescission and Annulment	39
Section 503 Collection of Indebtedness and Suits for Enforcement by Trustee	41
Section 504 Trustee May File Proofs of Claim	41
Section 505 Trustee May Enforce Claims Without Possession of Securities	42
Section 506 Application of Money Collected	42
Section 507 Limitation on Suits	42
Section 508 Unconditional Right of Holders to Receive Principal, Premium and Interest and to Convert	43
Section 509 Restoration of Rights and Remedies	43
Section 510 Rights and Remedies Cumulative	43
Section 511 Delay or Omission Not Waiver	43
Section 512 Control by Holders	44
Section 513 Waiver of Past Defaults	44
Section 514 Undertaking for Costs	44
Section 515 Waiver of Usury, Stay or Extension Laws	45
ARTICLE VI THE TRUSTEE	45
Section 601 Certain Duties and Responsibilities	45
Section 602 Notice of Defaults	46
Section 603 Certain Rights of Trustee	47
Section 604 Not Responsible for Recitals or Issuance of Securities	48
Section 605 May Hold Securities	48
Section 606 Money Held in Trust	49
Section 607 Compensation and Reimbursement	49
Section 608 Conflicting Interests	50
Section 609 Corporate Trustee Required; Eligibility	50
Section 610 Resignation and Removal; Appointment of Successor	50
Section 611 Acceptance of Appointment by Successor	52
Section 612 Merger, Conversion, Consolidation or Succession to Business	53
Section 613 Preferential Collection of Claims Against Company	53
Section 614 Appointment of Authenticating Agent	53
ARTICLE VII HOLDERS' LISTS AND REPORTS BY TRUSTEE AND COMPANY	55
Section 701 Company to Furnish Trustee Names and Addresses of Holders	55
Section 702 Preservation of Information; Communications to Holders	55
Section 703 Reports by Trustee	56
Section 704 Reports by Company and Guarantors	56
ARTICLE VIII CONSOLIDATION, MERGER, SALE, CONVEYANCE, TRANSFER OR LEASE	57
Section 801 Company May Consolidate, Etc., Only on Certain Terms	57
Section 802 Successor Substituted	57

ARTICLE IX SUPPLEMENTAL INDENTURES	58
Section 901 Supplemental Indentures Without Consent of Holders	58
Section 902 Supplemental Indentures With Consent of Holders	59
Section 903 Execution of Supplemental Indentures	61
Section 904 Effect of Supplemental Indentures	61
Section 905 Conformity with Trust Indenture Act	61
Section 906 Reference in Securities to Supplemental Indentures	61
Section 907 Waivers	61
ARTICLE X COVENANTS	62
Section 1001 Payment of Principal, Premium and Interest	62
Section 1002 Maintenance of Office or Agency	62
Section 1003 Money for Securities Payments to Be Held in Trust	62
Section 1004 Corporate Existence	63
Section 1005 Statement by Officer as to Default	64
Section 1006 Waiver of Certain Covenants	64
ARTICLE XI REDEMPTION OF SECURITIES	65
Section 1101 Applicability of Article	65
Section 1102 Election to Redeem; Notice to Trustee	65
Section 1103 Selection by Trustee of Securities to Be Redeemed	65
Section 1104 Notice of Redemption	66
Section 1105 Deposit of Redemption Price	67
Section 1106 Securities Payable on Redemption Date	68
Section 1107 Securities Redeemed in Part	68
Section 1108 No Limit on Repurchases	68
ARTICLE XII SINKING FUNDS	69
Section 1201 Applicability of Article	69
Section 1202 Satisfaction of Sinking Fund Payments with Securities	69
Section 1203 Redemption of Securities for Sinking Fund	69
ARTICLE XIII DEFEASANCE AND COVENANT DEFEASANCE	70
Section 1301 Company's Option to Effect Defeasance or Covenant Defeasance	70
Section 1302 Defeasance and Discharge	70
Section 1303 Covenant Defeasance	71
Section 1304 Conditions to Defeasance or Covenant Defeasance	71
Section 1305 Deposited Money and U.S. Government Obligations to Be Held in Trust; Miscellaneous Provisions	73
Section 1306 Reinstatement	74
ARTICLE XIV GUARANTEES	74
Section 1401 Guarantees	74

INDENTURE, dated as of December 13, 2022, among DIAMONDBACK ENERGY, INC., a corporation duly organized and existing under the laws of the State of Delaware (herein called the “*Company*”), having its principal office at 500 West Texas, Suite 100, Midland, Texas 79701, the Guarantors party hereto from time to time, each having its principal office at 500 West Texas, Suite 100, Midland, Texas 79701, and COMPUTERSHARE TRUST COMPANY, NATIONAL ASSOCIATION, as trustee (herein called the “*Trustee*”).

RECITALS OF THE COMPANY

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its unsecured debentures, notes or other evidences of indebtedness (herein called the “*Securities*”) to be issued in one or more series as in this Indenture provided.

All things necessary to make this Indenture a valid agreement of the Company in accordance with its terms have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually agreed, for the equal and proportionate benefit of all Holders of the Securities or of series thereof, as follows:

ARTICLE I DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 101 Definitions. For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

- (1) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;
- (2) all other terms used herein that are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;
- (3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP;
- (4) unless the context otherwise requires, any reference to an “Article” or a “Section” refers to an Article or a Section, as the case may be, of this Indenture;
- (5) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision;
- (6) when used with respect to any Security, the words “convert,” “converted” and “conversion” are intended to refer to the right of the Holder or the Company to convert or exchange such Security into or for securities or other property in accordance with such terms, if any, as may hereafter be specified for such Security as contemplated by Section 301, and these words are not intended to refer to any right of the Holder or the Company to exchange such Security for other Securities of the same series and like tenor pursuant to Section 304, Section 305, Section 306, Section 906 or Section 1107 or another similar provision of this Indenture, unless the context otherwise requires; and references herein to the terms of any Security that may be converted mean such terms as may be specified for such Security as contemplated in Section 301;

(7) unless the context otherwise requires, any reference to “duly provided for” and other words of similar import with respect to any amount or property required to be paid or delivered, as applicable, shall include, without limitation, having made such amount or property available for payment or delivery;

(8) references to sections of or rules under the Securities Act shall be deemed to include substitute, replacement or successor sections or rules adopted by the Commission from time to time;

(9) when the words “includes” or “including” are used herein, they shall be deemed to be followed by the words “without limitation;” and

(10) “or” is not exclusive.

“**Act**,” when used with respect to any Holder, has the meaning specified in Section 104.

“**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.

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

“**Authenticating Agent**” means, when used with respect to Securities of any series, any Person authorized by the Trustee to act on behalf of the Trustee to authenticate the Securities of such series.

“**Board of Directors**” means any of (a) the board of directors of the Company, (b) any duly authorized committee of that board or (c) any officer of the Company duly authorized by the board of directors of the Company to take a specified action.

“**Board Resolution**” means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee. Where any provision of this Indenture refers to action to be taken pursuant to a Board Resolution (including the establishment of any series of the Securities and the forms and terms thereof), such action may be taken by any officer or employee of the Company authorized to take such action by the Board of Directors as evidenced by a Board Resolution.

“**Business Day**,” when used with respect to any Place of Payment, means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which banking institutions in that Place of Payment are authorized or obligated by law or executive order to close; provided that, when used with respect to any Security, “Business Day” may have such other meaning, if any, as may be specified for such Security as contemplated by Section 301.

“**Commission**” means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or, if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

“**Company**” means the Person named as the “Company” in the first paragraph of this instrument until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Company” shall mean such successor Person.

“**Company Request**” or “**Company Order**” means a written request or order signed in the name of the Company by any Officer of the Company.

“**Corporate Trust Office**” means the designated office of the Trustee at which at any particular time its corporate trust business shall be administered and which, at the date hereof, is located at 600 South Fourth Street, Corporate Trust Operations MAC N9300-070, Minneapolis, Minnesota 55415, attention Diamondback Energy, Inc. Account Manager, or at such other address as the Trustee may designate from time to time by notice to the Holders and the Company (or such other address as a successor Trustee may designate from time to time by notice to the Holders and the Company).

“**corporation**” means a corporation, association, company (including a limited liability company), joint-stock company, business trust or other business entity (other than a partnership).

“**Covenant Defeasance**” has the meaning specified in Section 1303.

“**Defaulted Interest**” has the meaning specified in Section 307.

“**Defeasance**” has the meaning specified in Section 1302.

“**Depository**” means, with respect to Securities of any series issuable in whole or in part in the form of one or more Global Securities, a clearing agency registered under the Exchange Act that is designated to act as depository for such Securities as contemplated by Section 301.

“**DTC**” has the meaning specified in Section 104.

“**Event of Default**” has the meaning specified in Section 501.

“**Exchange Act**” means the Securities Exchange Act of 1934 and any statute successor thereto, in each case as amended from time to time.

“Expiration Date” has the meaning specified in Section 104.

“GAAP” means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, the Public Company Accounting Oversight Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect from time to time. All ratio computations based on GAAP contained in this Indenture will be computed in conformity with GAAP; provided that, when used with respect to any Security, “GAAP” may have such other meaning, if any, as may be specified for such Security as contemplated by Section 301.

“Global Security” means a Security that evidences all or part of the Securities of any series and bears the legend set forth in Section 204 (or such legend as may be specified as contemplated by Section 301 for such Securities).

“Guarantee” means a guarantee of any Securities by a Guarantor as contemplated by Article XIV; *provided* that the term “Guarantee,” when used with respect to any Security or with respect to the Securities of any series, means a guarantee of such Security or of the Securities of such series, respectively, by a Guarantor of such Security or of the Securities of such series, respectively, as contemplated by Article XIV.

“Guarantor” means any Person that shall have become a Guarantor under this Indenture pursuant to Section 301 or Section 901 hereof, in each case unless and until a successor Person shall have become a successor thereto pursuant to the applicable provisions of this Indenture in place thereof, and thereafter references to such Guarantor shall mean such successor Person; *provided* that: (i) the term “Guarantor,” when used with respect to the Securities of any series, means the Persons who shall from time to time be the Guarantors of Securities of such series as contemplated by Article XIV; and (ii) any Person constituting a Guarantor with respect to the Securities of a series shall cease to constitute a Guarantor with respect to Securities of such series when its Guarantee is released with respect to Securities of such series in accordance with the terms of this Indenture or any relevant indenture supplemental hereto.

“Guarantor’s Board of Directors” means, with respect to any Guarantor, any of (a) the board of directors (or other governing body) of such Guarantor, (b) any duly authorized committee of such board (or other governing body) or (c) any officer of such Guarantor duly authorized by the board of directors (or other governing body) of such Guarantor to take a specified action.

“Guarantor’s Board Resolution” means, with respect to any Guarantor, a copy of a resolution certified by the Secretary or an Assistant Secretary of such Guarantor to have been duly adopted by such Guarantor’s Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee. Where any provision of this Indenture refers to action to be taken pursuant to a Guarantor’s Board Resolution, such action may be taken by any officer or employee of such Guarantor authorized to take such action by such Guarantor’s Board of Directors as evidenced by a Guarantor’s Board Resolution.

“**Guarantor’s Officer’s Certificate**” means, with respect to any Guarantor, a certificate signed by any Officer of such Guarantor.

“**Guarantor Request**” or “**Guarantor Order**” means, with respect to any Guarantor, a written request or order signed in the name of such Guarantor by any Officer of such Guarantor.

“**Holder**” means a Person in whose name a Security is, at the time of determination, registered in the Security Register.

“**Indenture**” means this instrument as originally executed and as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, including, for all purposes of this instrument and any such supplemental indenture, the provisions of the Trust Indenture Act that are deemed to be a part of and govern this instrument and any such supplemental indenture. The term “Indenture” shall also include the terms of any particular series or specific Securities within a series and of any Guarantees thereof established as contemplated by Section 301.

“**interest**,” when used with respect to an Original Issue Discount Security that by its terms bears interest only after Maturity, means interest payable after Maturity.

“**Interest Payment Date**,” when used with respect to any Security, means the Stated Maturity of an installment of interest on such Security.

“**Maturity**,” when used with respect to any Security, means the date on which the principal of such Security or an installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by acceleration, call for redemption or otherwise.

“**Notice of Default**” means a written notice of the kind specified in Section 501(4).

“**Officer**” means, with respect to any Person, the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, the Chief Accounting Officer, any Executive Vice President, any Vice President, the Treasurer, the Secretary or any Assistant Secretary of such Person (or, if such Person is a partnership, the general partner thereof) or any other officer or officers of such Person (or such general partner) designated in a writing by or pursuant to authority of the Board of Directors (if such Person is the Company) or the Guarantor’s Board of Directors with respect to such Guarantor (if such Person is a Guarantor) and delivered to the Trustee from time to time.

“**Officer’s Certificate**” means a certificate signed on behalf of the Company by an Officer of the Company, who shall be the principal executive officer, the principal financial officer, the treasurer or the principal accounting officer of the Company, that meets the requirements of Section 102.

“**Opinion of Counsel**” means a written opinion from legal counsel (who may be an employee of or counsel for the Company or any Affiliate thereof) who is reasonably acceptable to the Trustee that meets the requirements of Section 102.

“**Original Issue Discount Security**” means any Security that provides for an amount less than the principal amount thereof to be due and payable upon an acceleration of the Maturity thereof pursuant to Section 502.

“**Outstanding**,” when used with respect to Securities, means, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except:

- (1) Securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;
- (2) Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities; provided that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made;
- (3) Securities as to which Defeasance has been effected pursuant to Section 1302;
- (4) Securities that have been paid pursuant to Section 306 or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Securities are held by a protected purchaser in whose hands such Securities are valid obligations of the Company; and
- (5) Securities as to which any property deliverable upon conversion thereof has been delivered (or such delivery has been duly provided for), or as to which any other particular conditions have been satisfied, in each case as may be provided for such Securities as contemplated in Section 301;

provided, however, that in determining whether the Holders of the requisite principal amount of the Outstanding Securities have given, made or taken any request, demand, authorization, direction, notice, consent, waiver or other action hereunder as of any date, (A) the principal amount of an Original Issue Discount Security that shall be deemed to be Outstanding shall be the amount of the principal thereof that would be due and payable as of such date upon acceleration of the Maturity thereof to such date pursuant to Section 502, (B) if, as of such date, the principal amount payable at the Stated Maturity of a Security is not determinable, the principal amount of such Security that shall be deemed to be Outstanding shall be the amount as specified or determined as contemplated by Section 301, (C) the principal amount of a Security denominated in one or more foreign currencies, composite currencies or currency units that shall be deemed to be Outstanding shall be the U.S. dollar equivalent, determined as of such date in the manner provided as contemplated by Section 301, of the principal amount of such Security (or, in the case of a Security described in Clause (A) or (B) above, of the amount determined as provided in such Clause), and (D) Securities owned by the Company, any Guarantor of the Securities or any other obligor upon the Securities or any Affiliate of the Company or any such Guarantor or of such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent, waiver or other action, only Securities that a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Securities so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee’s right so to act with respect to such Securities and that the pledgee is not the Company or any Guarantor of such Securities or any other obligor upon the Securities or any Affiliate of the Company or a Guarantor of the Securities or such other obligor.

“**Paying Agent**” means any Person authorized by the Company to pay the principal of or any premium or interest on any Securities on behalf of the Company.

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

“**Place of Payment**,” when used with respect to the Securities of any series and subject to Section 1002, means the place or places where the principal of and any premium and interest on the Securities of that series are payable as contemplated by Section 301.

“**Predecessor Security**” of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 306 in exchange for or in lieu of a mutilated, destroyed, lost or wrongfully taken Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or wrongfully taken Security.

“**Redemption Date**,” when used with respect to any Security to be redeemed, means the date fixed for such redemption by or pursuant to this Indenture.

“**Redemption Price**,” when used with respect to any Security to be redeemed, means the price at which it is to be redeemed pursuant to this Indenture.

“**Regular Record Date**” for the interest payable on any Interest Payment Date on the Securities of any series, means the date specified for that purpose as contemplated by Section 301.

“**Responsible Officer**,” when used with respect to the Trustee, means any officer within the corporate trust department of the Trustee (or any successor group of the Trustee) or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his or her knowledge of and familiarity with the particular subject.

“**Securities**” has the meaning stated in the first recital of this Indenture and more particularly means any Securities authenticated and delivered under this Indenture.

“**Securities Act**” means the Securities Act of 1933 and any statute successor thereto, in each case as amended from time to time.

“**Security Register**” and “**Security Registrar**” have the respective meanings specified in Section 305.

“**Signature Law**” has the meaning specified in Section 119.

“**Special Record Date**” for the payment of any Defaulted Interest, means a date fixed by the Trustee pursuant to Section 307.

“**Stated Maturity**,” when used with respect to any Security or any installment of principal thereof or interest thereon, means the date specified in such Security as the fixed date on which the principal of such Security or such installment of principal or interest is due and payable.

“**Subsidiary**,” with respect to any Person, means any (i) corporation of which the outstanding capital stock having a majority of the votes entitled to be cast in the election of directors, managers or trustees of such corporation under ordinary circumstances shall at the time be owned, directly or indirectly, by such Person or any other Person of which a majority of the voting interests under ordinary circumstances is at the time, directly or indirectly, owned by such Person or (ii) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

“**Successor Guarantor**” has the meaning specified in Section 1401.

“**Trust Indenture Act**” means the Trust Indenture Act of 1939 as in force at the date as of which this Indenture was executed; provided, however, that in the event the Trust Indenture Act of 1939 is amended after such date, “**Trust Indenture Act**” means, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

“**Trustee**” means the Person named as the “**Trustee**” in the first paragraph of this instrument until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “**Trustee**” shall mean or include each Person who is then a Trustee hereunder, and if at any time there is more than one such Person, “**Trustee**” as used with respect to the Securities of any series shall mean the Trustee with respect to Securities of that series.

“**Uniform Commercial Code**” means the Uniform Commercial Code in effect in the State of Delaware or the State of New York, as applicable, in each case as amended from time to time.

“**U.S. Government Obligation**” has the meaning specified in Section 1304.

“**Vice President**,” when used with respect to the Company, any Guarantor or the Trustee, means any executive vice president and any senior vice president, whether or not designated by a number or a word or words added before or after the title “executive vice president” or “senior vice president.”

Section 102 Compliance Certificates and Opinions. Upon any application or request by the Company or a Guarantor to the Trustee to take any action under any provision of this Indenture, the Company or such Guarantor, as the case may be, shall furnish to the Trustee such certificates and opinions as may be required under the Trust Indenture Act. Each such certificate or opinion shall be given in the form of an Officer’s Certificate, if to be given by an officer of the Company, or a Guarantor’s Officer’s Certificate, if to be given by an officer of any Guarantor, or an Opinion of Counsel, if to be given by counsel, and shall comply with the requirements of the Trust Indenture Act and any other requirements set forth in this Indenture.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

- (1) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;
- (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (3) a statement that, in the opinion of each such individual, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (4) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

Section 103 Form of Documents Delivered to Trustee. In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an Officer of the Company or a Guarantor may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel. Any such certificate or opinion of, or representation by, counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an Officer or Officers of the Company or such Guarantor, as the case may be, stating that the information with respect to such factual matters is in the possession of the Company or such Guarantor, as the case may be.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

Section 104 Acts of Holders; Record Dates. Any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by or pursuant to this Indenture to be given, made or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent or agents duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company and any Guarantor. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the “*Act*” of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 601) conclusive in favor of the Trustee, the Company and any Guarantor, if made in the manner provided in this Section 104.

Without limiting the generality of this Section 104, unless otherwise provided in or pursuant to this Indenture, (i) a Holder, including a Depository or its nominee that is a Holder of a Global Security, may give, make or take, by an agent or agents duly appointed in writing, any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted in or pursuant to this Indenture to be given, made or taken by Holders, and a Depository or its nominee that is a Holder of a Global Security may duly appoint in writing as its agent or agents members of, or participants in, such Depository holding interests in such Global Security in the records of such Depository, and (ii) with respect to any Global Security the Depository for which is The Depository Trust Company (“*DTC*”), any consent or other action given, made or taken by an “agent member” of DTC by electronic means in accordance with the Automated Tender Offer Procedures system or other Applicable Procedures of, and pursuant to authorization by, DTC shall be deemed to constitute the “*Act*” of the Holder of such Global Security, and such Act shall be deemed to have been delivered to the Company, any Guarantor and the Trustee upon the delivery by DTC of an “agent’s message” or other notice of such consent or other action having been so given, made or taken in accordance with the Applicable Procedures of DTC.

The fact and date of the execution by any Person of any instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

The ownership of Securities shall be proved by the Security Register.

Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company or any Guarantor in reliance thereon, whether or not notation of such action is made upon such Security.

With respect to Securities of any series, the Company may set any day as a record date for the purpose of determining the Holders of Outstanding Securities of such series entitled to give, make or take any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given, made or taken by Holders of Securities of such series, provided that the Company may not set a record date for, and the provisions of this paragraph shall not apply with respect to, the giving, making or taking of any notice, declaration, request or direction referred to in the next paragraph. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities of the relevant series on such record date, and no other Holders, shall be entitled to give, make or take the relevant action, whether or not such Holders remain Holders after such record date; provided, however, that no such action shall be effective hereunder unless given, made or taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Securities of such series on such record date. Nothing in this paragraph shall be construed to prevent the Company from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be cancelled and of no effect), and nothing in this paragraph shall be construed to render ineffective any action given, made or taken by Holders of the requisite principal amount of Outstanding Securities of the relevant series on the date such action is given, made or taken. Promptly after any record date is set pursuant to this paragraph, the Company, at its own expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Trustee in writing and to each Holder of Securities of the relevant series in the manner set forth in Section 105 and Section 106.

The Trustee may set any day as a record date for the purpose of determining the Holders of Outstanding Securities of any series entitled to join in the giving, making or taking of (i) any Notice of Default, (ii) any declaration of acceleration referred to in Section 502, (iii) any request to institute proceedings referred to in Section 507(2) or (iv) any direction referred to in Section 512, in each case with respect to Securities of such series. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities of such series on such record date, and no other Holders, shall be entitled to give, make or take such notice, declaration, request or direction, whether or not such Holders remain Holders after such record date; provided, however, that no such action shall be effective hereunder unless given, made or taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Securities of such series on such record date. Nothing in this paragraph shall be construed to prevent the Trustee from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be cancelled and of no effect), and nothing in this paragraph shall be construed to render ineffective any action given, made or taken by Holders of the requisite principal amount of Outstanding Securities of the relevant series on the date such action is given, made or taken. Promptly after any record date is set pursuant to this paragraph, the Trustee, at the Company's expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Company and any Guarantor in writing and to each Holder of Securities of the relevant series in the manner set forth in Section 105 and Section 106.

With respect to any record date set pursuant to this Section 104, the party hereto which sets such record date may designate any day as the "**Expiration Date**" and from time to time may change the Expiration Date to any earlier or later day; provided that no such change shall be effective unless notice of the proposed new Expiration Date is given to the other party hereto in writing, and to each Holder of Securities of the relevant series in the manner set forth in Section 106, on or prior to the existing Expiration Date. If an Expiration Date is not designated with respect to any record date set pursuant to this Section 104, the party hereto which set such record date shall be deemed to have initially designated the 180th day after such record date as the Expiration Date with respect thereto, subject to its right to change the Expiration Date to an earlier day as provided in this paragraph. Notwithstanding the foregoing, no Expiration Date shall be later than the 180th day after the applicable record date.

Without limiting the foregoing, a Holder entitled hereunder to give, make or take any action hereunder with regard to any particular Security may do so, in person or by an agent duly appointed in writing, with regard to all or any part of the principal amount of such Security.

Section 105 Notices, Etc., to Trustee, Company and Guarantors. Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with, (1) the Trustee by any Holder or by the Company or any Guarantor shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if made, given, furnished or filed in writing and delivered in Person, mailed by first class mail (registered or certified, return receipt requested), transmitted by facsimile or sent by overnight courier guaranteeing next Business Day delivery to or with the Trustee addressed to it at its Corporate Trust Office or (2) the Company or a Guarantor by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if made, given, furnished or filed in writing and delivered in Person, mailed by first class mail (registered or certified, return receipt requested), transmitted by facsimile or sent by overnight courier guaranteeing next Business Day delivery, to or with the Company or such Guarantor, as the case may be, addressed to it at the address of its principal office specified in the first paragraph of this instrument, Attention: Chief Financial Officer, with a copy to Akin Gump Strauss Hauer & Feld LLP, 1111 Louisiana Street, 44th Floor, Houston, Texas 77002, Facsimile: (713) 236-0822, Attention: John Goodgame, or at any other address previously furnished in writing to the Trustee by the Company.

All requests, demands, authorizations, directions, notices, consents, waivers or Acts of Holders or other such documents made, given, furnished or filed with or to the Trustee, the Company or any Guarantor shall be deemed to have been duly made, given furnished or filed: (i) at the time delivered by hand, if personally delivered; (ii) upon confirmation of delivery, if mailed by first class mail (registered or certified, return receipt requested); (iii) when receipt is confirmed, if transmitted by facsimile; and (iv) the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next Business Day delivery. Notices given by publication will be deemed given on the first date on which publication is made.

Section 106 Notice to Holders; Waiver. Where this Indenture provides for notice or other communication to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if given in writing and mailed by first class mail (registered or certified, return receipt requested) or sent by overnight air courier guaranteeing next Business Day delivery, to each Holder affected by such event, at such Holder's address as it appears in the Security Register, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice or other communication. Any notice or other communication shall also be so mailed or otherwise sent to any Person described in Section 313(c) of the Trust Indenture Act, to the extent required by the Trust Indenture Act. Failure to mail or otherwise send a notice or other communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders.

If a notice or communication is mailed or otherwise sent in the manner provided above within the time prescribed, it is duly given, whether or not the addressee receives it. Where this Indenture provides for notice or other communication in any manner, such notice or other communication may be waived in writing by the Person entitled to receive such notice or other communication, either before or after the event, and such waiver shall be the equivalent of such notice or other communication. Waivers of notice or other communication by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver. If the Company mails or otherwise sends a notice or communication to the Holders, it shall send a copy to the Trustee at the same time.

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

Where this Indenture provides for notice or other communication with respect to any event to a Holder of a Global Security, such notice or other communication shall be sufficiently given if given to the Depositary for such Security (or its designee), pursuant to its Applicable Procedures, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice or other communication.

Section 107 Trust Indenture Act Matters. If any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Act that is required under the Trust Indenture Act to be a part of and govern this Indenture, the latter provision shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be. Whenever this Indenture refers to a provision of the Trust Indenture Act, the provision is incorporated by reference in and made a part of this Indenture.

Section 108 Effect of Headings and Table of Contents. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 109 Successors and Assigns. All covenants and agreements in this Indenture and the Securities by the Company, the Trustee and any Guarantor, except as otherwise provided in Section 802 and Section 1401, shall bind their respective successors and assigns, whether so expressed or not.

Section 110 Separability Clause. In case any provision in this Indenture, or in the Securities 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.

Section 111 Benefits of Indenture. Nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder and the Holders, any benefit or any legal or equitable right, remedy or claim under this Indenture, except as may otherwise be provided pursuant to Section 301 with respect to any Securities of a particular series or under this Indenture with respect to such Securities.

Section 112 Governing Law. This Indenture, the Guarantees and the Securities and the rights and obligations of the parties hereto and thereto, including the interpretation, construction, validity and enforceability thereof, shall be governed by and construed and interpreted in accordance with the law of the State of New York.

Section 113 Legal Holidays. In any case where any Interest Payment Date, Redemption Date or Maturity of any Security, or any date on which a Holder has the right to convert his Security, shall not be a Business Day at any Place of Payment, then (notwithstanding any other provision of this Indenture or of the Securities (other than a provision of any Security that specifically states that such provision shall apply in lieu of this Section 113)) payment of interest or principal (and premium, if any), or conversion of such Security need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date or Redemption Date, or at the Maturity, or on such date for conversion, as the case may be; provided, however, that no interest shall accrue with respect to such payment for the period from and after such Interest Payment Date, Redemption Date, Maturity or date for conversion, as the case may be.

Section 114 No Adverse Interpretation of Other Agreements. This Indenture may not be used to interpret any other indenture, loan or other agreement of the Company or any Guarantor or any Subsidiaries of the Company or any Guarantor or of any other Person. Any such indenture, loan or other agreement may not be used to interpret this Indenture.

Section 115 No Personal Liability of Directors, Officers, Employees and Stockholders. No past, present or future director, officer, employee, manager, member, partner, incorporator or stockholder of the Company or any Guarantor, as such, will have any liability for any obligations of the Company or any Guarantor, respectively, under the Securities or this Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of Securities by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Securities. The waiver may not be effective to waive liabilities under the federal securities laws.

Section 116 Language of Notices, Etc. Any request, demand, authorization, direction, notice, consent, waiver, other action or Act provided or permitted under this Indenture shall be in the English language, except that any published notice may be in an official language of the country of publication.

Section 117 Force Majeure. Subject to Section 601, 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 (i) any act or provision of any present or future law or regulation or governmental authority, (ii) any act of God, (iii) natural disaster, (iv) war, (v) terrorism, (vi) civil unrest, (vii) accidents, (viii) labor dispute, (ix) disease, (x) epidemic or pandemic, (xi) quarantine, (xii) national emergency, (xiii) loss or malfunction of utility or computer software or hardware, (xiv) communications system failure, (xv) malware or ransomware, (xvi) unavailability of the Federal Reserve Bank wire or telex system or other wire or other funds transfer systems, or (xvii) unavailability of any securities clearing system; it being understood that the Trustee shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 118 Waiver of Jury Trial. EACH OF THE COMPANY, EACH GUARANTOR AND THE TRUSTEE HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS INDENTURE.

Section 119 Counterparts and E-signatures. This Indenture shall be valid, binding, and enforceable against a party only when executed and delivered by an authorized individual on behalf of the party by means of (i) any electronic signature permitted by the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, and/or any other relevant electronic signatures law, including relevant provisions of the Uniform Commercial Code (collectively, "**Signature Law**"), (ii) an original manual signature or (iii) a faxed, scanned, or photocopied manual signature. Each electronic signature or faxed, scanned, or photocopied manual signature shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Each party hereto shall be entitled to conclusively rely upon, and shall have no liability with respect to, any faxed, scanned, or photocopied manual signature, or other electronic signature, of any party and shall have no duty to investigate, confirm or otherwise verify the validity or authenticity thereof. This Indenture may be executed in any number of counterparts, each of which shall be deemed to be an original, but such counterparts shall, together, constitute one and the same instrument. For avoidance of doubt, original manual signatures shall be used for execution or indorsement of writings when required under the Uniform Commercial Code or other Signature Law due to the character or intended character of the writings.

Section 120 U.S.A. PATRIOT Act. The parties hereto acknowledge that in accordance with the Customer Identification Program requirements under the USA PATRIOT Act and its implementing regulations, the Trustee 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 hereby agree that they shall provide the Trustee with such information as it may request including, but not limited to, each party's name, physical address, tax identification number and other information that will help the Trustee identify and verify each party's identity such as organizational documents, certificate of good standing, license to do business, or other pertinent identifying information.

ARTICLE II SECURITY FORMS

Section 201 Forms Generally. As to each series of Securities, (i) the Securities of such series shall be in substantially the form set forth in this Article, or in such other form as shall be established by or pursuant to a Board Resolution or in one or more indentures supplemental hereto, and (ii) if the Securities of such series are to be guaranteed by the Guarantees of any Guarantor as provided in Section 301 and the terms of such Securities provide for the endorsement thereon or attachment thereto of notations of guarantee by such Guarantor, such notations of guarantee to be endorsed on or attached to such Securities shall be in substantially such form as shall be established by or pursuant to a Guarantor's Board Resolution of such Guarantor or in one or more indentures supplemental hereto, in the case of (i) or (ii), with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this 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 Depository therefor or as may, consistently herewith, be determined by the officer executing such Securities or notations of guarantee, respectively, as evidenced by such officer's execution thereof. If the form of Securities of any series is established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Company Order contemplated by Section 303 for the authentication and delivery of such Securities. If the form of any notation of guarantee by any Guarantor to be endorsed on Securities of any series is established by action taken pursuant to a Guarantor's Board Resolution of such Guarantor, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of such Guarantor and delivered to the Trustee at or prior to the delivery of the Guarantor Order contemplated by Section 303 for the authentication and delivery of such Securities with such notation of guarantee endorsed thereon. For purposes hereof, a notation of guarantee that is endorsed on, or otherwise attached to, a Security shall be deemed "endorsed" on such Security.

The definitive Securities and any notations of guarantee endorsed thereon shall be printed, lithographed or engraved on steel engraved borders or may be produced in any other manner, all as determined by the officer of the Company executing such Securities.

Anything herein to the contrary notwithstanding, there shall be no requirement that any Security have endorsed thereon or attached thereto a notation of guarantee, but such notation of guarantee may be endorsed thereon or attached thereto as contemplated by this Section 201. The Guarantee of a Guarantor shall be evidenced only by its execution and delivery of this Indenture or an indenture supplemental hereto, and not by its execution and delivery of a notation of guarantee. A notation of guarantee shall be for notice purposes only and shall not constitute an enforceable agreement or instrument.

Section 202 Form of Face of Security.

[Insert any legend required by the Internal Revenue Code and the regulations thereunder.]

No. [●]

CUSIP [●]
\$[●]

DIAMONDBACK ENERGY, INC.

DIAMONDBACK ENERGY, INC., a corporation duly organized and existing under the laws of the State of Delaware (herein called the “*Company*,” which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to [●], or registered assigns, the principal sum of [●] Dollars on [●] [if the Security is to bear interest prior to Maturity, insert — , and to pay interest thereon from 20 *¹ or from the most recent Interest Payment Date to which interest has been paid or duly provided for, semi-annually on [●] and [●] in each year, commencing [●], and at the Maturity thereof, at the rate of [●]% per annum, until the principal hereof is paid or made available for payment, provided that any premium, and any such installment of interest, which is overdue shall bear interest at the rate of [●]% per annum (to the extent that the payment of such interest shall be legally enforceable), from the date such overdue amount is due until such amount is paid or duly provided for; and such interest on any overdue amount shall be payable on demand]. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in such Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, which shall be the [●] or [●] (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date. Any such interest so payable, but not punctually paid or duly provided for, will forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities of this series not less than 10 days prior to such Special Record Date, or be paid in any other lawful manner not inconsistent with the requirements of any securities exchange on which this Security may be listed, and upon such notice as may be required by such exchange, all as more fully provided in said Indenture.

¹ If the Securities of the applicable series are to be sold “flat,” insert the date of original issuance of Securities of such series. If the Securities of the applicable series are to be issued “with accrued interest,” insert the Interest Payment Date for Securities of such series next preceding the date of original issuance of Securities of such series.

[If the Security is not to bear interest prior to Maturity, insert — *The principal of this Security shall not bear interest except in the case of a default in payment of principal upon acceleration, upon redemption or at Stated Maturity and in such case the overdue principal and any overdue premium shall bear interest at the rate of [●]% per annum (to the extent that the payment of such interest shall be legally enforceable), from the dates such amounts are due until they are paid or made available for payment. Interest on any overdue principal or premium shall be payable on demand. Any such interest on overdue principal or premium that is not paid on demand shall bear interest at the rate of [●]% per annum (to the extent that the payment of such interest on interest shall be legally enforceable), from the date of such demand until the amount so demanded is paid or made available for payment. Interest on any overdue interest shall be payable on demand.*]

Payment of the principal of (and premium, if any) and [if applicable, insert — *any such*] interest on this Security will be made at the office or agency of the Company maintained for that purpose, which is initially the corporate trust office of the Trustee in Minneapolis, Minnesota, in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts, against surrender of this Security in the case of any payment due at the Maturity of the principal thereof or any payment of interest becomes payable on a day other than an Interest Payment Date; provided, however, that if this Security is not a Global Security, (i) payment of interest on an Interest Payment Date will be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register; and all other payments will be made by check against surrender of this Security; (ii) all payments by check will be made in next-day funds (i.e., funds that become available on the day after the check is cashed); and (iii) notwithstanding clauses (i) and (ii) above, with respect to any payment of any amount due on this Security, if this Security is in a denomination of at least \$1,000,000 and the Holder hereof at the time of surrender hereof or, in the case of any payment of interest on any Interest Payment Date, the Holder thereof on the related Regular Record Date delivers a written request to the Paying Agent to make such payment by wire transfer at least five Business Days before the date such payment becomes due, together with appropriate wire transfer instructions specifying an account at a bank in the United States of America, the Company shall make such payment by wire transfer of immediately available funds to such account at such bank, any such wire instructions, once properly given by a Holder as to this Security, remaining in effect as to such Holder and this Security unless and until new instructions are given in the manner described above; provided further, that notwithstanding anything in the foregoing to the contrary, if this Security is a Global Security, payment shall be made pursuant to the Applicable Procedures of the Depositary as permitted in the Indenture.

Reference is hereby made to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof by manual signature, this Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly signed manually or by facsimile by its duly authorized officer.

DIAMONDBACK ENERGY, INC.,
a Delaware corporation

By: _____
Name: _____
Title: _____

Section 203 Form of Reverse of Security. This Security is one of a duly authorized issue of securities of the Company (herein called the “**Securities**”), issued and to be issued in one or more series under an Indenture, dated as of December 13, 2022 (herein called the “**Indenture**,” which term shall have the meaning assigned to it in such instrument), among the Company, the Guarantors, if any, and Computershare Trust Company, National Association, as trustee (herein called the “**Trustee**,” which term includes any successor trustee under the Indenture), and reference is hereby made to the Indenture for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Company, the Guarantors, if any, 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 is one of the series designated on the face hereof [if applicable, insert — *limited in aggregate principal amount to \$[●]*].

This Security is the general, unsecured obligation of the Company [if applicable, insert — *and is guaranteed pursuant to a guarantee (the “Guarantee”) by [insert name of each Guarantor] and any other Person who shall become such in accordance with the Indenture (the “Guarantors”). The Guarantee by each Guarantor is the general, unsecured, senior obligation of such Guarantor, subject to the release and discharge thereof as provided in the Indenture*].

[If applicable, insert — *The Securities of this series are subject to redemption upon not less than 10 days’ nor more than 60 days’ notice, at any time [if applicable, insert — on or after [●], 20[●]], as a whole or in part, at the election of the Company, at the following Redemption Prices (expressed as percentages of the principal amount): If redeemed [if applicable, insert — on or before [●], [●]%, and if redeemed] during the 12-month period beginning [●] of the years indicated,*

Year

Redemption Price

Year

Redemption Price

and thereafter at a Redemption Price equal to [●]% of the principal amount, together in the case of any such redemption with accrued interest to the Redemption Date, but interest installments whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, of record at the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.]]

[If applicable, insert — The Securities of this series are subject to redemption upon not less than 10 nor more than 60 days' notice, (1) on [●] in any year commencing with the year [●] and ending with the year [●] through operation of the sinking fund for this series at the Redemption Prices for redemption through operation of the sinking fund (expressed as percentages of the principal amount) set forth in the table below, and (2) at any time [if applicable, insert — on or after [●], as a whole or in part, at the election of the Company, at the Redemption Prices for redemption otherwise than through operation of the sinking fund (expressed as percentages of the principal amount) set forth in the table below: If redeemed during the 12-month period beginning [●] of the years indicated,

Year	Redemption Price for Redemption Through Operation of the Sinking Fund	Redemption Price for Redemption Otherwise Than Through Operation of the Sinking Fund
-------------	--	---

and thereafter] at a Redemption Price equal to [●]% of the principal amount, together in the case of any such redemption (whether through operation of the sinking fund or otherwise) with accrued interest to the Redemption Date, but interest installments whose Stated Maturity is on or prior to such Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, of record at the close of business on the relevant Record Dates referred to on the face hereof, all as provided in the Indenture.]

[If applicable, insert — Notwithstanding the foregoing, the Company may not, prior to [●], redeem any Securities of this series as contemplated by [if applicable, insert — clause (2) of] the preceding paragraph as a part of, or in anticipation of, any refunding operation by the application, directly or indirectly, of moneys borrowed having an interest cost to the Company (calculated in accordance with generally accepted financial practice) of less than [●]% per annum.]

[If applicable, insert — The sinking fund for this series provides for the redemption on [●] in each year beginning with the year [●] and ending with the year [●] of [if applicable, insert — not less than \$[●] (“mandatory sinking fund”) and not more than] \$[●] aggregate principal amount of Securities of this series. Securities of this series acquired or redeemed by the Company otherwise than through [if applicable, insert — mandatory] sinking fund payments may be credited against subsequent [if applicable, insert — mandatory] sinking fund payments otherwise required to be made [if applicable, insert —, in the inverse order in which they become due.]]

[If the Security is subject to redemption of any kind, insert — *In the event of redemption of this Security in part only, a new Security or Securities of this series and of like tenor for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof.*]

[If applicable, insert — *The Indenture contains provisions for defeasance at any time of the entire indebtedness of this Security or certain restrictive covenants and Events of Default with respect to this Security, in each case upon compliance with certain conditions set forth in the Indenture.*]

[If applicable, insert — *As provided in the Indenture and subject to certain limitations therein set forth, the obligations of the Company under this Security are guaranteed by each of the Guarantors pursuant to the Indenture [as indicated in the notation of guarantee endorsed hereon]. The Indenture provides that a Guarantor shall be released from its Guarantee upon compliance with certain conditions.*]

[If the Security is not an Original Issue Discount Security, insert — *If an Event of Default with respect to Securities of this series shall occur and be continuing, the principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture.*]

[If the Security is an Original Issue Discount Security, insert — *If an Event of Default with respect to Securities of this series shall occur and be continuing, an amount of principal of the Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture. Such amount shall be equal to — insert formula for determining the amount. Upon payment (i) of the amount of principal so declared due and payable and (ii) of interest on any overdue principal, premium and interest (in each case to the extent that the payment of such interest shall be legally enforceable), all of the Company's obligations in respect of the payment of the principal of and premium and interest, if any, on the Securities of this series shall terminate.*]

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company [if applicable, insert — *and the Guarantors*] and the rights of the Holders of the Securities to be affected under the Indenture at any time by the Company [if applicable, insert — *and the Guarantors*] and the Trustee with the consent of the Holders of a majority in principal amount (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, Securities) of all Securities at the time Outstanding to be affected (considered together as one class for this purpose and such Securities to be affected potentially being Securities of the same or different series and, with respect to any series, potentially comprising fewer than all the Securities of such series), except as may otherwise be provided pursuant to the Indenture for all or any specific Securities of any series. The Indenture also contains provisions (i) permitting the Holders of a majority in principal amount (including waivers obtained in connection with a purchase of, or tender offer or exchange offer for, Securities) of the Securities at the time Outstanding to be affected under the Indenture (considered together as one class for this purpose and such affected Securities potentially being Securities of the same or different series and, with respect to any particular series, potentially comprising fewer than all the Securities of such series), on behalf of the Holders of all Securities so affected, to waive compliance by the Company [if applicable, insert — *and the Guarantors*] with certain provisions of the Indenture and (ii) permitting the Holders of a majority in principal amount (including waivers obtained in connection with a purchase of, or tender offer or exchange offer for, Securities) of the Securities at the time Outstanding of any series to be affected under the Indenture (with each such series considered separately for this purpose), on behalf of the Holders of all Securities of such series, to waive certain past defaults under the Indenture with respect to such series and their consequences, in the case of Clause (i) or (ii), except as may otherwise be provided pursuant to the Indenture for all or any specific Securities of any series. 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 Securities of this series, the Holders of not less than 25% in principal amount of the Securities of this series at the time Outstanding shall have made written request to the Trustee to institute proceedings in respect of such Event of Default and offered the Trustee security or indemnity reasonably satisfactory to it, and the Trustee shall not have received from the Holders of a majority in principal amount of Securities of this series 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 security or indemnity. The foregoing shall not apply to any suit instituted by the Holder of this Security for the enforcement of any payment of principal hereof or any premium or interest hereon 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 shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and any premium and interest on this Security at the times, place and rate, and in the coin or currency, herein prescribed [if applicable, insert — *or alter or impair the obligation of each Guarantor, which is absolute and unconditional, to pay pursuant to its Guarantee*].

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Security Register, upon surrender of this Security for registration of transfer at the office or agency of the Company in any place where the principal of and any premium and interest on this Security are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or his 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 principal amount, will be issued to the designated transferee or transferees.

The Securities of this series are issuable only in registered form without coupons in denominations of \$2,000 and any integral multiple of \$1,000 in excess thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities of this series are exchangeable for a like aggregate principal amount of Securities of this series and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Security for registration of transfer, the Company, [if applicable, insert — *any Guarantor*]; the Trustee and any agent of the Company [if applicable, insert — *any Guarantor*] or the Trustee shall treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, [if applicable, insert — *any Guarantor*]; the Trustee nor any such agent shall be affected by notice to the contrary.

[If this Security is a Global Security, insert — *This Security is a Global Security and is subject to the provisions of the Indenture relating to Global Securities, including the limitations therein on transfers and exchanges of Global Securities.*]

This Security and the Indenture shall be governed by and construed in accordance with the law of the State of New York.

All terms used in this Security that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

Section 204 Form of Legend for Global Securities. Unless otherwise specified as contemplated by Section 301 for the Securities evidenced thereby, every Global Security authenticated and delivered hereunder shall bear a legend in substantially the following form:

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.

Section 205 Form of Trustee's Certificate of Authentication. The Trustee's certificates of authentication shall be in substantially the following form:

This is one of the Securities of the series designated herein and referred to in the within-mentioned Indenture.

Dated: _____], as Trustee

By: _____
Authorized Signatory

**ARTICLE III
THE SECURITIES**

Section 301 Amount Unlimited; Issuable in Series. The aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued in one or more series. There shall be established in or pursuant to a Board Resolution, and, subject to Section 303, set forth, or determined in the manner provided, in an Officer's Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any series:

- (1) the title of the Securities of the series (which shall distinguish the Securities of the series from Securities of any other series);
- (2) any limit upon the aggregate principal amount of the Securities of the series that may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to Section 304, Section 305, Section 306, Section 906 or Section 1107 and except for any Securities that, pursuant to Section 303, are deemed never to have been authenticated and delivered hereunder);
- (3) the Person to whom any interest on a Security of the series shall be payable, if other than the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest;
- (4) the date or dates on which the principal of any Securities of the series is payable or the method of determination thereof and the amount of principal that will be payable;
- (5) the rate or rates (which may be fixed or variable) at which the Securities of the series shall bear interest, if any, or contingent interest, if any, or the formula, method or provision pursuant to which such rate or rates are determined, and the date or dates from which such interest shall accrue or the method of determination thereof;
- (6) the Interest Payment Dates on which any such interest shall be payable and the Regular Record Date for any such interest payable on any Interest Payment Date;
- (7) the place or places where the principal of and any premium and interest on any Securities of the series shall be payable and the manner in which any payment may be made;

(8) the Company's option, if any, to redeem or prepay the Securities of the series, in whole or in part, the period or periods within which, and the price or prices at which, such redemption or prepayment may occur, and the other terms and conditions of any such redemptions or prepayments;

(9) the Company's obligation, if any, whether pursuant to a sinking fund or otherwise, to redeem, purchase, repurchase, or offer to purchase or repurchase, the Securities of the series, in whole or in part, the period or periods within which, and the price or prices at which, such redemption, purchase or repurchase must occur, and the other terms and conditions of any such redemptions, purchases and repurchases;

(10) if other than denominations of \$2,000 and any integral multiple of \$1,000 in excess thereof, the denominations in which any Securities of the series shall be issuable;

(11) if the amount of principal of or any premium or interest on any Securities of the series may be determined with reference to an index or pursuant to a formula, the manner in which such amounts shall be determined;

(12) if other than the currency of the United States of America, the currency, currencies, composite currency, composite currencies or currency units in which the principal of or any premium or interest on any Securities of the series shall be payable, or shall at the election of the Company or the Holder thereof be payable, and the manner of determining the equivalent thereof in the currency of the United States of America for any purpose, including for the purposes of making payment in the currency of the United States of America and applying the definition of "Outstanding" in Section 101, and, in the case of an election, the periods within which and the terms and conditions upon which such election is to be made and the amount so payable (or the manner in which such amount shall be determined);

(13) if other than the entire principal amount thereof, the portion of the principal amount of any Securities of the series that shall be payable upon acceleration of the Maturity thereof pursuant to Section 502;

(14) if the principal amount payable at the Stated Maturity of any Securities of the series will not be determinable as of any one or more dates prior to the Stated Maturity, the amount that shall be deemed to be the principal amount of such Securities as of any such date for any purpose thereunder or hereunder, including the principal amount thereof that shall be due and payable upon any Maturity other than the Stated Maturity or that shall be deemed to be Outstanding as of any date prior to the Stated Maturity (or, in any such case, the manner in which such amount deemed to be the principal amount shall be determined);

(15) if applicable, that the Securities of the series, in whole or any specified part, shall not be defeasible pursuant to Section 1302 or Section 1303 or both such Sections, and, if such Securities may be defeased, in whole or in part, pursuant to either or both such Sections, any provisions to permit a pledge of obligations other than U.S. Government Obligations (or the establishment of other arrangements) to satisfy the requirements of Section 1304(1) for defeasance of such Securities and, if other than by a Board Resolution, the manner in which any election by the Company to defease such Securities shall be evidenced;

(16) if applicable, that any Securities of the series shall be issuable in whole or in part in the form of one or more Global Securities and, in such case, the respective Depositaries for such Global Securities, the form of any legend or legends that shall be borne by any such Global Security in addition to or in lieu of that set forth in Section 204, any addition to, elimination of or other change in the circumstances set forth in Clause (2) of the penultimate paragraph of Section 305 in which any such Global Security may be exchanged in whole or in part for Securities registered, and any transfer of such Global Security in whole or in part may be registered, in the name or names of Persons other than the Depositary for such Global Security or a nominee thereof and any other provisions governing exchanges or transfers of any such Global Security;

(17) any addition to, elimination of or other change in the Events of Default that apply to any Securities of the series, any changes in the applicable notice or cure periods (which may be no period), and any change in the right of the Trustee or the requisite Holders of such Securities to declare the principal amount thereof due and payable pursuant to Section 502, or the automatic acceleration of such principal amount;

(18) any addition to, elimination of or other change in the covenants set forth in Article X that applies to Securities of the series;

(19) if applicable, that Persons other than those specified in Section 111 shall have such benefits, rights, remedies and claims with respect to any Securities of the series or under this Indenture with respect to such Securities, as and to the extent provided for such Securities;

(20) any change in the actions permitted or required under this Indenture to be taken by or on behalf of the Holders of the Securities of the series, including any such change that permits or requires any or all such actions to be taken by or on behalf of the Holders of any specific Securities of the series rather than or in addition to the Holders of all Securities of the series;

(21) any provisions for subordination of any Securities of the series to other obligations of the Company (including Securities of other series);

(22) whether payment of principal of and premium, if any, and interest, if any, on the Securities of the series shall be without deduction for taxes, assessments or governmental charges paid by Holders of the series;

(23) if and as applicable, that the Securities of the series shall be issuable in whole or in part in the form of one or more Global Securities and, in such case, the Depositary or Depositaries for such Global Security or Global Securities and any circumstances other than those set forth in Section 305 in which any such Global Security may be transferred to, and registered and exchanged for Securities registered in the name of, a Person other than the Depositary for such Global Security or a nominee thereof and in which any such transfer may be registered;

(24) whether and under what circumstances the Company will pay additional amounts on the Securities of the series held by a Person who is not a “U.S. Person” or otherwise has a specified status in respect of any tax, assessment or governmental charge withheld or deducted and, if so, whether the Company will have the option to redeem the Securities of the series rather than pay such additional amounts;

(25) if the Securities of the series are to be issuable in definitive form (whether upon original issue or upon exchange of a temporary Security of such series) only upon receipt of certain certificates or other documents or satisfaction of other conditions, the form and terms of such certificates, documents or conditions;

(26) whether the Securities of the series are to be convertible into or exchangeable for common stock or any other security or property, including, without limitation, securities of another Person held by the Company or its Affiliates, and, if so, the terms thereof;

(27) any provisions necessary to permit or facilitate the issuance, payment or conversion of any Securities of the series that may be converted into securities or other property other than Securities of the same series and of like tenor, whether in addition to, or in lieu of, any payment of principal or other amount and whether at the option of the Company or otherwise;

(28) whether the Securities of the series will be guaranteed, and, if so, the terms and conditions of such Guarantees, if such terms differ from those set forth in Section 1401, and the names of, or the method of determination or identification of, the Guarantors; and any deletions from, or modifications or additions to, the provisions of Article XIV or any other provisions of this Indenture in connection with the Guarantees of the Securities of the series;

(29) if other than the Trustee, the identity of the initial Security Registrar and any initial Paying Agent; and

(30) any other terms of the series (which terms shall not be inconsistent with the provisions of this Indenture, except as permitted by Section 901(5)).

If the Securities of the series are to be guaranteed by any Guarantor pursuant to Article XIV, there shall be established in or pursuant to a Guarantor’s Board Resolution of such Guarantor and, subject to Section 303, set forth, or determined in the manner provided, in a Guarantor’s Officer’s Certificate of such Guarantor, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of the series, the terms of the Guarantee by such Guarantor with respect to the Securities of the series, if such terms differ from those set forth in Section 1401.

All Securities of any one series shall be substantially identical except as to denomination and except as may otherwise be provided in or pursuant to the Board Resolution referred to above and (subject to Section 303) set forth, or determined in the manner provided, in the Officer’s Certificate referred to above or in any such indenture supplemental hereto. All Securities of any one series need not be issued at the same time and, unless otherwise provided pursuant to this Section 301 for any series, after issuance of Securities of such series, such series may be reopened for issuances of additional Securities of that series.

The terms of any Security of a series may differ from the terms of other Securities of the same series, if and to the extent provided pursuant to this Section 301. The matters referenced in any or all of Clauses (1) through (30) above may be established and set forth or determined as aforesaid with respect to all or any specific Securities of a series (in each case to the extent permitted by the Trust Indenture Act).

If any of the terms of the series are established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Officer's Certificate setting forth the terms of the series.

If any of the terms of the Guarantee by any Guarantor of the Securities of the series are established by action taken pursuant to a Guarantor's Board Resolution of such Guarantor, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of such Guarantor and delivered to the Trustee at or prior to the delivery of the Guarantor's Officer's Certificate of such Guarantor setting forth the terms of such Guarantee.

Section 302 Denominations. The Securities of each series shall be issuable only in registered form without coupons and only in such denominations as shall be specified as contemplated by Section 301. In the absence of any such specified denomination with respect to the Securities of any series, the Securities of such series shall be issuable in denominations of \$2,000 and any integral multiple of \$1,000 in excess thereof.

Section 303 Execution, Authentication, Delivery and Dating. The Securities shall be executed on behalf of the Company by its Chairman of the Board, Chief Executive Officer, Chief Financial Officer, Chief Accounting Officer, President, an Executive Vice President or a Vice President of the Company (or any other officer of the Company designated in writing by or pursuant to authority of the Board of Directors and delivered to the Trustee from time to time). The signature of any of these officers on the Securities may be manual or facsimile. If the terms of the Securities of any series provide that any notation of guarantee by any Guarantor is to be endorsed on or otherwise attached to, or made part of, Securities of any series, and if the terms of such Securities provide for the execution of such notation of guarantee by such Guarantor (it being understood and agreed that the terms of Securities of any series may, but need not, provide for the execution of any notation of guarantee by any Guarantor), such notation of guarantee shall be executed on behalf of such Guarantor by the Chairman of the Board, Chief Executive Officer, Chief Financial Officer, Chief Accounting Officer, President, an Executive Vice President or a Vice President of such Guarantor (or any other officer of such Guarantor designated in writing by or pursuant to authority of the Guarantor's Board of Directors and delivered to the Trustee from time to time). The signature of any of these officers on any notation of guarantee may be manual or facsimile.

Securities bearing the manual or facsimile signature of an individual who was at any time the proper officer of the Company shall bind the Company and any Guarantor of such Securities, notwithstanding that such individual has ceased to hold such office prior to the authentication and delivery of such Securities or did not hold such office at the date of such Securities.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities of any series executed by the Company, together with, if the terms of such Securities provide for the endorsement thereon of any notations of guarantee by any Guarantor, such notations of guarantee endorsed hereon and, if such terms so provide, executed by such Guarantor, to the Trustee for authentication, together with a Company Order and, if any notation of guarantee by a Guarantor is to be endorsed on such Securities, a Guarantor Order of such Guarantor, for the authentication and delivery of such Securities with any such notations of guarantee endorsed thereon, and the Trustee in accordance with the Company Order shall authenticate and deliver such Securities with any such notations of guarantee endorsed thereon. If the form or terms of the Securities of the series have been established by or pursuant to one or more Board Resolutions or the form or terms of any notations of guarantee have been established by or pursuant to one or more Guarantor's Board Resolutions of such Guarantor as permitted by Section 201 and Section 301, in authenticating such Securities with any such notations of guarantee endorsed thereon, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive, and (subject to Section 601) shall be fully protected in relying upon, an Opinion of Counsel stating,

(1) if the form of such Securities or any notation of guarantee by any Guarantor endorsed thereon has been established by or pursuant to Board Resolution or Guarantor's Board Resolution of such Guarantor, as permitted by Section 201, that such form has been established in conformity with the provisions of this Indenture;

(2) if the terms of such Securities or any notation of guarantee thereof by a Guarantor have been established by or pursuant to Board Resolution or Guarantor's Board Resolution of such Guarantor as permitted by Section 301, that such terms have been established in conformity with the provisions of this Indenture; and

(3) that when such Securities have been authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, such Securities and the Guarantee set forth in the Indenture will constitute valid and legally binding obligations of the Company or such Guarantor, respectively, enforceable in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles and subject to any limitation with respect to payments in currency other than U.S. dollars and other customary assumptions, exceptions, qualifications and limitations.

If such form or terms have been so established, the Trustee shall not be required to authenticate such Securities if the issue of such Securities pursuant to this Indenture will affect the Trustee's own rights, duties or immunities under the Securities and this Indenture or otherwise in a manner that is not reasonably acceptable to the Trustee.

Notwithstanding the provisions of Section 301 and of the preceding paragraph, if all Securities of a series are not to be originally issued at one time, it shall not be necessary to deliver the Officer's Certificate or Guarantor's Officer's Certificate otherwise required pursuant to Section 301 or the Company Order, any Guarantor Order and Opinion of Counsel otherwise required pursuant to such preceding paragraph at or prior to the authentication of each Security of such series if such documents are delivered at or prior to the authentication upon original issuance of the first Security of such series to be issued.

Each Security shall be dated the date of its authentication.

No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security a certificate of authentication substantially in the form provided for herein executed by the Trustee by manual signature, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder. Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Security to the Trustee for cancellation as provided in Section 309, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

Section 304 Temporary Securities. Pending the preparation of definitive Securities of any series, the Company may execute, and upon Company Order and, if any notations of guarantee by a Guarantor are to be endorsed on such Securities, a Guarantor Order of such Guarantor, the Trustee shall authenticate and deliver, temporary Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officer executing such Securities or notations of guarantee, respectively, may determine, as evidenced by such officer's execution of such Securities or notations of guarantee, respectively.

If temporary Securities of any series are issued, the Company will cause definitive Securities of that series to be prepared without unreasonable delay. After the preparation of definitive Securities of such series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Company in a Place of Payment for that series, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any series, the Company, and if applicable, the Guarantors shall execute and the Trustee shall authenticate and deliver in exchange therefor one or more definitive Securities of the same series, of any authorized denominations and of like tenor and aggregate principal amount. Until so exchanged, the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series and tenor.

Section 305 Registration, Registration of Transfer and Exchange. The Company shall cause to be kept at each office or agency of the Company designated as a Place of Payment pursuant to the first paragraph of Section 1002 a register (the register, maintained in each such office or agency of the Company designated as a Place of Payment, being herein sometimes collectively referred to as the “**Security Register**”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Securities and of transfers of Securities. The Trustee is hereby appointed “**Security Registrar**” for the purpose of registering Securities and transfers of Securities as herein provided.

Upon surrender for registration of transfer of any Security of a series at the office or agency of the Company in a Place of Payment for that series, the Company and, if applicable, the Guarantors shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of the same series, of any authorized denominations and of like tenor and aggregate principal amount.

At the option of the Holder, Securities of any series may be exchanged for other Securities of the same series, of any authorized denominations and of like tenor and aggregate principal amount, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company and, if applicable, the Guarantors shall execute, and the Trustee shall authenticate and deliver, the Securities, which the Holder making the exchange is entitled to receive.

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

Every Security presented or surrendered for registration of transfer or for exchange shall (if so required by the Company, any Guarantor or the Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed, by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 304, Section 906 or Section 1107 not involving any transfer.

If the Securities of any series (or of any series and specified tenor) are to be redeemed in whole or in part, the Company shall not be required (A) to issue, register the transfer of or exchange any Securities of that series (or of that series and specified tenor, as the case may be) during a period beginning at the opening of business 15 days before the day of selection of any such Securities for redemption under Section 1103 and ending at the close of business on the day of such selection (or during such period as otherwise specified pursuant to Section 301 for such Securities), or (B) to register the transfer of or exchange any Security so selected for redemption in whole or in part, except the unredeemed portion of any Security being redeemed in part.

The provisions of Clauses (1), (2), (3) and (4) below shall apply only to Global Securities:

(1) Each Global Security authenticated under this Indenture shall be registered in the name of the Depositary designated for such Global Security or a nominee thereof and delivered to such Depositary or a nominee thereof or custodian therefor, and each such Global Security shall constitute a single Security for all purposes of this Indenture.

(2) Notwithstanding any other provision in this Indenture, and subject to such applicable provisions, if any, as may be specified as contemplated by Section 301, no Global Security may be exchanged in whole or in part for Securities registered, and no transfer of a Global Security in whole or in part may be registered, in the name of any Person other than the Depositary for such Global Security or a nominee thereof unless (A) such Depositary has notified the Company that it (i) is unwilling or unable to continue as Depositary for such Global Security or (ii) has ceased to be a clearing agency registered under the Exchange Act, or (B) the Company has executed and delivered to the Trustee a Company Order stating that such Global Security shall be exchanged in whole for Securities that are not Global Securities (in which case such exchange shall promptly be effected by the Trustee). If the Company receives a notice of the kind specified in Clause (A) above or has delivered a Company Order of the kind specified in Clause (B) above, it may, in its sole discretion, designate a successor Depositary for such Global Security within 90 days after receiving such notice or delivery of such order, as the case may be. If the Company designates a successor Depositary as aforesaid, such Global Security shall promptly be exchanged in whole for one or more other Global Securities registered in the name of the successor Depositary, whereupon such designated successor shall be the Depositary for such successor Global Security or Global Securities and the provisions of Clauses (1), (2), (3) and (4) of this provision shall continue to apply thereto.

(3) Subject to Clause (2) above and to such applicable provisions, if any, as may be specified as contemplated by Section 301, any exchange of a Global Security for other Securities may be made in whole or in part, and all Securities issued in exchange for a Global Security or any portion thereof shall be registered in such names as the Depositary for such Global Security shall direct.

(4) Every Security authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Security or any portion thereof, whether pursuant to this Section 305, Section 304, Section 306, Section 906 or Section 1107 or otherwise, shall be authenticated and delivered in the form of, and shall be, a Global Security, unless such Security is registered in the name of a Person other than the Depositary for such Global Security or a nominee thereof.

Every Person who takes or holds any beneficial interest in a Global Security agrees that:

- (1) the Company and the Trustee may deal with the Depository as sole owner of the Global Security and as the authorized representative of such Person;
- (2) such Person's rights in the Global Security shall be exercised only through the Depository and shall be limited to those established by law and agreement between such Person and the Depository and/or direct and indirect participants of the Depository;
- (3) the Depository and its participants make book-entry transfers of beneficial ownership among, and receive and transmit distributions of principal and interest on the Global Securities to, such Persons in accordance with the Applicable Procedures of the Depository; and
- (4) none of the Company, the Trustee nor any agent of the Company or the Trustee will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Section 306 Mutilated, Destroyed, Lost and Wrongfully Taken Securities. If (a) any mutilated Security is surrendered to the Trustee or (b) both (i) there shall be delivered to the Company and the Trustee (A) a claim by a Holder as to the destruction, loss or wrongful taking of any Security of such Holder and a request thereby for a new replacement Security of the same series, and (B) such indemnity bond as may be required by them to save each of them and any agent of either of them harmless and (ii) such other reasonable requirements as may be imposed by the Company as permitted by Section 8-405 of the Uniform Commercial Code have been satisfied, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a "protected purchaser" within the meaning of Section 8-405 of the Uniform Commercial Code, the Company, and, if applicable, the Guarantors, shall execute and upon its request the Trustee shall authenticate and deliver, in lieu of any such mutilated, destroyed, lost or wrongfully taken Security, a new Security of the same series and of like tenor and principal amount and bearing a number not contemporaneously Outstanding.

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

Upon the issuance of any new Security under this Section 306, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Security of any series issued pursuant to this Section 306 in lieu of any destroyed, lost or wrongfully taken Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or wrongfully taken Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of that series duly issued hereunder.

The provisions of this Section 306 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or wrongfully taken Securities.

Section 307 Payment of Interest; Interest Rights Preserved. Except as otherwise provided as contemplated by Section 301 with respect to any Securities of a series, interest on any Security that is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest (or, if no business is conducted by the Trustee at its Corporate Trust Office on such date, at 5:00 P.M. New York City time on such date).

Any interest on any Security of any series that is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "**Defaulted Interest**") shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in Clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest payable on any Securities of a series to the Persons in whose names such Securities (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each of such Securities and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this Clause provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be given to each Holder of such Securities in the manner set forth in Section 106, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so given, such Defaulted Interest shall be paid to the Persons in whose names such Securities (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following Clause (2).

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

Except as may otherwise be provided in this Section 307 or as contemplated in Section 301 with respect to any Securities of a series, the Person to whom interest shall be payable on any Security that first becomes payable on a day that is not an Interest Payment Date shall be the Holder of such Security on the day such interest is paid.

Subject to the foregoing provisions of this Section 307, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other Security.

In the case of any Security that is converted after any Regular Record Date and on or prior to the next succeeding Interest Payment Date (other than any Security whose Maturity is prior to such Interest Payment Date), interest whose Stated Maturity is on such Interest Payment Date shall be payable on such Interest Payment Date notwithstanding such conversion, and such interest (whether or not punctually paid or duly provided for) shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on such Regular Record Date. Except as otherwise expressly provided in the immediately preceding sentence, in the case of any Security that is converted, interest whose Stated Maturity is after the date of conversion of such Security shall not be payable.

Notwithstanding the foregoing, the terms of any Security that may be converted may provide that the provisions of the immediately preceding paragraph do not apply, or apply with such additions, changes or omissions as may be provided thereby, to such Security.

Section 308 Persons Deemed Owners. Prior to due presentment of a Security for registration of transfer, the Company, any Guarantor and the Trustee and any agent of the Company, any Guarantor or the Trustee shall treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of principal of and any premium and (subject to Section 307) any interest on such Security and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, any Guarantor, the Trustee nor any agent of the Company, any Guarantor or the Trustee shall be affected by notice to the contrary.

Section 309 Cancellation. All Securities surrendered for payment, redemption, registration of transfer or exchange or conversion or for credit against any sinking fund payment shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee (or to any other Person for delivery to the Trustee) for cancellation any Securities previously authenticated hereunder which the Company has not issued and sold, and all Securities so delivered shall be promptly cancelled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section 309, except as expressly permitted by this Indenture. The Trustee shall dispose of all canceled Securities in accordance with its standard procedures and deliver a certificate of such disposition to the Company upon its written request therefor.

Section 310 Computation of Interest. Except as otherwise specified as contemplated by Section 301 for Securities of any series, interest on the Securities of each series shall be computed on the basis of a 360-day year of twelve 30-day months.

Section 311 CUSIP Numbers. The Company, in issuing the Securities may use “CUSIP” and “ISIN” numbers (if then generally in use), and, if so, the Trustee shall use “CUSIP” and “ISIN” numbers in notices of redemption as a convenience to Holders; provided 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 Company shall promptly notify the Trustee of any change in “CUSIP” or “ISIN” numbers.

ARTICLE IV SATISFACTION AND DISCHARGE

Section 401 Satisfaction and Discharge of Indenture. This Indenture shall upon Company Request cease to be of further effect with respect to the Securities of any series and any Guarantees of such Securities (except as to any surviving rights of conversion, registration of transfer or exchange of any such Security expressly provided for herein or in the terms of such Security), and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture with respect to such Securities, when:

(1) either

(A) all such Securities theretofore authenticated and delivered (other than (i) Securities that have been destroyed, lost or wrongfully taken and that have been replaced or paid as provided in Section 306 and (ii) Securities for the payment of which money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 1003) have been delivered to the Trustee for cancellation; or

- (B) all such Securities not theretofore delivered to the Trustee for cancellation
- (i) have become due and payable, or
 - (ii) will become due and payable at their Stated Maturity within one year, or
 - (iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company,

and the Company or a Guarantor, in the case of (i), (ii) or (iii) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for such purpose money in an amount sufficient to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal and any premium and interest to the date of such deposit (in the case of Securities that have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be;

(2) the Company and the Guarantors (if any) have paid or caused to be paid all other sums payable hereunder by the Company and the Guarantors (if any) with respect to such Securities; and

(3) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel (which Opinion of Counsel may be subject to customary assumptions and exclusions), each stating that all conditions precedent herein relating to the satisfaction and discharge of this Indenture with respect to such Securities have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture with respect to Securities of any series, the obligations of the Company to the Trustee under Section 607, the obligations of the Trustee to any Authenticating Agent under Section 614, and, if money shall have been deposited with the Trustee pursuant to subclause (B) of Clause (1) of this Section 401 with respect to such Securities, the obligations of the Company of such series under Section 1002 and the obligations of the Trustee under Section 402, Section 606 and the last paragraph of Section 1003 with respect to such Securities shall survive such satisfaction and discharge.

Section 402 Application of Trust Money. Subject to the provisions of the last paragraph of Section 1003, all money deposited with the Trustee pursuant to Section 401 with respect to Securities of any series shall be held in trust and applied by it, in accordance with the provisions of such Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal and any premium and interest for whose payment such money has been deposited with the Trustee. All moneys deposited with the Trustee pursuant to Section 401 (and held by it or any Paying Agent) for the payment of Securities subsequently converted shall be returned to the Company upon Company Request, to the extent originally deposited by the Company. The Company may direct by a Company Order the investment of any money deposited with the Trustee pursuant to Section 401, without distinction between principal and income, in (1) U.S. Government Obligations with a maturity of one year or less or (2) a money market fund that invests solely in short-term U.S. Government Obligations and from time to time the Company may direct the reinvestment of all or a portion of such money in other securities or funds meeting the criteria specified in Clause (1) or (2) of this sentence.

**ARTICLE V
REMEDIES**

Section 501 Events of Default. Except as may otherwise be provided pursuant to Section 301 for all or any specific Securities of any series, “*Event of Default*,” wherever used herein with respect to the Securities of that series, means any one of the following events (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):

- (1) default in the payment of any interest upon any Security of that series when it becomes due and payable, and continuance of such default for a period of 30 days; or
- (2) default in the payment of the principal of or any premium on any Security of that series at its Maturity; or
- (3) default in the deposit of any sinking fund payment when and as due by the terms of any Security of that series and continuance of such default for a period of 60 days; or
- (4) default in the performance, or breach, of any covenant of the Company in this Indenture (other than a covenant a default in whose performance or whose breach is elsewhere in this Section 501 specifically dealt with or which has expressly been included in this Indenture solely for the benefit of series of Securities other than that series), and continuance of such default or breach for a period of 90 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in principal amount of the Outstanding Securities of that series a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a “*Notice of Default*” hereunder; or
- (5) the entry by a court having jurisdiction in the premises of (A) a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or (B) a decree or order adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable Federal or State law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 90 consecutive days (provided that, if any Person becomes the successor to the Company pursuant to Article VIII and such Person is a corporation, partnership, limited liability company or trust organized and validly existing under the law of a jurisdiction outside the United States, each reference in this Clause (5) to an applicable Federal or State law of a particular kind shall be deemed to refer to such law or any applicable comparable law of such non-U.S. jurisdiction, for as long as such Person is the successor to the Company hereunder and is so organized and existing); or

(6) the commencement by the Company of a voluntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable Federal or State bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable Federal or State law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due (provided that, if any Person becomes the successor to the Company pursuant to Article VIII and such Person is a corporation, partnership, limited liability company or trust organized and validly existing under the law of a jurisdiction outside the United States, each reference in this Clause (6) to an applicable Federal or State law of a particular kind shall be deemed to refer to such law or any applicable comparable law of such non-U.S. jurisdiction, for as long as such Person is the successor to the Company hereunder and is so organized and existing); or

(7) if Article XIV has been made applicable with respect to such Securities, any Guarantee of the Securities of such series by any Guarantor shall cease to be in full force and effect (except as contemplated by the terms of this Indenture) or is declared null and void in a judicial proceeding or the Guarantor denies or disaffirms its obligations under this Indenture or its Guarantee, in each case unless the Guarantee has been released pursuant to the terms of this Indenture; or

(8) any other Event of Default provided with respect to Securities of that series in accordance with Section 301.

Section 502 Acceleration of Maturity; Rescission and Annulment. Except as may otherwise be provided pursuant to Section 301 for all or any specific Securities of any series, if an Event of Default (other than an Event of Default specified in Section 501(5) or Section 501(6)) with respect to Securities of that series at the time Outstanding occurs and is continuing, then in every such case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities of that series may declare the principal amount of all the Securities of that series (or, in the case of any Security of that series which specifies an amount to be due and payable thereon upon acceleration of the Maturity thereof, such amount as may be specified by the terms thereof) to be due and payable immediately, by a notice in writing to the Company and any Guarantor of the Securities of that series (and to the Trustee if given by Holders), and upon any such declaration such principal amount (or specified amount), together with any accrued and unpaid interest thereon, shall become immediately due and payable. Except as may otherwise be provided pursuant to Section 301 for all or any specific Securities of any series, if an Event of Default specified in Section 501(5) or Section 501(6) with respect to Securities of that series at the time Outstanding occurs, the principal amount of all the Securities of that series (or, in the case of any Security of that series which specifies an amount to be due and payable thereon upon acceleration of the Maturity thereof, such amount as may be specified by the terms thereof), together with any premium thereon and accrued and unpaid interest thereon, shall automatically, and without any declaration or other action on the part of the Trustee or any Holder, become immediately due and payable.

Except as may otherwise be provided pursuant to Section 301 for all or any specific Securities of any series, at any time after such a declaration of acceleration with respect to Securities of that series has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holders of a majority in principal amount of the Outstanding Securities of that series, by written notice to the Company, any Guarantor of the Securities of that series and the Trustee, may rescind and annul such declaration and its consequences if

- (1) the Company or any such Guarantor has paid or deposited with the Trustee a sum sufficient to pay
 - (A) all overdue interest on all Securities of that series,
 - (B) the principal of (and premium, if any, on) any Securities of that series which have become due otherwise than by such declaration of acceleration and any interest thereon at the rate or rates prescribed therefor in such Securities,
 - (C) to the extent that payment of such interest is lawful, interest upon overdue interest at the rate or rates prescribed therefor in such Securities, and
 - (D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and
- (2) all Events of Default with respect to Securities of that series, other than the non-payment of the principal of Securities of that series which has become due solely by such declaration of acceleration, have been cured or waived as provided in Section 513.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

Section 503 Collection of Indebtedness and Suits for Enforcement by Trustee. The Company covenants that if

- (1) default is made in the payment of any interest on any Security when such interest becomes due and payable and such default continues for a period of 60 days, or
- (2) default is made in the payment of the principal of (or premium, if any, on) any Security at the Maturity thereof,

the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal and any premium and interest and, to the extent that payment of such interest shall be legally enforceable, interest on any overdue principal and premium and on any overdue interest, at the rate or rates prescribed therefor in such Securities, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

If an Event of Default with respect to Securities of any series occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities of such series by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

Section 504 Trustee May File Proofs of Claim. In case of any judicial proceeding relative to the Company, any Guarantor or any other obligor upon the Securities, their property or their creditors, the Trustee shall be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized under the Trust Indenture Act in order to have claims of the Holders and the Trustee allowed in any such proceeding. The Trustee shall be authorized to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 607.

No provision of this Indenture shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or any Guarantee or the rights of any Holder thereof or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding; provided, however, that the Trustee may, on behalf of the Holders, vote for the election of a trustee in bankruptcy or similar official and be a member of a creditors' or other similar committee.

Section 505 Trustee May Enforce Claims Without Possession of Securities. All rights of action and claims under this Indenture or the Securities or any Guarantee 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 of the Securities in respect of which such judgment has been recovered.

Section 506 Application of Money Collected. Any money collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal or any premium or interest, upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 607;

SECOND: To the payment of the amounts then due and unpaid for principal of and any premium and interest on the Securities in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal and any premium and interest, respectively; and

THIRD: To the payment of the remainder, if any, to the Company, any Guarantor or to whomsoever may be lawfully entitled to receive the same as a court of competent jurisdiction may direct.

Section 507 Limitation on Suits. Except pursuant to Section 508, no Holder of any Security of any series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless

- (1) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Securities of that series;
- (2) the Holders of not less than 25% in principal amount of the Outstanding Securities of that series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;
- (3) such Holder or Holders have offered to the Trustee security or indemnity reasonably satisfactory to it against any costs, expenses and liabilities to be incurred in compliance with such request;

(4) the Trustee for 60 days after its receipt of such notice, request and offer of security or indemnity has failed to institute any such proceeding; and

(5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Securities of that series;

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other of such Holders, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all of such Holders.

Section 508 Unconditional Right of Holders to Receive Principal, Premium and Interest and to Convert. Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and any premium and (subject to Section 307) interest on such Security on the respective Stated Maturities expressed in such Security (or, in the case of redemption, on the Redemption Date), and, if the terms of such Security so provide, to convert such Security in accordance with its terms, and to institute suit for the enforcement of any such payment and, if applicable, any such right to convert, and such rights shall not be impaired without the consent of such Holder.

Section 509 Restoration of Rights and Remedies. If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this 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 Company, any 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 510 Rights and Remedies Cumulative. Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or wrongfully taken Securities in the last paragraph of Section 306, 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 511 Delay or Omission Not Waiver. No delay or omission of the Trustee or of any Holder of any Securities 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 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 or by the Holders, as the case may be.

Section 512 Control by Holders. The Holders of a majority in principal amount of the Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or of exercising any trust or power conferred on the Trustee, with respect to the Securities of such series, provided that

- (1) such direction shall not be in conflict with any rule of law or with this Indenture;
- (2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction; and
- (3) subject to the provisions of Section 601, the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall determine that the proceeding so directed would involve the Trustee in personal liability.

Section 513 Waiver of Past Defaults. Except as may otherwise be provided pursuant to Section 301 for all or any specific Securities of any series, the Holders of not less than a majority in principal amount (including waivers obtained in connection with a purchase of, or tender offer or exchange offer for, Securities) of the Outstanding Securities of any series to be affected under this Indenture may on behalf of the Holders of all the Securities of such series waive any past default hereunder with respect to such series and its consequences, except a default

- (1) in the payment of the principal of or any premium or interest on any Security of such series, or
- (2) in respect of a covenant or provision hereof which under Article IX cannot be modified or amended without the consent of the Holder of each Outstanding Security of such series affected.

Upon any such waiver with respect to any series, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, with respect to such series for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon. A waiver of any past default and its consequences given by or on behalf of any Holder of Securities in connection with a purchase of, or tender or exchange offer for, such Holder's Securities will not be rendered invalid by such purchase, tender or exchange.

Section 514 Undertaking for Costs. In any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, a court may require any party litigant in such suit to file an undertaking to pay the costs of such suit, and may assess costs, including reasonable attorneys' fees and expenses, against any such party litigant, in the manner and to the extent provided in the Trust Indenture Act; provided that neither this Section 514 nor the Trust Indenture Act shall be deemed to authorize any court to require such an undertaking or to make such an assessment in any suit instituted by the Company, any Guarantor or the Trustee or, if applicable, in any suit for the enforcement of the right to convert any Security in accordance with its terms.

Section 515 Waiver of Usury, Stay or Extension Laws. The Company and each Guarantor covenants (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 or take the benefit or advantage of, any usury, stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company and each Guarantor (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

ARTICLE VI
THE TRUSTEE

Section 601 Certain Duties and Responsibilities.

(1) Except during the continuance of an Event of Default,

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

(B) the Trustee may in good faith conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture.

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

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

(A) this Subsection shall not be construed to limit the effect of the first paragraph of this Section 601;

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

(C) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in principal amount of the Outstanding Securities of any series, determined as provided in Section 512, 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 with respect to the Securities of such series; and

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

(4) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 601.

(5) No provision of this Indenture shall require the Trustee to expend or risk its own funds or incur any liability. The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to it against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction.

Section 602 Notice of Defaults. If a default or Event of Default occurs and is continuing hereunder with respect to Securities of any series, and if it is known to the Trustee, the Trustee shall mail or otherwise send to the Holders of Securities of such series notice of such default or Event of default within 90 days after the Trustee gains knowledge of the default or Event of Default unless such default or Event of Default shall have been cured or waived before the giving of such notice. Except in the case of a default or Event of Default in payment of principal of, premium or interest on Securities of any series, the Trustee may withhold the notice if and so long as a committee of its Responsible Officers in good faith determines that withholding the notice is in the interests of the Holders of the Securities of such series. For the purpose of this Section 602, Section 603 and Section 1005, the term “*default*” means, with respect to Securities of any series, any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to Securities of such series.

Section 603 Certain Rights of Trustee. Subject to the provisions of Section 601:

(1) the Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(2) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order and any request or direction of a Guarantor mentioned herein shall be sufficiently evidenced by a Guarantor Request or Guarantor Order of such Guarantor, and any resolution of the Board of Directors shall be sufficiently evidenced by a Board Resolution and any resolution of a Guarantor's Board of Directors may be sufficiently evidenced by a Guarantor's Board Resolution;

(3) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) shall be entitled to receive and may, in the absence of bad faith on its part, conclusively rely upon, and shall not be liable for any action it takes or omits to take in good faith in reliance upon, an Officer's Certificate or, if such matter relates to a Guarantor, a Guarantor's Officer's Certificate of such Guarantor or an Opinion of Counsel;

(4) the Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection from liability in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(5) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to it against the costs, expenses and liabilities that might be incurred by it in compliance with such request or direction;

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

(7) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder and shall not be responsible for the supervision of officers and employees of such agents or attorneys;

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

(9) the Trustee shall not be liable for any action taken, suffered or omitted to be taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(10) the Trustee shall not be deemed to have notice of any default or Event of Default unless a Responsible 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 the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Securities and this Indenture;

(11) the rights, privileges, protections, immunities and benefits given to the Trustee, including its rights to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and to each agent, custodian and other Person employed to act hereunder; and

(12) the Trustee shall not be required to provide bond or other security with respect to the performance of its duties and powers.

Section 604 Not Responsible for Recitals or Issuance of Securities. The recitals contained herein and in the Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and the Trustee does not assume any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. The Trustee shall not be accountable for the use or application by the Company of Securities or the proceeds thereof.

Section 605 May Hold Securities. The Trustee, any Authenticating Agent, any Paying Agent, any Security Registrar or any other agent of the Company or any Guarantor, in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to Section 608 and Section 613, may otherwise deal with the Company or any Guarantor with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Security Registrar or such other agent.

Section 606 Money Held in Trust. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law or by any other provision of this Indenture. The Trustee (acting in any capacity hereunder) shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Company or any Guarantor.

Section 607 Compensation and Reimbursement.

(1) The Company shall pay to the Trustee (in its capacity as Trustee, and, to the extent it has been appointed as such, as Paying Agent and Security Registrar) from time to time reasonable compensation for its acceptance of this Indenture and services hereunder in accordance with a written schedule provided by the Trustee to the Company. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee promptly upon request for all reasonable and customary disbursements, advances and reasonable out-of-pocket expenses incurred or made by it in addition to the compensation for its services, except those resulting from its own negligent action, negligent failure to act or willful misconduct. Such expenses shall include the reasonable and customary compensation, disbursements and expenses of the Trustee's agents and counsel.

(2) The Company shall indemnify the Trustee in its capacity against any and all losses, liabilities or reasonable out-of-pocket expenses (including reasonable attorneys' fees and court costs) incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture, including the costs and expenses (including reasonable attorneys' fees and court costs) of enforcing this Indenture against the Company (including this Section 607) and defending itself against any claim (whether asserted by either of the Company or any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, except to the extent any such loss, liability, expense or cost is the result of the Trustee's own negligence or willful misconduct as found by a court of competent jurisdiction. The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. Failure by the Trustee to so notify the Company shall not relieve the Company of its obligations hereunder. The Company shall defend the claim and the Trustee shall cooperate in the defense. The Trustee may elect to have separate counsel defend the claim, but the Company shall be obligated to pay the reasonable fees and expenses of such separate counsel only if the Company fails to assume the Trustee's defense or there is a conflict of interest between the Company, on the one hand, and the Trustee, on the other hand, with respect to the claim, as reasonably determined by the Trustee. The Company need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld. None of the Company nor the Guarantors need reimburse the Trustee for any expense or indemnity against liability or loss of the Trustee to the extent such expense, liability or loss is the result of its own negligence or willful misconduct.

(3) As security for the performance of the obligations of the Company under this Section 607 the Trustee shall have a lien prior to the Securities of any series upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of (and premium, if any) or interest on Securities of such series. Such lien shall survive satisfaction and discharge of this Indenture.

(4) Without limiting any rights available to the Trustee under applicable law, when the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 501(5) and Section 501(6), the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable Federal or State bankruptcy, insolvency or other similar law. 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 this Section 607 out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, 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.

(5) The provisions of this Section 607 shall survive the termination of this Indenture and the resignation or removal of the Trustee.

Section 608 Conflicting Interests. If the Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture. To the extent permitted by the Trust Indenture Act, the Trustee shall not be deemed to have a conflicting interest by virtue of being a trustee under this Indenture with respect to Securities of more than one series.

Section 609 Corporate Trustee Required; Eligibility. There shall at all times be one (and only one) Trustee hereunder with respect to the Securities of each series, which may be Trustee hereunder for Securities of one or more other series. Each Trustee shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such, has a combined capital and surplus of at least \$100,000,000 and has its Corporate Trust Office in the continental United States of America. If any such Person publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, then for the purposes of this Section 609 and to the extent permitted by the Trust Indenture Act, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee with respect to the Securities of any series shall cease to be eligible in accordance with the provisions of this Section 609, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 610 Resignation and Removal; Appointment of Successor. No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 611.

The Trustee may resign at any time with respect to the Securities of one or more series by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 611 shall not have been delivered to the Trustee within 60 days after the giving of such notice of resignation, the resigning Trustee may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

The Trustee may be removed at any time with respect to the Securities of any series by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series, delivered to the Trustee and to the Company. If the instrument of acceptance by a successor Trustee required by Section 611 shall not have been delivered to the Trustee within 30 days after the giving of a notice of removal pursuant to this paragraph, the Trustee being removed may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

If at any time:

(1) the Trustee shall fail to comply with Section 608 after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Security for at least six months, or

(2) the Trustee shall cease to be eligible under Section 609 and shall fail to resign after written request therefor by the Company or by any such Holder, or

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

then, in any such case, (A) the Company by a Board Resolution may remove the Trustee with respect to all Securities, or (B) subject to Section 514, any Holder who has been a bona fide Holder of a Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Securities and the appointment of a successor Trustee or Trustees.

If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, with respect to the Securities of one or more series, the Company, by a Board Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Securities of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Securities of any particular series) and shall comply with the applicable requirements of Section 611. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the giving of such notice of removal, the Trustee being removed may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Securities of any series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 611, become the successor Trustee with respect to the Securities of such series and to that extent supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Securities of any series shall have been so appointed by the Company or the Holders and accepted appointment in the manner required by Section 611, any Holder who has been a bona fide Holder of a Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities of such series.

The Company shall give notice of each resignation and each removal of the Trustee with respect to the Securities of any series and each appointment of a successor Trustee with respect to the Securities of any series to all Holders of Securities of such series in the manner provided in Section 106. Each notice shall include the name of the successor Trustee with respect to the Securities of such series and the address of its Corporate Trust Office.

Section 611 Acceptance of Appointment by Successor. In case of the appointment hereunder of a successor Trustee with respect to all Securities, such successor Trustee so appointed shall execute, acknowledge and deliver to the Company, any Guarantor and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on the request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder.

In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Company, any Guarantor, the retiring Trustee and each successor Trustee with respect to the Securities of one or more series shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Company or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.

Upon request of any such successor Trustee, the Company and any Guarantor shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in the first or second preceding paragraph, as the case may be.

No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article.

Section 612 Merger, Conversion, Consolidation or Succession to Business. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

Section 613 Preferential Collection of Claims Against Company. If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Securities), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor).

Section 614 Appointment of Authenticating Agent. The Trustee may appoint an Authenticating Agent or Agents with respect to any series of Securities which shall be authorized to act on behalf of the Trustee to authenticate the Securities of such Series issued upon original issue and upon exchange, registration of transfer, partial conversion or partial redemption or pursuant to Section 306, and Securities of such series so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities of such series by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent so appointed with respect to such series and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent so appointed with respect to such series. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America, any State thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than \$50,000,000 and subject to supervision or examination by Federal or State authority. If such Authenticating Agent publishes reports of condition at least annually pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section 614, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 614, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section 614.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided such corporation shall be otherwise eligible under this Section 614, without the execution or filing of any paper or any further act on the part of the Trustee, the Company, the Authenticating Agent or such successor corporation.

An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 614, the Trustee may appoint a successor Authenticating Agent with respect to any series of Securities which shall be acceptable to the Company and shall give notice of such appointment to all Holders of Securities of such series in the manner provided in Section 106. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section 614.

The Trustee agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section 614, and the Trustee shall be entitled to be reimbursed by the Company for such payments, subject to the provisions of Section 607.

If an appointment is made pursuant to this Section 614 with respect to Securities of any series, the Securities of such series may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternate certificate of authentication in the following form:

This is one of the Securities of the series designated herein and referred to in the within-mentioned Indenture.

[_____] ,
as Trustee

By [NAME OF AUTHENTICATING AGENT],
as Authenticating Agent

By: _____
Authorized Signatory

ARTICLE VII HOLDERS' LISTS AND REPORTS BY TRUSTEE AND COMPANY

Section 701 Company to Furnish Trustee Names and Addresses of Holders. The Company will furnish or cause to be furnished to the Trustee

(1) semi-annually, not later than May 15 and November 15 in each year, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders of Securities of each series as of the immediately preceding May 1 or November 1 as the case may be, and

(2) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished;

provided, however, that if and so long as the Trustee shall be the Security Registrar for Securities of a series, no such list need be furnished with respect to such series of Securities.

Section 702 Preservation of Information; Communications to Holders. The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 701 and the names and addresses of Holders received by the Trustee in its capacity as Security Registrar. The Trustee may destroy any list furnished to it as provided in Section 701 upon receipt of a new list so furnished.

The rights of Holders to communicate with other Holders with respect to their rights under this Indenture or under the Securities, and the corresponding rights and privileges of the Trustee, shall be as provided by the Trust Indenture Act.

Every Holder of Securities, by receiving and holding the same, agrees with the Company, any Guarantor and the Trustee that neither of the Company nor the Guarantors (if applicable) nor the Trustee nor any agent of any of them shall be held accountable by reason of any disclosure of information as to names and addresses of Holders made pursuant to the Trust Indenture Act.

Section 703 Reports by Trustee. The Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto.

Reports so required to be transmitted at stated intervals of not more than 12 months shall be transmitted no later than April 15 and shall be dated as of April 1 in each calendar year, commencing after the issuance of Securities.

A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange upon which any Securities are listed, with the Commission and with the Company. The Company will notify the Trustee when any Securities are listed on any stock exchange and of any delisting thereof.

Section 704 Reports by Company and Guarantors. The Company and any Guarantor shall file with the Trustee and the Commission, and transmit to Holders, such information, documents and other reports, and such summaries thereof, as may be required pursuant to the Trust Indenture Act, if any, at the times and in the manner provided pursuant to such Act; provided that any such information, documents or reports required to be filed with the Commission pursuant to Section 13 or 15(d) of the Exchange Act need not be filed with the Trustee until the 15th day after the same are actually filed with the Commission. The Company and any Guarantor will be deemed to have furnished such reports to the Trustee if it has filed such reports with the SEC using the EDGAR filing system and such reports are publicly available. The Trustee has no duty or obligation to monitor if such information, documents and other reports have been so filed or are publicly available. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the compliance by the Company or any Guarantor with any of their covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officer's Certificates or Guarantor's Officer's Certificates, as the case may be).

ARTICLE VIII
CONSOLIDATION, MERGER, SALE, CONVEYANCE, TRANSFER OR LEASE

Section 801 Company May Consolidate, Etc., Only on Certain Terms. The Company shall not, in a single transaction or a series of related transactions, consolidate with or merge with or into, or sell, convey, transfer or lease all or substantially all of its properties and assets on a consolidated basis to, any Person, unless:

- (1) the resulting, surviving or transferee Person (the “*Successor Company*”) shall be a corporation, limited liability company, partnership, trust or other entity organized and validly existing under the laws of the United States, any State thereof or the District of Columbia;
- (2) the Successor Company (if not the Company) shall expressly assume, by supplemental indenture, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, the due and punctual payment of the principal of and any premium and interest on all the Securities and the performance or observance of every covenant of this Indenture on the part of the Company to be performed or observed and, for each Security that by its terms provides for conversion, shall have provided for the right to convert such Security in accordance with its terms;
- (3) immediately after giving effect to such transaction and treating any indebtedness that becomes an obligation of the Company or any Subsidiary as a result of such transaction as having been incurred by the Company or such Subsidiary at the time of such transaction, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing; and
- (4) the Company has delivered to the Trustee an Officer’s Certificate and an Opinion of Counsel, each stating that such consolidation, merger, sale, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article and that all conditions precedent provided for in this Indenture relating to such transaction have been complied with.

Section 802 Successor Substituted. Upon any consolidation of the Company with, or merger of the Company with or into, or any sale, conveyance, transfer or lease of all or substantially all the properties and assets of the Company on a consolidated basis to, any Person, in each case in accordance with Section 801, the Successor Company shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if the Successor Company had been named as the Company herein, and thereafter the predecessor Company shall be relieved of all obligations and covenants under this Indenture and the Securities, except in the case of a lease of all or substantially all of the properties and assets of the Company on a consolidated basis, in which case the predecessor Company shall not be released from the obligation to pay the principal of, any premium on, and interest on the Securities.

ARTICLE IX
SUPPLEMENTAL INDENTURES

Section 901 Supplemental Indentures Without Consent of Holders. Except as may otherwise be provided pursuant to Section 301 for all or any specific Securities of any series, without the consent of any Holders, the Company, each of the Guarantors, 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:

- (1) to evidence the succession of another Person to the Company or a Guarantor and the assumption by any such successor of the covenants of the Company or such Guarantor herein and in the Securities or the Guarantees of such Guarantor, as the case may be; or
- (2) to add to the covenants of the Company or any Guarantor for the benefit of the Holders of all or any Securities of any series (and if such covenants are to be for the benefit of less than all Securities of such series, stating that such covenants are expressly being included solely for the benefit of such Securities within such series) or to surrender any right or power herein conferred upon the Company or any Guarantor with regard to all or any Securities of any series (and if any such surrender is to be made with regard to less than all Securities of such series, stating that such surrender is expressly being made solely with regard to such Securities within such series); or
- (3) to add any additional Events of Default for the benefit of the Holders of all or any Securities of any series (and if such additional Events of Default are to be for the benefit of less than all Securities of such series, stating that such additional Events of Default are expressly being included solely for the benefit of such Securities within such series); or
- (4) to add to or change any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the issuance of Securities in bearer form, registrable or not registrable as to principal, and with or without interest coupons, or to permit or facilitate the issuance of Securities in uncertificated form; or
- (5) to add to, change or eliminate any of the provisions of this Indenture in respect of all or any Securities of any series or any Guarantees thereof (and if such addition, change or elimination is to apply with respect to less than all Securities of such series or Guarantees thereof, stating that it is expressly being made to apply solely with respect to such Securities within such series or Guarantees thereof), provided that any such addition, change or elimination (A) shall neither (i) apply to any Security of any series or Guarantees thereof created prior to the execution of such supplemental indenture and entitled to the benefit of such provision nor (ii) modify the rights of the Holder of any such Security with respect to such provision or (B) shall become effective only when there is no such Security Outstanding; or
- (6) to secure the Securities or any Guarantees; or
- (7) to establish the form or terms of all or any Securities of any series and any Guarantees thereof as permitted by Section 201 and Section 301; or
- (8) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 611; or

(9) to add to or change any of the provisions of this Indenture with respect to any Securities that by their terms may be converted into securities or other property other than Securities of the same series and of like tenor, in order to permit or facilitate the issuance, payment or conversion of such Securities; or

(10) to add any Person as a Guarantor under this Indenture, to add additional Guarantees or additional Guarantors in respect of any Outstanding Securities under this Indenture, or to evidence the release and discharge of any Guarantor from its obligations under its Guarantees of any Securities and its obligations under this Indenture in respect of any Securities in accordance with the terms of this Indenture; or

(11) to conform the text of this Indenture or any Securities to any provision of the “Description of Debt Securities” or “Description of the Notes” (or comparable) section in any offering memorandum, prospectus or prospectus supplement of the Company prepared from time to time with respect to the offer and sale of Securities of any series, to the extent that such provision was intended to be a verbatim recitation of a provision of this Indenture or the Securities, which intent will be established by an Officer’s Certificate; or

(12) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture; provided that such action pursuant to this Clause (12) shall not adversely affect the interests of the Holders of Securities of any series in any material respect.

The Trustee is hereby authorized to join with the Company and the Guarantors in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations that may be therein contained and to accept the conveyance, transfer, assignment, mortgage or pledge of any property thereunder, but the Trustee shall not be obligated to enter into any such supplemental indenture that affects the Trustee’s own rights, duties or immunities under this Indenture or otherwise.

Section 902 Supplemental Indentures With Consent of Holders. Except as may otherwise be provided pursuant to Section 301 for all or any specific Securities of any series or Guarantees thereof, with the consent of the Holders of a majority in principal amount (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, Securities) of the Outstanding Securities of all series affected by such supplemental indenture (considered together as one class for this purpose and such affected Securities potentially being Securities of the same or different series and, with respect to any series, potentially comprising fewer than all the Securities of such series), by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, each of the Guarantors when authorized by a Guarantor’s Board Resolution of such Guarantor, 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 this Indenture or of modifying in any manner the rights of the Holders of Securities of such series under this Indenture or any Guarantees of such Securities; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby (including consents obtained in connection with a purchase of, or tender offer or exchange offer for, Securities),

(1) change the Stated Maturity of the principal of, or any installment of principal of or interest on, any Security, or reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof, or reduce the amount of the principal of an Original Issue Discount Security or any other Security that would be due and payable upon acceleration of the Maturity thereof pursuant to Section 502, or permit the Company to redeem any Security if, absent such supplemental indenture, the Company would not be permitted to do so, or change any Place of Payment where, or the coin or currency in which, any Security or any premium or interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date), or

(2) if any Security provides that the Holder may require the Company to repurchase or convert such Security, impair such Holder's right to require repurchase or conversion of such Security on the terms provided therein, or

(3) reduce the percentage in principal amount of the Outstanding Securities of any one or more series (considered separately or together as one class, as applicable, and whether comprising the same or different series or less than all the Securities of a series), the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver (of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in this Indenture, or

(4) if any Security is guaranteed by the Guarantee of any Guarantor, release such Guarantor from any of its obligations under such Guarantee except in accordance with the terms of this Indenture; or

(5) modify any of the provisions of this Section 902, Section 513 or Section 1006, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby; provided, however, that this clause shall not be deemed to require the consent of any Holder with respect to changes in the references to the "*Trustee*" and concomitant changes in this Section 902 and Section 1006, or the deletion of this proviso, in accordance with the requirements of Section 611 and Section 901(8).

A supplemental indenture that changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular Securities or series of Securities, or that modifies the rights of the Holders of such Securities or series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of any other Securities or of any other series, as applicable.

It shall not be necessary for any Act of Holders under this Section 902 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof. A consent to any indenture supplemental hereto by or on behalf of any Holder of Securities given in connection with a purchase of, or tender or exchange offer for, such Holder's Securities will not be rendered invalid by such purchase, tender or exchange.

Section 903 Execution of Supplemental Indentures. In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 601) shall be fully protected in relying upon, an Opinion of Counsel and Officer's Certificate and Guarantor's Officer's Certificate, as the case may be, stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 904 Effect of Supplemental Indentures. Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

Section 905 Conformity with Trust Indenture Act. Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act.

Section 906 Reference in Securities to Supplemental Indentures. Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities of any series so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and, if applicable, the Guarantors and authenticated and delivered by the Trustee in exchange for Outstanding Securities of such series.

Section 907 Waivers. Except as may otherwise be provided pursuant to Section 301 for all or any specific Securities of any series, past defaults and compliance with certain provisions of this Indenture may be waived in certain circumstances by Holders as provided in Section 513 and Section 1006, respectively.

ARTICLE X COVENANTS

Section 1001 Payment of Principal, Premium and Interest. The Company covenants and agrees for the benefit of each series of Securities that it will duly and punctually pay the principal of and any premium and interest on the Securities of that series in accordance with the terms of the Securities and this Indenture.

Section 1002 Maintenance of Office or Agency. The Company will maintain in each Place of Payment for any series of Securities an office or agency where Securities of that series may be presented or surrendered for payment, where Securities of that series may be surrendered for registration of transfer or exchange, where Securities may be surrendered for conversion and where notices and demands to or upon the Company or any Guarantor in respect of the Securities of that series and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company and each Guarantor hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

The Company may also from time to time designate one or more other offices or agencies where the Securities of one or more series may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in each Place of Payment for Securities of any series for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

With respect to any Global Security, and except as otherwise may be specified for such Global Security as contemplated by Section 301, the Corporate Trust Office of the Trustee shall be the Place of Payment where such Global Security may be presented or surrendered for payment or for registration of transfer or exchange, or where successor Securities may be delivered in exchange therefor; provided, however, that any such payment, 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 this Indenture.

Section 1003 Money for Securities Payments to Be Held in Trust. If the Company shall at any time act as its own Paying Agent with respect to any series of Securities, it will, on or before each due date of the principal of or any premium or interest on any of the Securities of that series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal and any premium and interest so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will promptly notify the Trustee of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents for any series of Securities, it will, on or prior to 12:30 P.M., New York City time, on each due date of the principal of or any premium or interest on any Securities of that series, deposit (or, if the Company has deposited any trust funds with a trustee pursuant to Section 1304(1), cause such trustee to deposit) with a Paying Agent a sum sufficient to pay such amount, such sum to be held as provided by the Trust Indenture Act, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

The Company will cause each Paying Agent for any series of Securities other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section 1003, that such Paying Agent will (1) comply with the provisions of the Trust Indenture Act applicable to it as a Paying Agent and (2) during the continuance of any default by the Company (or any other obligor upon the Securities of that series) in the making of any payment in respect of the Securities of that series, upon the written request of the Trustee, forthwith pay to the Trustee all sums held in trust by such Paying Agent for payment in respect of the Securities of that series.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of or any premium or interest on any Security of any series and remaining unclaimed for two years after such principal, premium or interest has become due and payable shall be paid, subject to applicable escheatment laws, to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, shall, at the expense of the Company, cause to be published once, in The New York Times or The Wall Street Journal (national edition), notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

Section 1004 Corporate Existence. Subject to Article VIII, the Company 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), licenses and franchises; provided, however, that the Company will not be required to preserve any such right, license or franchise if it shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company.

Section 1005 Statement by Officer as to Default. The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year of the Company ending after the date hereof, an Officer's Certificate, stating that a review of the activities of the Company and any Guarantors during the preceding fiscal year has been made under the supervision of the signing Officer with a view to determining whether the Company and each Guarantor (if any) has kept, observed, performed and fulfilled its obligations under this Indenture with respect to the Securities of each series Outstanding and further stating, as to such Officer signing such certificate, that to such Officer's knowledge, the Company and each Guarantor (if any) has complied with all conditions and covenants under this Indenture with respect to Securities of such series and is not in default in the performance and observance of any of the material terms, provisions and conditions of this Indenture with respect to Securities of such series, in each case, so as not to result in any default or Event of Default with respect to Securities of such series (or, if a default or Event of Default with respect to Securities of such series shall have occurred and be continuing, describing all such defaults or Events of Default of which such Officer may have knowledge and what action the Company or such Guarantor is taking or propose to take with respect thereto).

Section 1006 Waiver of Certain Covenants. Except as otherwise provided pursuant to Section 301 for all or any Securities of any series, the Company may, with respect to all or any Securities of any series, omit in any particular instance to comply with any covenant, term, provision or condition set forth in this Indenture for the benefit of the Holders of such series if, before the time for such compliance, the Holders of a majority in principal amount (including waivers obtained in connection with a purchase of, or tender offer or exchange offer for, Securities) of all Outstanding Securities affected by such waiver (considered together as one class for this purpose and such affected Securities potentially being Securities of the same or different series and, with respect to any particular series, potentially comprising fewer than all the Securities of such series) shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such covenant, term, provision or condition, but no such waiver shall extend to or affect such covenant, term, provision or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such covenant, term, provision or condition shall remain in full force and effect, and no such waiver may be granted if a waiver of a past default under such covenant, term, provision or condition could not be granted pursuant to Section 513 or if such waiver would be prohibited by Section 508. A waiver of compliance given by or on behalf of any Holder of Securities in connection with a purchase of, or tender or exchange offer for, such Holder's Securities will not be rendered invalid by such purchase, tender or exchange.

ARTICLE XI
REDEMPTION OF SECURITIES

Section 1101 Applicability of Article. Securities of any series that are redeemable before their Stated Maturity shall be redeemable in accordance with their terms and (except as otherwise specified as contemplated by Section 301 for such Securities) in accordance with this Article.

Section 1102 Election to Redeem; Notice to Trustee. The election of the Company to redeem any Securities shall be established in or pursuant to a Board Resolution or in another manner specified as contemplated by Section 301 for such Securities. If the Company elects to redeem any Securities, the Company shall, at least 5 Business Days prior to the giving of notice of redemption (unless a shorter notice shall be satisfactory to the Trustee), give written notice to the Trustee setting forth (i) the clause of this Indenture pursuant to which the redemption shall occur, (ii) the Redemption Date, (iii) the principal amount of Securities to be redeemed, (iv) the Redemption Price and (v) whether the Company requests the Trustee to give notice of such redemption. In the case of any redemption of Securities (1) prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, or (2) pursuant to an election of the Company that is subject to a condition specified in the terms of the Securities of the series to be redeemed, the Company shall furnish the Trustee with an Officer's Certificate evidencing compliance with such restriction or condition. Redemptions may be conditioned upon the occurrence of conditions precedent with respect to the redemption.

Section 1103 Selection by Trustee of Securities to Be Redeemed. If less than all the Securities of any series are to be redeemed (unless all the Securities of such series and of a specified tenor are to be redeemed or unless such redemption affects only a single Security), the particular Securities to be redeemed shall be selected not more than 40 days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series not previously called for redemption, by such method as the Trustee shall deem fair and appropriate (or when the Securities are Global Securities, selected pursuant to the Applicable Procedures of the Depository) and which may provide for the selection for redemption of a portion of the principal amount of any Security of such series, provided that the unredeemed portion of the principal amount of any Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security. If less than all the Securities of such series and of a specified tenor are to be redeemed (unless such redemption affects only a single Security), the particular Securities to be redeemed shall be selected not more than 40 days prior to the Redemption Date by the Trustee, from the Outstanding Securities of such series and specified tenor not previously called for redemption in accordance with the preceding sentence.

If any Security selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed (so far as it may be) to be the portion selected for redemption. Securities that have been converted during a selection of Securities to be redeemed shall be treated by the Trustee as Outstanding for the purpose of such selection.

The Trustee shall promptly notify the Company and each Security Registrar in writing of the Securities selected for redemption as aforesaid and, in case of any Securities selected for partial redemption as aforesaid, the principal amount thereof to be redeemed.

The provisions of the two preceding paragraphs shall not apply with respect to any redemption affecting only a single Security, whether such Security is to be redeemed in whole or in part. In the case of any such redemption in part, the unredeemed portion of the principal amount of the Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Securities redeemed or to be redeemed only in part, to the portion of the principal amount of such Securities that has been or is to be redeemed.

Section 1104 Notice of Redemption. Notice of redemption shall be given in the manner provided in Section 106 at least 10 but not more than 60 days prior to the Redemption Date (or within such period as otherwise specified as contemplated by Section 301 for the relevant Securities), to each Holder of Securities to be redeemed, at such Holder's address appearing in the Security Register; provided, however, notice of redemption may be given more than 60 days prior to the Redemption Date (i) when Securities are to be redeemed pursuant to Article IV of this Indenture, (ii) if the notice is issued in connection with a Covenant Defeasance or Defeasance with respect to the relevant Securities or (iii) as specified in any indenture supplemental hereto applicable to such Securities.

All notices of redemption shall identify the Securities to be redeemed (including CUSIP numbers, if any) and shall state:

- (1) the Redemption Date,
- (2) the Redemption Price,
- (3) if less than all the Outstanding Securities of any series consisting of more than a single Security are to be redeemed, the identification (and, in the case of partial redemption of any such Securities, the principal amounts) of the particular Securities to be redeemed and, if less than all the Outstanding Securities of any series consisting of a single Security are to be redeemed, the principal amount of the particular Security to be redeemed,

- (4) that on the Redemption Date the Redemption Price will become due and payable upon each such Security to be redeemed and, if applicable, that interest thereon will cease to accrue on and after said date,
- (5) the place or places where each such Security is to be surrendered for payment of the Redemption Price,
- (6) the conditions precedent for the redemption, if any,
- (7) for any Securities that by their terms may be converted, the terms of conversion, the date on which the right to convert the Security to be redeemed will terminate and the place or places where such Securities may be surrendered for conversion, and
- (8) that the redemption is for a sinking fund, if such is the case.

Notice of any redemption may, at the Company's discretion, be subject to one or more conditions precedent. If any such condition precedent has not been satisfied, the Company shall provide written notice to the Trustee prior to the close of business one Business Day prior to the Redemption Date (or such shorter period as may be acceptable to the Trustee). Upon receipt of such notice, the notice of redemption shall be rescinded or delayed, and the redemption of the Notes shall be rescinded or delayed as provided in such notice. Upon receipt, the Trustee shall provide such notice to each Holder in the same manner in which the notice of redemption was given.

A notice of redemption need not set forth the exact Redemption Price but only the manner of calculation thereof.

Notice of redemption of Securities to be redeemed at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company.

Section 1105 Deposit of Redemption Price. Prior to 11:00 A.M., New York City time, on any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 1003) an amount of money sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued interest on, all the Securities that are to be redeemed on that date, other than any Securities called for redemption on that date which have been converted prior to the date of such deposit.

If any Security called for redemption is converted, any money deposited with the Trustee or with any Paying Agent or so segregated and held in trust for the redemption of such Security shall (subject to any right of the Holder of such Security or any Predecessor Security to receive interest as provided in the last paragraph of Section 307 or in the terms of such Security) be paid to the Company upon Company Request or, if then held by the Company, shall be discharged from such trust.

Section 1106 Securities Payable on Redemption Date. Notice of redemption having been given as aforesaid, unless the conditions precedent described in the notice of redemption for the redemption have not been satisfied, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Company shall default in the payment of the Redemption Price and accrued interest) such Securities shall cease to bear interest. Upon surrender of any such Security for redemption in accordance with said notice, such Security shall be paid by the Company at the Redemption Price, together with accrued interest to the Redemption Date; provided, however, that, unless otherwise specified as contemplated by Section 301, installments of interest whose Stated Maturity is on or prior to the Redemption Date will be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 307.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal and any premium shall, until paid, bear interest from the Redemption Date at the rate prescribed therefor in the Security.

Section 1107 Securities Redeemed in Part. Any Security that is to be redeemed only in part shall be surrendered at a Place of Payment therefor (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing), and the Company, and, if applicable, the Guarantors shall execute and the Trustee shall authenticate and deliver to the Holder of such Security without service charge, a new Security or Securities of the same series and of like tenor, of any authorized denomination as requested by such Holder, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

Section 1108 No Limit on Repurchases. Nothing in this Indenture or the Securities shall prohibit or limit the right of the Company or any Affiliate of the Company to repurchase Securities from time to time at any price in open market purchases or private transactions at negotiated prices, by tender offer or otherwise, in each case without any notice to or consent by Holders. Any Securities purchased by the Company or any Affiliate of the Company may, to the extent permitted by law and at the discretion of the Company, be held, resold or delivered to the Trustee for cancellation. Any such Securities delivered to the Trustee for cancellation may not be resold and shall be disposed of as directed by Company Order.

ARTICLE XII
SINKING FUNDS

Section 1201 Applicability of Article. The provisions of this Article shall be applicable to any sinking fund for the retirement of Securities of any series except as otherwise specified as contemplated by Section 301 for such Securities.

The minimum amount of any sinking fund payment provided for by the terms of any Securities is herein referred to as a “***mandatory sinking fund payment***,” and any payment in excess of such minimum amount provided for by the terms of such Securities is herein referred to as an “***optional sinking fund payment***.” If provided for by the terms of any Securities, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 1202. Each sinking fund payment shall be applied to the redemption of Securities as provided for by the terms of such Securities.

Section 1202 Satisfaction of Sinking Fund Payments with Securities. The Company (1) may deliver Outstanding Securities of a series (other than any previously called for redemption) and (2) may apply as a credit Securities of a series that have been converted in accordance with their terms or that have been redeemed either at the election of the Company pursuant to the terms of such Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, in each case in satisfaction of all or any part of any sinking fund payment with respect to any Securities of such series required to be made pursuant to the terms of such Securities as and to the extent provided for by the terms of such Securities; provided that the Securities to be so credited have not been previously so credited. The Securities to be so credited shall be received and credited for such purpose by the Trustee at the Redemption Price, as specified in the Securities so to be redeemed (or at such other prices as may be specified for such Securities as contemplated in Section 301), for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly.

Section 1203 Redemption of Securities for Sinking Fund. Not less than 45 days (or such shorter period as shall be satisfactory to the Trustee) prior to each sinking fund payment date for any Securities, the Company will deliver to the Trustee an Officer’s Certificate specifying the amount of the next ensuing sinking fund payment for such Securities pursuant to the terms of such Securities, the portion thereof, if any, that is to be satisfied by payment of cash and the portion thereof, if any, that is to be satisfied by delivering and crediting Securities pursuant to Section 1202 and will also deliver to the Trustee any Securities to be so delivered. Not less than 30 days prior to each such sinking fund payment date, the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 1103 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 1104. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Section 1106 and Section 1107.

ARTICLE XIII
DEFEASANCE AND COVENANT DEFEASANCE

Section 1301 Company's Option to Effect Defeasance or Covenant Defeasance.

Unless otherwise designated pursuant to Section 301, the Securities of any series of Securities shall be subject to defeasance or covenant defeasance pursuant to such Section 1302 or Section 1303, in accordance with any applicable requirements provided pursuant to Section 301 and upon compliance with the conditions set forth below in this Article. The Company may elect, at its option, at any time, to have Section 1302 or Section 1303 applied to any Securities or any series of Securities so subject to Defeasance or Covenant Defeasance. Any such election shall be evidenced by a Board Resolution or in another manner specified as contemplated by Section 301 for such Securities.

Section 1302 Defeasance and Discharge. Upon the Company's exercise of its option (if any) to have this Section 1302 applied to any Securities or any series of Securities, as the case may be, the Company shall be deemed to have been discharged from its obligations with respect to such Securities as provided in this Section 1302 on and after the date the conditions set forth in Section 1304 are satisfied (hereinafter called "**Defeasance**"). For this purpose, such Defeasance means that the Company and the Guarantors of the Securities shall be deemed to have paid and discharged the entire indebtedness represented by such Securities and to have satisfied all their other respective obligations under such Securities and this Indenture insofar as such Securities are concerned (and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging the same), subject to the following which shall survive until otherwise terminated or discharged hereunder: (1) the rights of Holders of such Securities to receive, solely from the trust fund described in Section 1304(1) and as more fully set forth in such Section, payments in respect of the principal of and any premium and interest on such Securities when payments are due, or, if applicable, to convert such Securities in accordance with their terms, (2) the obligations of the Company with respect to such Securities under Section 304, Section 305, Section 306, Section 1002 and Section 1003, and, if applicable, their obligations with respect to the conversion of such Securities, (3) the rights, powers, trusts, duties and immunities of the Trustee hereunder and (4) this Article. If the Company exercises its Defeasance option, payment of the Securities may not be accelerated because of an Event of Default with respect to the Securities. Subject to compliance with this Article, the Company may exercise its option (if any) to have this Section 1302 applied to any Securities notwithstanding the prior exercise of its option (if any) to have Section 1303 applied to such Securities. Upon the effectiveness of Defeasance with respect to any series of Securities, each Guarantor of the Securities of such series shall be automatically and unconditionally released and discharged from all of its obligations under its Guarantee of the Securities of such series and all of its other obligations under this Indenture in respect of the Securities of such series, without any action by the Company, any Guarantor or the Trustee and without the consent of the Holders of any Securities.

Section 1303 Covenant Defeasance. Upon the Company's exercise of its option (if any) to have this Section 1303 applied to any Securities or any series of Securities, as the case may be, (1) the Company shall be released from its obligations under Section 1004 and any covenants provided pursuant to Section 301(18), Section 901(2), Section 901(6) or Section 901(7) for the benefit of the Holders of such Securities and (2) the occurrence of any event specified in Section 501(4) (with respect to Section 1004 and any such covenants provided pursuant to Section 301(18), Section 901(2), Section 901(6) or Section 901(7) and Section 501(8) shall be deemed not to be or result in an Event of Default, in each case with respect to such Securities as provided in this Section 1303 on and after the date the conditions set forth in Section 1304 are satisfied (hereinafter called "**Covenant Defeasance**"). For this purpose, such Covenant Defeasance means that, with respect to such Securities, the Company and any Guarantor may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such specified Section (to the extent so specified in the case of Section 501(4)), whether directly or indirectly by reason of any reference elsewhere herein to any such Section or by reason of any reference in any such Section to any other provision herein or in any other document, but the remainder of this Indenture and such Securities thereof shall be unaffected thereby. If the Company exercises its Covenant Defeasance option, payment of the Securities may not be accelerated because of, and a default or Event of Default shall be deemed not to exist as a result of or to arise out of, an Event of Default with respect to the failure of the Company to comply with any covenants provided pursuant to Section 301(18), Section 901(2), Section 901(6) or Section 901(7). Upon the effectiveness of Covenant Defeasance with respect to any series of Securities, each Guarantor of the Securities of such series shall be automatically and unconditionally released and discharged from all of its obligations under its Guarantee of the Securities of such series and all of its other obligations under this Indenture in respect of the Securities of such series, without any action by the Company, any Guarantor or the Trustee and without the consent of the Holders of any Securities.

Section 1304 Conditions to Defeasance or Covenant Defeasance. The following shall be the conditions to the application of Section 1302 or Section 1303 to any Securities or any series of Securities, as the case may be:

(1) The Company shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee which satisfies the requirements contemplated by Section 609 and agrees to comply with the provisions of this Article applicable to it) as trust funds in trust for the purpose of making the following payments, and dedicated solely to, the benefits of the Holders of such Securities, (A) money in an amount, or (B) U.S. Government Obligations which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment, money in an amount, or (C) such other obligations or arrangements as may be specified as contemplated by Section 301 with respect to such Securities, or (D) a combination thereof, in each case sufficient (except in the case of clause (A), in the opinion of a nationally recognized firm of independent public accountants expressing its opinion (or if a nationally recognized independent accounting firm declines or refuses to express such opinion, a certificate from the chief financial officer of the Company expressing his or her opinion) that the payments of principal and interest when due and without reinvestment on the deposited U.S. Government Obligations plus any deposited money without investment shall provide cash at such times and in such amounts as shall be sufficient to pay principal, premium, if any, and interest when due on all the Securities to maturity or redemption, as the case may be, expressed in a written certification thereof delivered to the Trustee) to pay and discharge, and which shall be applied by the Trustee (or any such other qualifying trustee) to pay and discharge, the principal of and any premium and interest on such Securities on the respective Stated Maturities, in accordance with the terms of this Indenture and such Securities. As used herein, "**U.S. Government Obligation**" means (x) any security that is (i) a direct obligation of the United States of America for the payment of which the full faith and credit of the United States of America is pledged or (ii) an obligation of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case (i) or (ii), is not callable or redeemable at the option of the issuer thereof, and (y) any depositary receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any U.S. Government Obligation which is specified in Clause (x) above and held by such bank for the account of the holder of such depositary receipt, or with respect to any specific payment of principal of or interest on any U.S. Government Obligation which is so specified and held, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the U.S. Government Obligation or the specific payment of principal or interest evidenced by such depositary receipt.

(2) In the event of an election to have Section 1302 apply to any Securities or any series of Securities, as the case may be, the Company shall have delivered to the Trustee an Opinion of Counsel (subject to customary assumptions and exclusions) stating that (A) the Company has received from, or there has been published by, the Internal Revenue Service a ruling or (B) since the date of this instrument, there has been a change in the applicable Federal income tax law, in either case (A) or (B) to the effect that, and based thereon such opinion shall confirm that, the Holders of such Securities will not recognize gain or loss for Federal income tax purposes as a result of the deposit, Defeasance and discharge to be effected with respect to such Securities and will be subject to Federal income tax on the same amount, in the same manner and at the same times as would be the case if such deposit, Defeasance and discharge were not to occur.

(3) In the event of an election to have Section 1303 apply to any Securities or any series of Securities, as the case may be, the Company shall have delivered to the Trustee an Opinion of Counsel (subject to customary assumptions and exclusions) to the effect that the Holders of such Securities will not recognize gain or loss for Federal income tax purposes as a result of the deposit and Covenant Defeasance to be effected with respect to such Securities and will be subject to Federal income tax on the same amount, in the same manner and at the same times as would be the case if such deposit and Covenant Defeasance were not to occur.

(4) No Event of Default with respect to such Securities or any other Securities (other than such an Event of Default with respect to such Securities resulting solely from the incurrence of indebtedness or other borrowing of funds, or the grant of liens securing such indebtedness or other borrowing, all or a portion of which are to be applied to such deposit) shall have occurred and be continuing at the time of such deposit.

(5) Such Defeasance or Covenant Defeasance shall not result in a breach of, or constitute a default under, any other agreement or instrument (other than this Indenture insofar as such Securities are concerned) to which the Company is a party or by which it is bound.

(6) The Company shall have delivered to the Trustee an Officer's Certificate stating that the deposit was not made by the Company with the intent of preferring the Holders of such Securities over the other creditors of the Company or with the intent of defeating, hindering, delaying or defrauding creditors of the Company.

(7) The Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent with respect to such Defeasance or Covenant Defeasance have been complied with.

Upon satisfaction of the conditions set forth herein and upon request of the Company, the Trustee shall acknowledge in writing the discharge of those obligations that the Company terminates.

Section 1305 Deposited Money and U.S. Government Obligations to Be Held in Trust; Miscellaneous Provisions. Subject to the provisions of the last paragraph of Section 1003, all money, U.S. Government Obligations and other obligations (including the proceeds thereof) deposited with the Trustee or other qualifying trustee (solely for purposes of this Section 1305 and Section 1306, the Trustee and any such other trustee are referred to collectively as the "*Trustee*") pursuant to Section 1304 in respect of any Securities shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities and this Indenture, to the payment, either directly or through any such Paying Agent (including the Company acting as its own Paying Agent or any Guarantor of the Securities of the applicable series or any Subsidiary or Affiliate of the Company or any such Guarantor acting as Paying Agent) as the Trustee may determine, to the Holders of such Securities, of all sums due and to become due thereon in respect of principal and any premium and interest, but money and U.S. Government Obligations so held in trust need not be segregated from other funds except to the extent required by law.

The Company shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the U.S. Government Obligations deposited pursuant to Section 1304 or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of Outstanding Securities.

Anything in this Article to the contrary notwithstanding, the Trustee shall deliver or pay to the Company from time to time upon Company Request any money, U.S. Government Obligations or other obligations held by it as provided in Section 1304 with respect to any Securities that are in excess of the amount thereof which would then be required to be deposited to effect the Defeasance or Covenant Defeasance, as the case may be, with respect to such Securities.

Section 1306 Reinstatement. If the Trustee or the Paying Agent is unable to apply any money in accordance with this Article with respect to any Securities by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, then the respective obligations under this Indenture and such Securities and, if applicable, Guarantees of such Securities from which the Company and the applicable Guarantors have been discharged or released pursuant to Section 1302 or Section 1303 shall be revived and reinstated as though no deposit had occurred pursuant to this Article with respect to such Securities, until such time as the Trustee or Paying Agent is permitted to apply all money held in trust pursuant to Section 1305 with respect to such Securities in accordance with this Article; provided, however, that if the Company or any Guarantor makes any payment of principal of or any premium or interest on any such Security following such reinstatement of its obligations, the Company or such Guarantor, as the case may be, shall be subrogated to the rights (if any) of the Holders of such Securities to receive such payment from the money so held in trust.

ARTICLE XIV GUARANTEES

Section 1401 Guarantees. Securities of any series that are to be guaranteed by the Guarantees of any Guarantors shall be guaranteed by such Guarantors as shall be established pursuant to Section 301 with respect to the Securities of such series. The Persons who shall initially be the Guarantors of the Securities of any such series may include any and all such Persons as the Company may determine; provided that, prior to the authentication and delivery upon original issuance of Securities that are to be guaranteed by a Person, the Company, the Trustee and such Person shall enter into a supplemental indenture pursuant to Section 901 hereof whereby such Person shall become a Guarantor under this Indenture.

Securities of any series that are to be guaranteed by the Guarantees of any Guarantors shall be guaranteed in accordance with the terms of such Guarantees as established pursuant to Section 301 with respect to such Securities and such Guarantees thereof and (except as otherwise specified as contemplated by Section 301 for such Securities and such Guarantees thereof) in accordance with this Article.

Each Guarantor of any Security hereby fully and unconditionally guarantees to each Holder of such Security, and to the Trustee on behalf of such Holder, the due and punctual payment of the principal of, and premium, if any, and interest, if any, on such Security when and as the same shall become due and payable, whether at the Stated Maturity, by declaration of acceleration, call for redemption or otherwise, in accordance with the terms of such Security and of this Indenture. In case of the failure of the Company punctually to make any such payment, such Guarantor hereby agrees to cause such payment to be made punctually when and as the same shall become due and payable, whether at the Stated Maturity or by acceleration, call for redemption or otherwise, and as if such payment were made by the Company.

The Guarantor of any Security hereby agrees that its obligations hereunder shall be absolute and unconditional irrespective of, and shall be unaffected by, any invalidity, irregularity or unenforceability of such Security or this Indenture, any failure to enforce the provisions of such Security or this Indenture, or any waiver, modification or indulgence granted to the Company with respect thereto, by the Holder of such Security or the Trustee or any other circumstance that may otherwise constitute a legal or equitable discharge or defense of a surety or guarantor; provided, however, that, notwithstanding the foregoing, no such waiver, modification or indulgence shall, without the consent of any Guarantor, increase the principal amount of such Security, or increase the interest rate thereon, change any redemption provisions thereof (including any change to increase any premium payable upon redemption thereof) or change the Stated Maturity of any payment thereon, or increase the principal amount of any Original Issue Discount Security that would be due and payable upon acceleration or the maturity thereof pursuant to Section 502 of this Indenture.

The Guarantor of any Security hereby waives the benefits of diligence, presentment, demand for payment, any requirement that the Trustee or any of the Holders exhaust any right or take any action against the Company or any other Person, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest or notice with respect to any Security or the indebtedness evidenced thereby and all demands whatsoever, and covenants that its obligations hereunder will not be discharged in respect of such Security except by complete performance of the obligations of such Guarantor contained in such Security and in this Indenture. Any Guarantee of any Guarantor hereunder shall constitute a guaranty of payment and not of collection. The Guarantor of any Security hereby agrees that, in the event of a default in payment of principal, or premium, if any, or interest, if any, on such Security, whether at its Stated Maturity, by acceleration, call for redemption or otherwise, legal proceedings may be instituted by the Trustee on behalf of, or by, the Holder of such Security, subject to the terms and conditions set forth in this Indenture, directly against such Guarantor to enforce the obligation of such Guarantor hereunder without first proceeding against the Company.

The Guarantee by any Guarantor of any Security shall remain in full force and effect and continue notwithstanding any petition filed by or against the Company for liquidation or reorganization, the Company becoming insolvent or making an assignment for the benefit of creditors or a receiver or trustee being appointed for all or any significant part of the Company's assets, and shall, to the fullest extent permitted by law, continue to be effective or reinstated, as the case may be, if at any time payment of such Security, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any Holder of such Security, 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 on a Security, such Security shall, to the fullest extent permitted by law, be reinstated and deemed paid only by such amount paid and not so rescinded, reduced, restored or returned.

No Guarantor shall consolidate with or merge with or into, or sell, convey, transfer or lease all or substantially all of its properties and assets on a consolidated basis to any Person, in each case in a transaction in which the successor Person formed by such consolidation or merger or to which such sale, conveyance, transfer or lease is made is an Affiliate of the Company (other than the Company or the Guarantor), unless, in any such case:

(1) the resulting, surviving or transferee Person (the “*Successor Guarantor*”) shall be a corporation, limited liability company, partnership, trust, or other entity organized and validly existing under the laws of the United States, any State thereof or the District of Columbia;

(2) the Successor Guarantor (if not the predecessor Guarantor) shall expressly assume, by supplemental indenture, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, the performance or observance of every covenant of this Indenture and any Guarantees on the part of such Guarantor to be performed or observed;

(3) immediately after giving effect to such transaction, no Event of Default, and no event that, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing; and

(4) such Guarantor has delivered to the Trustee a Guarantor’s Officer’s Certificate and an Opinion of Counsel, each stating that such consolidation, merger, sale, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture comply with this Article and that all conditions precedent provided for in this Indenture relating to such transaction have been complied with.

Upon any consolidation of any Guarantor with, or merger of such Guarantor with or into, or any sale, conveyance, transfer or lease of all or substantially all the properties and assets of such Guarantor on a consolidated basis to, any Person, in each case in accordance with this paragraph, the Successor Guarantor shall succeed to, and be substituted for, and may exercise every right and power of, such Guarantor under this Indenture with the same effect as if the Successor Guarantor had been named as such Guarantor herein, and thereafter the predecessor Guarantor shall be relieved of all obligations and covenants under this Indenture and any Guarantees of such Guarantor, except in the case of a lease of all or substantially all of the properties and assets of the Guarantor on a consolidated basis, in which case the predecessor Guarantor shall not be released from the obligation to pay the principal of, any premium on, and interest on the Securities.

Each Guarantor shall be released and discharged automatically and unconditionally from all its obligations under this Indenture and its Guarantees with respect to a series of Securities, and will cease to be a Guarantor with respect to such Securities, without further action required on the part of the Trustee or any Holder, (a) in the case of a Guarantor that is a Subsidiary of the Company, in the event the Guarantor is sold or disposed of (whether by merger, consolidation, the sale of a sufficient amount of its (or an intermediate holding company's) capital stock so that it no longer constitutes a Subsidiary of the Company or the sale of all or substantially all of its properties and assets on a consolidated basis (other than by lease)), and whether or not the Guarantor is the surviving entity in such transaction, to a Person that is not (and does not thereupon become) the Company or a Subsidiary of the Company, (b) in connection with any Covenant Defeasance or Defeasance pursuant to Article XIII or satisfaction and discharge of the Securities of that series pursuant to Article IV, or (c) if no Event of Default has occurred and is then continuing, upon the liquidation or dissolution of the Guarantor. The Trustee shall deliver an appropriate instrument evidencing such release and discharge upon receipt of a Company Request accompanied by an Officer's Certificate certifying as to the compliance with this paragraph of Section 1401. The Company may, at its option, at any time and from time to time, cause any Guarantor to be automatically and unconditionally released and discharged from all its obligations under its Guarantees with respect to Securities of any series guaranteed by Guarantees of such Guarantor and under this Indenture upon (i) any conditions for such release provided with respect to Securities of such series in accordance with Section 301 having been satisfied and (ii) delivery by the Company to the Trustee of a Company Order relating to such release and discharge. The Trustee shall deliver an appropriate instrument evidencing such release and discharge upon receipt of a Company Request accompanied by an Officer's Certificate certifying as to the compliance with this paragraph of Section 1401.

Anything in this Indenture, the Securities or any Guarantee to the contrary notwithstanding, the obligations of any Guarantor under its Guarantees and this Indenture shall be limited to the maximum amount as will, after giving effect to all other contingent and fixed liabilities of such Guarantor, result in the obligations of such Guarantor under its Guarantees and this Indenture not constituting a fraudulent advance or fraudulent transfer under any Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal, state or other law affecting the rights of creditors generally.

No Guarantee by any Guarantor of any Security, whether or not such Guarantee is or is to be endorsed thereon, shall be valid and obligatory for any purpose with respect to such Security until the certificate of authentication on such Security shall have been signed by or on behalf of the Trustee.

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument. Delivery of an executed counterpart of this Indenture by facsimile or electronic transmission shall be equally as effective as delivery of an original executed counterpart of this Indenture. Any party delivering an executed counterpart of this Indenture by facsimile or electronic transmission also shall deliver an original executed counterpart of this Indenture, but failure to deliver an original executed counterpart shall not affect the validity, enforceability and binding effect of this Indenture.

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

DIAMONDBACK ENERGY, INC.

By: /s/ Teresa L. Dick

Name: Teresa L. Dick

Title: Executive Vice President, Chief Accounting Officer and Assistant Secretary

Indenture Signature Page

COMPUTERSHARE TRUST COMPANY, NATIONAL ASSOCIATION, as
Trustee

By: /s/ Niki Austin
Name: Niki Austin
Title: Assistant Vice President

Indenture Signature Page

DIAMONDBACK ENERGY, INC.,

as the Company

DIAMONDBACK E&P LLC,

as the Subsidiary Guarantor

and

COMPUTERSHARE TRUST COMPANY, NATIONAL ASSOCIATION,

as the Trustee

6.250% Senior Notes due 2053

FIRST SUPPLEMENTAL INDENTURE

Dated as of December 13, 2022

to the

INDENTURE

Dated as of December 13, 2022

TABLE OF CONTENTS

	Page
ARTICLE I SCOPE OF SUPPLEMENTAL INDENTURE; GENERAL; THE NOTES	2
SECTION 1.1. Scope of Supplemental Indenture; General	2
SECTION 1.2. Applicability of Sections of the Base Indenture	2
SECTION 1.3. Form, Dating and Terms	2
SECTION 1.4. Additional Notes	5
ARTICLE II CERTAIN DEFINITIONS	5
SECTION 2.1. Certain Definitions	5
ARTICLE III REDEMPTION	13
SECTION 3.1. Optional Redemption	13
SECTION 3.2. Sinking Fund; Mandatory Redemption	14
SECTION 3.3. Redemption Provisions	14
ARTICLE IV COVENANTS	15
SECTION 4.1. Limitation on Liens	15
SECTION 4.2. Reports	15
SECTION 4.3. Unrestricted Subsidiaries	16
ARTICLE V CONSOLIDATION, MERGER, SALE, CONVEYANCE, TRANSFER OR LEASE	16
ARTICLE VI DEFAULTS AND REMEDIES	17
SECTION 6.1. Events of Default	17
SECTION 6.2. Acceleration of Maturity; Rescission and Annulment	18
ARTICLE VII SATISFACTION AND DISCHARGE; DEFEASANCE	19
ARTICLE VIII AMENDMENT, SUPPLEMENT AND WAIVER	20
SECTION 8.1. Without Consent of Holders	20
SECTION 8.2. With Consent of Holders	21
SECTION 8.3. Limitations	21
SECTION 8.4. Compliance with Trust Indenture Act	22
SECTION 8.5. Revocation and Effect of Consents	22
SECTION 8.6. Notation on or Exchange of Notes	23
SECTION 8.7. Effect of Supplemental Indenture	23
ARTICLE IX SUBSIDIARY GUARANTEE	23
SECTION 9.1. Release of a Guarantor	23
SECTION 9.2. Guarantee Evidenced by Indenture; No Notation of Guarantee	24

ARTICLE X MISCELLANEOUS	24
SECTION 10.1. Governing Law	24
SECTION 10.2. Successors	24
SECTION 10.3. Multiple Originals	24
SECTION 10.4. Paying Agent and Security Registrar	25
SECTION 10.5. Severability	25
SECTION 10.6. Trust Indenture Act Controls	25
SECTION 10.7. Table of Contents; Headings	25
SECTION 10.8. No Adverse Interpretation of Other Agreements	25
SECTION 10.9. Ratification and Incorporation of Base Indenture	25
SECTION 10.10. Benefits of Supplemental Indenture	25

EXHIBITS

EXHIBIT A Form of Note

FIRST SUPPLEMENTAL INDENTURE dated as of December 13, 2022 (this "Supplemental Indenture") by and among DIAMONDBACK ENERGY, INC., a Delaware corporation (referred to herein as the "Company"), DIAMONDBACK E&P LLC, a Delaware limited liability company, as the Subsidiary Guarantor (as defined below), and Computershare Trust Company, National Association, as trustee (referred to herein as the "Trustee"), supplementing the Indenture dated as of December 13, 2022, by and between the Company and the Trustee (the "Base Indenture" and, as supplemented by this Supplemental Indenture, the "Indenture").

Each party agrees as follows for the benefit of the other parties and for the equal and ratable benefit of the Holders of Notes (as such terms are defined herein):

WHEREAS, the Company has duly authorized the execution and delivery of the Base Indenture to provide for the issuance from time to time of the Company's Securities to be issued in one or more series as provided in the Indenture;

WHEREAS, the Base Indenture has been duly authorized, executed and delivered by the Company and the Trustee;

WHEREAS, Section 901 of the Base Indenture provides that the Company, each Guarantor (if any) and the Trustee may, without the consent of any Holder, enter into a supplemental indenture: (i) in accordance with clause (7) thereof, to establish the form and terms of Securities of any series and any Guarantees thereof as permitted by the Base Indenture; (ii) in accordance with clause (5) thereof, to add to, change, or eliminate any of the provisions of the Base Indenture in respect of one or more series of Securities or any Guarantees thereof, provided that any such addition, change, or elimination (x) will neither (A) apply to any Security of any series created prior to the execution of such supplemental indenture and entitled to the benefit of such provision nor (B) modify the rights of the Holder of any such Security with respect to such provision or (y) will become effective only when there is no such Security Outstanding; and (iii) in accordance with clause (10) thereof, to add any Person as a Guarantor under the Base Indenture;

WHEREAS, the Company has duly authorized the issue of its 6.250% Senior Notes due 2053 as a series of Securities under the Base Indenture (as they may be issued from time to time under this Supplemental Indenture, including any Additional Notes (as defined below) issued pursuant to Section 1.4 of this Supplemental Indenture, the "Notes"); and in connection therewith, there being no Notes Outstanding at the time of execution and delivery of this Supplemental Indenture, the Company has duly determined to make, execute and deliver this Supplemental Indenture to establish the form and terms of the Notes and the Guarantee thereof as required by the Base Indenture, to add to, change and eliminate certain provisions of the Base Indenture in respect of the Notes and the Guarantee thereof, and to add the Subsidiary Guarantor as a Guarantor of the Notes;

WHEREAS, the Company and the Subsidiary Guarantor have duly authorized the execution and delivery of this Supplemental Indenture, and have requested the Trustee to join them in the execution and delivery of this Supplemental Indenture, in order to establish the form and terms of, and to provide for the issuance by the Company of, the Notes, substantially in the form attached hereto as Exhibit A and the Guarantee thereof, on the terms set forth herein;

WHEREAS, the Company now wishes to issue \$650,000,000 aggregate principal amount of the Notes (the "Initial Notes"), and the Subsidiary Guarantor wishes to guarantee the payment of the Initial Notes;

WHEREAS, the conditions set forth in the Base Indenture for the execution and delivery of this Supplemental Indenture have been complied with;

WHEREAS, all things necessary have been done to make the Initial Notes, when Global Securities representing the Initial Notes have been duly executed by the Company and authenticated and delivered by the Trustee or a duly authorized Authenticating Agent, as provided in the Base Indenture, the valid and legally binding obligations of the Company; and

WHEREAS, all things necessary have been done to make this Supplemental Indenture a valid agreement of the Company, the Subsidiary Guarantor and the Trustee, in accordance with its terms, and a valid amendment of, and supplement to, the Base Indenture.

NOW, THEREFORE:

In consideration of the premises and the purchase and acceptance of the Notes by the Holders, the Company and the Subsidiary Guarantor covenant and agree with the Trustee, for the equal and ratable benefit of the Holders of the Notes, that the Base Indenture is supplemented and amended, to the extent expressed herein, as follows:

ARTICLE I

SCOPE OF SUPPLEMENTAL INDENTURE; GENERAL; THE NOTES

SECTION 1.1. Scope of Supplemental Indenture; General. This Supplemental Indenture supplements, and to the extent inconsistent therewith, replaces, the provisions of the Base Indenture, to which provisions reference is hereby made.

The changes, modifications and supplements to the Base Indenture effected by this Supplemental Indenture shall be applicable only with respect to, and govern the terms of, and shall be deemed expressly included in this Supplemental Indenture solely for the benefit of, the Notes (which shall be initially in the aggregate principal amount of \$650,000,000) and shall not apply to any other series of Securities that have been or may be issued under the Base Indenture unless a supplemental indenture with respect to such other series of Securities specifically incorporates such changes, modifications and supplements.

SECTION 1.2. Applicability of Sections of the Base Indenture. Except as expressly specified hereby, each of the provisions of the Base Indenture shall apply to the Notes.

SECTION 1.3. Form, Dating and Terms.

(a) General. The aggregate principal amount of the Notes that may be authenticated and delivered under the Indenture is unlimited. The aggregate principal amount of the Initial Notes initially authorized for authentication and delivery pursuant to this Supplemental Indenture is limited to \$650,000,000 (except for Notes authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of other Notes pursuant to Section 1.3(b), 1.3(c) and 8.6 of this Supplemental Indenture and Sections 304, 305, 306 and 1107 of the Base Indenture). Pursuant to this Supplemental Indenture, there is hereby created and designated one series of Securities under the Indenture entitled “6.250% Senior Notes due 2053.”

In addition, with respect to the Notes, the Company may issue, from time to time subsequent to the Issue Date in accordance with the provisions of the Indenture, additional Securities (such Securities, the “Additional Notes”) of the same series as the Notes.

The Initial Notes and the Additional Notes shall be considered collectively as a single class for all purposes of the Indenture. Holders of the Initial Notes and the Additional Notes shall vote and consent together on all matters to which such Holders are entitled to vote or consent as one series of Securities, and none of the Holders of the Initial Notes or the Additional Notes shall have the right to vote or consent as a separate class or series on any matter to which such Holders are entitled to vote or consent.

Initial Notes and Additional Notes shall be initially issued in the form of one or more permanent Global Securities substantially in the form of Exhibit A (each, a “Global Note”), duly executed by the Company and authenticated by the Trustee as provided in the Base Indenture. The aggregate principal amount of the Global Notes may from time to time be increased or decreased by adjustments made on the records of the Trustee and the Depositary or its nominee.

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

The terms and provisions contained in the form of Note attached as Exhibit A hereto shall constitute, and are hereby expressly made, a part of this Supplemental Indenture, and the Company, the Subsidiary Guarantor 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 any provision of any Note conflicts with the express provisions of the Indenture, the provisions of the Indenture shall govern and be controlling.

The Company shall pay principal of, premium, if any, and interest on the Notes at the office or agency designated by the Company, which is initially the corporate trust office of the Trustee in Minneapolis, Minnesota. The Company shall pay principal of, premium, if any, and interest on the Global Notes registered in the name of or held by the Depositary or its nominee in immediately available funds to the Depositary or its nominee, as the case may be, as the registered holder of such Global Note. The Company shall make all payments in respect of a Definitive Note by mailing a check to the registered address of each Holder thereof as such address shall appear in the Security Registrar’s books; *provided, however*, that payments on the Notes represented by Definitive Notes may also be made, in the case of a Holder of at least \$1,000,000 aggregate principal amount of Notes represented by Definitive Notes, by wire transfer to a U.S. dollar account maintained by the payee with a bank in the United States if such Holder elects payment by wire transfer by giving written notice to the Trustee or the Paying Agent in accordance with the terms of the Indenture.

(b) Book-Entry Provisions. Except as otherwise stated in this Section 1.3(b) and Section 1.3(c), below, the last two paragraphs of Section 305 of the Base Indenture will apply to the Notes.

(i) This Section 1.3(b) shall apply only to Global Notes deposited with the Notes Custodian with respect to such Notes (as appointed by the Depositary), or any successor Person thereto, which shall initially be the Trustee.

(ii) Each Global Note initially shall (x) be registered in the name of the Depositary for such Global Note or the nominee of such Depositary, (y) be delivered to the Notes Custodian for such Depositary and (z) bear the legend set forth in Exhibit A.

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

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

(v) In connection with the transfer of an entire Global Note to beneficial owners pursuant to Section 1.3(c) of this Supplemental Indenture, such Global Note shall be deemed to be surrendered to the Trustee for cancellation, and the Company shall execute, and the Trustee shall authenticate and deliver, to each beneficial owner identified by the Depositary in exchange for its beneficial interest in such Global Note, an equal aggregate principal amount of Definitive Notes of authorized denominations.

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

(c) Definitive Notes. Except as provided in the Indenture, owners of beneficial interests in Global Notes shall not be entitled to receive Definitive Notes. Definitive Notes shall be delivered to all beneficial owners in exchange for their beneficial interests in a Global Note if (i) the Depository notifies the Company that it is unwilling or unable to continue as depository for such Global Note or the Depository ceases to be a clearing agency registered under the Exchange Act at a time when the Depository is required to be so registered in order to act as Depository, and, in each case, a successor depository is not appointed by the Company within 90 days of such notice or (ii) an Event of Default has occurred and is continuing and the Security Registrar has received a request from the Depository to deliver Definitive Notes to all beneficial owners in exchange for their beneficial interests in such Global Note. Definitive Notes may not be exchanged for beneficial interests in any Global Note unless the transferor first delivers to the Trustee a written certificate to the effect that such transfer will comply with any appropriate transfer restrictions applicable to such Notes.

(d) Initial Notes. The Initial Notes may forthwith be executed by the Company and delivered, together with a Company Order, to the Trustee for authentication and delivery by the Trustee for original issue in accordance with the provisions of Section 303 of the Base Indenture.

(e) Additional Notes. At any time and from time to time after the issuance of the Initial Notes, the Trustee shall authenticate and deliver any Additional Notes for original issue in accordance with the provisions of Section 303 of the Base Indenture in an aggregate principal amount determined at the time of issuance and specified in a Company Order which shall be accompanied with the Officer's Certificate or supplemental indenture, as applicable, in respect thereof specified in Section 1.4 of this Supplemental Indenture. Such Company Order shall specify the principal amount of the Additional Notes to be authenticated and the date on which the original issue of such Additional Notes is to be authenticated.

SECTION 1.4. Additional Notes. With respect to any Additional Notes, there shall be set forth or determined in an Officer's Certificate delivered to the Trustee or established in one or more indentures supplemental to the Indenture, prior to the issuance of such Additional Notes:

(a) the aggregate principal amount of such Additional Notes to be authenticated and delivered; and

(b) the issue price and the issue date of such Additional Notes, including the date from which interest shall accrue and the first interest payment date therefor.

ARTICLE II

CERTAIN DEFINITIONS

SECTION 2.1. Certain Definitions. Section 101 of the Base Indenture is hereby amended by adding the following definitions in their proper alphabetical order which, in the event of a conflict with the definition of terms in the Base Indenture, shall supersede and replace the corresponding definitions in the Base Indenture. Capitalized terms used but not defined herein have the meanings ascribed to such terms in the Base Indenture. The rules of construction set forth in Section 101 of the Base Indenture shall be applied hereto as if set forth in full herein, except that unless the context indicates otherwise, references in this Supplemental Indenture to an Article or Section refer to an Article or Section of this Supplemental Indenture, as the case may be.

“Bankruptcy Law” means Title 11 of the United States Code or any similar federal, state or foreign law for the relief of debtors.

“Capital Stock” of any Person means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, including, without limitation, any preferred stock and limited liability company or partnership interests (whether general or limited) of such Person, but excluding any debt securities convertible or exchangeable into such equity.

“Code” means the Internal Revenue Code of 1986, as amended.

“Consolidated Net Tangible Assets” means at any date of determination, the total amount of assets of the Company and its Restricted Subsidiaries (less applicable depreciation and valuation reserves and other reserves and items deductible from the gross book value of specific asset accounts under GAAP) after deducting therefrom:

(1) all current liabilities (excluding (A) any current liabilities that by their terms are extendable or renewable at the option of the obligor thereon to a time more than 12 months after the time as of which the amount thereof is being computed, and (B) current maturities of Funded Debt); and

(2) the value of all goodwill, trade names, trademarks, patents, and other like intangible assets, all as set forth on the Company’s consolidated balance sheet as of a date no earlier than the date of the Company’s latest available annual or quarterly consolidated financial statements prepared in accordance with GAAP.

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

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

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

“Definitive Notes” means Notes issued in the form of one or more certificated Notes substantially in the form of Exhibit A.

“Depository” means The Depository Trust Company, its nominees and their respective successors and assigns, or such other depository institution hereinafter appointed by the Company.

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

“Funded Debt” means, in respect of any Person, all Indebtedness Incurred by such Person that matures, or is renewable by such Person to a date, more than one year after the date as of which Funded Debt is being determined.

“GAAP” means generally accepted accounting principles in the United States of America as in effect as of the Issue Date, including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession.

“guarantee” means any obligation, contingent or otherwise, of any Person guaranteeing any Indebtedness of any other Person and any obligation, direct or indirect, contingent or otherwise, of such Person to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise). The term “guarantee” will not include endorsements for collection or deposit in the ordinary course of business. The term “guarantee” used as a verb has a corresponding meaning.

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

“Incur” means issue, create, assume, guarantee, incur or otherwise become liable for. Any Indebtedness of a Person existing at the time such Person becomes a Subsidiary (whether by merger, consolidation, acquisition or otherwise) will be deemed to be Incurred by such Subsidiary at the time it becomes a Subsidiary. The terms “Incurred” and “Incurrence” have meanings correlative to the foregoing.

“Indebtedness” means, with respect to any Person on any date of determination, any obligation of such Person, whether contingent or otherwise, for the repayment of borrowed money and any guarantee thereof.

“Issue Date” means December 13, 2022, the date the Initial Notes are first issued under the Indenture.

“Lien” means, with respect to any asset, any mortgage, lien (statutory or otherwise), pledge, hypothecation, charge, security interest, preference, priority or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction. For the avoidance of doubt, (1) an operating lease shall be deemed not to constitute a Lien and (2) a contract that would not be considered a capital lease pursuant to GAAP prior to the effectiveness of Accounting Standards Codification 842 shall be deemed not to constitute a Lien.

“Non-Recourse Debt” means Indebtedness as to which neither the Company nor any of its Restricted Subsidiaries (a) provides credit support of any kind (including any undertaking, agreement or instrument that would constitute Indebtedness) or (b) is directly or indirectly liable as a guarantor or otherwise except, in each case for (i) Customary Recourse Exceptions and (ii) the pledge of (or a guarantee limited in recourse solely to) the Capital Stock of such Unrestricted Subsidiary.

“Notes Custodian” means the custodian with respect to the Global Notes (as appointed by the Depositary), or any successor Person thereto, and shall initially be the Trustee.

“Officer’s Certificate” means a certificate signed by an Officer of the Company.

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

“Par Call Date” means September 15, 2052.

“Permitted Liens” means, with respect to any Person:

- (1) any Lien in favor of the Trustee for the benefit of the Trustee or the Holders of the Notes or otherwise securing the Notes, a Guarantee or other obligations under the Indenture;
- (2) Liens securing hedging obligations or obligations with regard to treasury management arrangements;
- (3) Liens in favor of the Company or a Restricted Subsidiary;
- (4) Liens on property of a Person existing at the time such Person becomes a Restricted Subsidiary of the Company or is merged with or into or consolidated with the Company or any Restricted Subsidiary of the Company; provided that such Liens were in existence prior to the contemplation of such Person becoming a Restricted Subsidiary;
- (5) Liens on property existing at the time of acquisition of the property by the Company or any Restricted Subsidiary of the Company; provided that such Liens were in existence prior to such acquisition and not Incurred in contemplation of such acquisition;
- (6) Liens to secure the performance of statutory or regulatory obligations, insurance, surety or appeal bonds, workers’ compensation obligations, bid, plugging and abandonment and performance bonds or other obligations of a like nature incurred in the ordinary course of business (including Liens to secure letters of credit issued to assure payment of such obligations);

(7) Liens to secure Indebtedness represented by capital lease obligations, finance lease obligations, mortgage financings or purchase money obligations or other Indebtedness, in each case, incurred for the purpose of financing all or any part of the purchase price, other acquisition cost or cost of design, construction, installation, development, repair or improvement of property, plant or equipment used in the business of the Company or any of its Restricted Subsidiaries, and all refinancing indebtedness Incurred to renew, refund, refinance, replace, defease, discharge or otherwise retire for value, in whole or in part, such Indebtedness, covering only the assets acquired with or financed by such Indebtedness;

(8) Liens existing on the date hereof;

(9) filing of Uniform Commercial Code financing statements as a precautionary measure in connection with operating leases;

(10) bankers' Liens, rights of setoff, rights of revocation, refund or chargeback with respect to money or instruments of the Company or any Restricted Subsidiary, Liens arising out of judgments or awards and notices of *lis pendens* and associated rights related to litigation being contested in good faith by appropriate proceedings and for which adequate reserves have been made;

(11) Liens in respect of Production Payments and Reserve Sales; provided, that such Liens are limited to the property that is subject to such Production Payments and Reserve Sales;

(12) Liens arising under oil and gas leases or subleases, assignments, farm-out agreements, farm-in agreements, division orders, contracts for the sale, purchase, exchange, transportation, gathering or processing of hydrocarbons, unitizations and pooling designations, declarations, orders and agreements, development agreements, joint venture agreements, partnership agreements, operating agreements, royalties, working interests, net profits interests, joint interest billing arrangements, participation agreements, production sales contracts, area of mutual interest agreements, gas balancing or deferred production agreements, injection, repressuring and recycling agreements, salt water or other disposal agreements, seismic or geophysical permits or agreements, licenses, sublicenses and other agreements that are customary in the oil and gas business; *provided, however*, in all instances that such Liens are limited to the assets that are the subject of the relevant agreement, program, order or contract;

(13) Liens imposed by law or ordinary course of business contracts, including, without limitation, carriers', warehousemen's, suppliers', mechanics', materialmen's, repairmen's and similar Liens;

(14) Liens in favor of issuers of surety or performance bonds or letters of credit or bankers' acceptances issued pursuant to the request of and for the account of such Person in the ordinary course of its business;

(15) survey exceptions, encumbrances, ground leases, easements, restrictions, servitudes, permits, conditions, covenants, exceptions or reservations of, or rights of others for, licenses, rights-of-way, roads, pipelines, transmission liens, transportation liens, distribution lines for the removal of gas, oil, coal or other minerals or timber, sewers, electric lines, telegraph and telephone lines and other similar purposes, or for the joint or common use of real estate, rights of way, facilities and equipment, Liens related to surface leases and surface operations, or zoning, building codes or other restrictions (including, without limitation, minor defects or irregularities in title and similar encumbrances) as to the use of real properties or Liens incidental to the conduct of the business of the Company or any Restricted Subsidiary of the Company or to the ownership of its properties that do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of the Company or any Restricted Subsidiary of the Company;

(16) leases, licenses, subleases and sublicenses of assets that do not materially interfere with the ordinary conduct of the business of the Company or any Restricted Subsidiary of the Company;

(17) any interest or title of a lessor under any operating lease;

(18) Liens on pipelines or pipeline facilities that arise by operation of law;

(19) Liens on, or related to, properties or assets to secure all or part of the costs incurred in the ordinary course of business for the exploration, drilling, development, production, processing, gathering, transportation, marketing or storage, plugging, abandonment or operation thereof;

(20) Liens under industrial revenue, municipal or similar bonds; and

(21) any Lien renewing, extending, refinancing, replacing or refunding a Lien permitted by this definition, provided that (a) the principal amount of the Indebtedness secured by such Lien is not increased except by an amount equal to accrued interest and any premium or other amount paid, and fees, costs and expenses incurred, in connection therewith and by an amount equal to any existing commitments unutilized thereunder and (b) no assets are encumbered by any such Lien other than the assets permitted to be encumbered immediately prior to such renewal, extension, refinancing, replacement or refunding.

In each case set forth above, notwithstanding any stated limitation on the assets or property that may be subject to such Lien, a Permitted Lien on a specified asset or property or group or type of assets or property may include Liens on all improvements, additions, repairs, attachments and accessions thereto, construction thereon, assets and property affixed or appurtenant thereto, parts, replacements and substitutions therefor and all products and proceeds thereof, including dividends, distributions, interest and increases in respect thereof.

“Person” means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company or government or other entity.

“Principal Property” means all property interests in oil and gas reserves located in the United States capable of producing hydrocarbon substances in paying quantities, the net book value of which exceeds 2% of Consolidated Net Tangible Assets, other than: (1) property not of material importance to the business of the Company and its Subsidiaries, taken as a whole; (2) assets used in midstream operations; (3) accounts receivable; and (4) production or proceeds from the production of hydrocarbons.

“Production Payments and Reserve Sales” means the grant or transfer by the Company or any of its Restricted Subsidiaries to any Person of a royalty, overriding royalty, net profits interest, production payment, partnership or other interest in oil and gas properties, reserves or the right to receive all or a portion of the production or the proceeds from the sale of production attributable to such properties where the holder of such interest has recourse solely to such production or proceeds of production, subject to the obligation of the grantor or transferor to operate and maintain, or cause the subject interests to be operated and maintained, in a reasonably prudent manner or other customary standard or subject to the obligation of the grantor or transferor to indemnify for environmental, title or other matters customary in the oil and gas business, including any such grants or transfers pursuant to incentive compensation programs on terms that are reasonably customary in the oil and gas business for geologists, geophysicists or other providers of technical services to the Company or any of its Restricted Subsidiaries.

“Restricted Subsidiary” of any Person means any Subsidiary of the Person that is not an Unrestricted Subsidiary.

“SEC” means the United States Securities and Exchange Commission.

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

“Stated Maturity” means, with respect to any security or Indebtedness, the date specified in such security or Indebtedness as the fixed date on which the payment of principal of such security or Indebtedness is due and payable, including, without limitation, pursuant to any mandatory redemption provision, but shall not include any contingent obligations to repay, redeem or repurchase any such principal prior to the date originally scheduled for the payment thereof.

“Subsidiary” with respect to any Person, means any (i) corporation, limited liability company or other entity (other than a partnership) of which the outstanding Capital Stock having a majority of the votes entitled to be cast in the election of directors, managers or trustees of such entity under ordinary circumstances shall at the time be owned, directly or indirectly, by such Person or any other Person of which a majority of the voting interests under ordinary circumstances is at the time, directly or indirectly, owned by such Person or (ii) partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are that Person or one or more Subsidiaries of that Person (or any combination thereof).

“Treasury Rate” means, with respect to any redemption date, the yield determined by the Company in accordance with the following two paragraphs.

The Treasury Rate shall be determined by the Company after 4:15 p.m., New York City time (or after such time as yields on U.S. government securities are posted daily by the Board of Governors of the Federal Reserve System), on the third Business Day preceding the redemption date based upon the yield or yields for the most recent day that appear after such time on such day in the most recent statistical release published by the Board of Governors of the Federal Reserve System designated as “Selected Interest Rates (Daily)—H.15” (or any successor designation or publication) (“H.15”) under the caption “U.S. government securities—Treasury constant maturities—Nominal” (or any successor caption or heading) (“H.15 TCM”). In determining the Treasury Rate, the Company shall select, as applicable: (1) the yield for the Treasury constant maturity on H.15 exactly equal to the period from the redemption date to the Par Call Date (the “Remaining Life”); or (2) if there is no such Treasury constant maturity on H.15 exactly equal to the Remaining Life, the two yields—one yield corresponding to the Treasury constant maturity on H.15 immediately shorter than and one yield corresponding to the Treasury constant maturity on H.15 immediately longer than the Remaining Life—and shall interpolate to the Par Call Date on a straight-line basis (using the actual number of days) using such yields and rounding the result to three decimal places; or (3) if there is no such Treasury constant maturity on H.15 shorter than or longer than the Remaining Life, the yield for the single Treasury constant maturity on H.15 closest to the Remaining Life. For purposes of this paragraph, the applicable Treasury constant maturity or maturities on H.15 shall be deemed to have a maturity date equal to the relevant number of months or years, as applicable, of such Treasury constant maturity from the redemption date.

If on the third Business Day preceding the redemption date H.15 TCM is no longer published, the Company shall calculate the Treasury Rate based on the rate per annum equal to the semi-annual equivalent yield to maturity at 11:00 a.m., New York City time, on the second Business Day preceding such redemption date of the United States Treasury security maturing on, or with a maturity that is closest to, the Par Call Date, as applicable. If there is no United States Treasury security maturing on the Par Call Date but there are two or more United States Treasury securities with a maturity date equally distant from the Par Call Date, one with a maturity date preceding the Par Call Date and one with a maturity date following the Par Call Date, the Company shall select the United States Treasury security with a maturity date preceding the Par Call Date. If there are two or more United States Treasury securities maturing on the Par Call Date or two or more United States Treasury securities meeting the criteria of the preceding sentence, the Company shall select from among these two or more United States Treasury securities the United States Treasury security that is trading closest to par based upon the average of the bid and asked prices for such United States Treasury securities at 11:00 a.m., New York City time. In determining the Treasury Rate in accordance with the terms of this paragraph, the semi-annual yield to maturity of the applicable United States Treasury security shall be based upon the average of the bid and asked prices (expressed as a percentage of principal amount) at 11:00 a.m., New York City time, of such United States Treasury security, and rounded to three decimal places.

“Unrestricted Subsidiary” means (1) Viper Energy Partners GP LLC, (2) Viper Energy Partners LP, (3) Viper Energy Partners LLC, (4) Rattler Midstream GP LLC, (5) Rattler Midstream LP, (6) Rattler Midstream Operating LLC, (7) Tall City Towers LLC, (8) Rattler OMOG LLC, (9) Rattler Ajax Processing LLC, (10) Rattler WTG LLC, (11) Rattler Holdings LLC, (12) Rattler BANGL LLC, (13) any other Subsidiary of the Company designated as such pursuant to and in compliance with the Indenture and (14) any Subsidiary of an Unrestricted Subsidiary. Notwithstanding the foregoing, if OMOG JV LLC shall constitute a Subsidiary of the Company, it shall constitute an Unrestricted Subsidiary.

In addition to the terms defined above, the following terms are defined in this Supplemental Indenture where indicated below:

Term	Defined in Section
“Additional Notes”	1.3(a)
“Agent Members”	1.3(b)(iii)
“Base Indenture”	Preamble
“Event of Default”	6.1(a)
“Global Note”	1.3(a)
“Indenture”	Preamble
“Initial Notes”	Recitals
“Notes”	Recitals
“payment default”	6.1(a)(5)(A)
“Subsidiary Credit Facility”	9.1
“Subsidiary Guarantee”	Article IX
“Subsidiary Guarantor”	Article IX
“Supplemental Indenture”	Preamble

ARTICLE III

REDEMPTION

SECTION 3.1. Optional Redemption.

(a) Prior to the Par Call Date, the Company may redeem the Notes at its option, in whole or in part, at any time and from time to time, at a Redemption Price (expressed as a percentage of principal amount and rounded to three decimal places) equal to the greater of (1) (a) the sum of the present values of the remaining scheduled payments of principal and interest on the Notes to be redeemed discounted to the Redemption Date (assuming the Notes matured on the Par Call Date) on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate plus 40 basis points less (b) interest accrued to the Redemption Date, and (2) 100% of the principal amount of the Notes to be redeemed, plus, in either case, accrued and unpaid interest thereon to but not including the Redemption Date.

(b) On or after the Par Call Date, the Company may redeem the Notes, in whole or in part, at any time and from time to time, at a Redemption Price equal to 100% of the principal amount of the Notes being redeemed plus accrued and unpaid interest thereon to but not including the Redemption Date.

(c) The Company’s actions and determinations in determining the Redemption Price shall be conclusive and binding for all purposes, absent manifest error.

(d) In the case of a partial redemption, selection of the Notes for redemption will be made pro rata, by lot or by such other method as the Trustee in its sole discretion deems appropriate and fair, subject to the last sentence of this Section 3.1(d). No Notes of a principal amount of \$2,000 or less will be redeemed in part. If any Note is to be redeemed in part only, the notice of redemption that relates to the Note will state the portion of the principal amount of the Note to be redeemed. A new Note in a principal amount equal to the unredeemed portion of the Note will be issued in the name of the Holder of the Note upon surrender for cancellation of the original Note. For so long as the Notes are held by the Depository, the redemption of the Notes shall be done in accordance with the policies and procedures of such Depository.

(e) Unless the Company defaults in payment of the Redemption Price or any conditions precedent described in the notice of redemption are not satisfied and therefore the notice of redemption is deemed rescinded, on and after the Redemption Date interest will cease to accrue on the Notes or portions thereof called for redemption.

SECTION 3.2. Sinking Fund; Mandatory Redemption. The Company is not required to make mandatory redemption payments or sinking fund payments with respect to the Notes. Accordingly, Article XII of the Base Indenture shall not apply to the Notes.

SECTION 3.3. Redemption Provisions.

(a) The first paragraph of Section 1104 of the Base Indenture shall not apply to the Notes, and in lieu thereof, the following paragraph shall be deemed included in the Indenture for the benefit of the Notes:

Notice of any redemption will be mailed or electronically delivered (or otherwise transmitted in accordance with the Depository's Applicable Procedures) in the manner provided in Section 106 of the Base Indenture at least 10 days but not more than 60 days before the Redemption Date to each Holder of Notes to be redeemed. Notwithstanding anything herein to the contrary, notices may be sent more than 60 days prior to a Redemption Date if the notice is issued in connection with a Covenant Defeasance or Defeasance with respect to the Notes or a satisfaction and discharge of the Indenture with respect to the Notes.

(b) Notice of any redemption may, at the Company's discretion, be subject to one or more conditions precedent. If a redemption is subject to satisfaction of one or more conditions precedent, the Redemption Date may be delayed up to 10 Business Days at the Company's election. If such conditions precedent are not satisfied within 10 Business Days after the proposed Redemption Date, such redemption shall not occur and the notice thereof shall be deemed rescinded. If the conditions precedent are satisfied, the Company shall provide written notice to the Trustee of the satisfaction of such conditions as soon as practicable following occurrence of the conditions.

(c) The third paragraph of Section 1104 of the Base Indenture shall not apply to the Notes.

(d) Except as otherwise stated in this Article III or to the extent inconsistent with this Article III, Article XI of the Base Indenture shall apply to the Notes.

ARTICLE IV

COVENANTS

Articles VII and X of the Base Indenture shall apply to the Notes, and the covenants in such Articles shall be deemed included in the Indenture for the benefit of the Notes, except that Section 704 of the Base Indenture shall not apply to the Notes, and the covenants in Section 704 of the Base Indenture shall be deemed included in the Indenture solely for the benefit of series of Securities other than the Notes.

In addition, the following covenants in this Article IV shall apply to the Notes and shall be deemed included in the Indenture solely for the benefit of the Notes:

SECTION 4.1. Limitation on Liens. The Company will not, and will not permit any of its Restricted Subsidiaries to, create, Incur, or suffer or permit to exist, any Lien securing Funded Debt (other than Permitted Liens) upon any Principal Property, whether owned on the Issue Date or acquired after that date, unless the Indebtedness due under the Indenture, the Notes and the Subsidiary Guarantee (if any) is secured equally and ratably with (or senior in priority to in the case of Liens with respect to Funded Debt that is expressly subordinated to the Notes or the Subsidiary Guarantee) the Funded Debt secured by such Lien for so long as such Funded Debt is so secured.

Notwithstanding the preceding paragraph, the Company may, and may permit any Restricted Subsidiary of the Company to, create, Incur, or suffer or permit to exist, any Lien securing Funded Debt upon any Principal Property without securing the Indebtedness due under the Indenture, the Notes and the Subsidiary Guarantee if the aggregate principal amount of such Funded Debt secured by such Lien upon such Principal Property, together with the aggregate outstanding principal amount of all other Funded Debt of the Company and of any Restricted Subsidiary of the Company secured by any Liens (other than Permitted Liens) upon Principal Property, does not at the time such Funded Debt is created, Incurred or assumed (or, if later, at the time such Lien is created, Incurred or assumed) exceed the greater of (i) 15% of Consolidated Net Tangible Assets at such time and (ii) \$3,350,000,000.

SECTION 4.2. Reports.

(a) The Company will furnish or file with the Trustee, within 15 days after it files the same with the SEC, copies of the annual reports and 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) that the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act. If the Company is not subject to the requirements of Section 13 or 15(d) of the Exchange Act, the Company will furnish to all Holders of the Notes and prospective purchasers of the Notes designated by the Holders of the Notes, promptly on their request, the information required to be delivered pursuant to Rule 144A(d)(4) promulgated under the Securities Act. For purposes of this Section 4.2, the Company will be deemed to have furnished such reports and information to, or filed such reports and information with, the Trustee and the Holders of Notes and prospective purchasers as required by this Section 4.2 if it has filed such reports or information with the SEC via the EDGAR filing system or otherwise made such reports or information publicly available on a freely accessible page on the Company's website. The Trustee shall have no obligation whatsoever to determine whether or not such reports and information have been filed or have been posted on such website.

(b) The Company also shall furnish to the Trustee, annually, a brief certificate from the principal executive officer, principal financial officer or principal accounting officer as to his or her knowledge of the Company's compliance with all conditions and covenants under the Indenture.

(c) The Company will deliver to the Trustee, within 30 days after the occurrence thereof, written notice of any events that would constitute an Event of Default, unless such Event of Default has been cured or waived before the end of such 30-day period, their status and what action the Company is taking or proposing to take in respect thereof.

(d) Delivery of any reports, information and documents to the Trustee pursuant to paragraphs (a) and (b) above is for informational purposes only and the Trustee's receipt of such shall not constitute notice, constructive or otherwise, of any information contained therein or determinable from information contained therein, including the compliance by the Company with any of the Company's covenants (as to which the Trustee is entitled to rely exclusively on Officer's Certificates).

SECTION 4.3 Unrestricted Subsidiaries.

(a) The Board of Directors of the Company may after the Issue Date designate any Subsidiary as an "Unrestricted Subsidiary" if: (1) no Default or Event of Default shall have occurred and be continuing at the time of or after giving effect to such designation; and (2) such Subsidiary has no Indebtedness other than Non-Recourse Debt.

(b) The Board of Directors of the Company may at any time designate any Unrestricted Subsidiary to be a Restricted Subsidiary of the Company. Any such designation will be deemed to be an incurrence of Funded Debt and Liens by a Restricted Subsidiary of the Company of any outstanding Funded Debt and Liens, respectively, of such Unrestricted Subsidiary, and such designation will only be permitted if no Default or Event of Default would be in existence following such designation.

ARTICLE V

CONSOLIDATION, MERGER, SALE, CONVEYANCE, TRANSFER OR LEASE

Sections 801 and 802 of the Base Indenture shall apply to the Notes, and the covenants therein shall be deemed included in the Indenture for the benefit of the Notes.

ARTICLE VI

DEFAULTS AND REMEDIES

Sections 501 and 502 of the Base Indenture shall not apply to the Notes, and shall be deemed not to be included in the Indenture for the benefit of the Notes.

Sections 6.1 and 6.2 below shall apply to the Notes and shall be deemed to be included in the Indenture solely for the benefit of the Notes:

SECTION 6.1. Events of Default.

(a) Each of the following is an “Event of Default” with respect to the Notes:

- (1) default in any payment of interest on any Note when due, continued for 30 days;
- (2) default in the payment of principal of or premium, if any, on any Note when due at its Stated Maturity, upon optional redemption, upon acceleration or otherwise;
- (3) failure by the Company to comply for 180 days after notice as provided below with Section 4.2 of this Supplemental Indenture;
- (4) failure by the Company to comply for 90 days after notice as provided below with its agreements (other than the agreements that are the subjects of clauses (1)-(3) above) contained in the Indenture or the Notes;
- (5) default under any mortgage, indenture or similar instrument under which there is issued or by which there is secured or evidenced any Indebtedness for money borrowed by the Company or the Subsidiary Guarantor (or the payment of which is guaranteed by the Company or the Subsidiary Guarantor), other than Indebtedness owed to a Subsidiary, whether such Indebtedness or guarantee now exists or is created after the Issue Date, which default:
 - (A) is caused by a failure to pay principal of, or interest or premium, if any, on such Indebtedness prior to the expiration of the grace period provided in such Indebtedness (“payment default”); or
 - (B) results in the acceleration of such Indebtedness prior to its maturity;

and, in each case, the principal amount of any such Indebtedness, together with the principal amount of any other such Indebtedness under which there is an outstanding uncured payment default or the maturity of which has been and remains so accelerated, aggregates \$150.0 million or more;

(6) the Company, pursuant to or within the meaning of any Bankruptcy Law:

- (A) commences a voluntary case or voluntary proceeding;
- (B) consents to the entry of a judgment, decree or order for relief against it in an involuntary case or involuntary proceeding;
- (C) consents to the appointment of a Custodian of it or for any substantial part of its property;
- (D) makes a general assignment of substantially all of its property for the benefit of its creditors; or
- (E) transmits its written consent to or acquiescence in the institution of a bankruptcy proceeding or other collective proceeding for relief by or against its creditors generally;

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

- (A) is for relief in an involuntary case against the Company, pursuant to or within the meaning of the Bankruptcy Law;
- (B) appoints a Custodian for all or substantially all of the property of the Company, pursuant to or within the meaning of the Bankruptcy Law; or
- (C) orders the winding up or liquidation of the Company, pursuant to or within the meaning of the Bankruptcy Law; and

in case of (A), (B) or (C), the order or decree remains unstayed or not dismissed and in effect for 60 days following the entry, issuance or effective date thereof; or

(8) the Subsidiary Guarantee ceases to be in full force and effect (except as contemplated by the terms of the Indenture) or is declared null and void in a judicial proceeding or the Subsidiary Guarantor denies or disaffirms its obligations under the Indenture or the Subsidiary Guarantee, in each case unless the Subsidiary Guarantee has been released pursuant to the terms of the Indenture.

(b) Notwithstanding Section 6.1(a), a default under Section 6.1(a)(3) or Section 6.1(a)(4) will not constitute an Event of Default until the Trustee or the Holders of at least 25% in principal amount of the then Outstanding Notes notify the Company in writing of the Default and the Company does not cure such Default within the time specified in Section 6.1(a)(3) or Section 6.1(a)(4) after receipt of such notice. Such notice must specify the Default, demand that it be remedied, and state that such notice is a "Notice of Default."

SECTION 6.2. Acceleration of Maturity; Rescission and Annulment.

If an Event of Default (other than an Event of Default described in Section 6.1(a)(6) or (7)) occurs and is continuing, the Trustee by written notice to the Company, or Holders of at least 25% in principal amount of the then outstanding Notes by written notice to the Company and the Trustee, may, and the Trustee at the request of Holders of at least 25% in principal amount of the then Outstanding Notes shall, declare the principal, premium, if any, and accrued and unpaid interest, if any, on all the Notes to be due and payable. Such notice must specify the Event of Default and state that such notice is a "Notice of Acceleration." Upon such a declaration, such principal, premium, if any, and accrued and unpaid interest will be due and payable immediately.

In the event of a declaration of acceleration of the Notes because an Event of Default described in Section 6.1(a)(5) has occurred and is continuing, the declaration of acceleration of the Notes shall be automatically annulled if the Default triggering such Event of Default pursuant to Section 6.1(a)(5) shall be remedied or cured by the Company or waived by the Holders of the relevant Indebtedness within 20 days after the written notice of declaration of acceleration of the Notes with respect thereto is received by the Company and if (1) the annulment of the acceleration of the Notes would not conflict with any judgment or decree of a court of competent jurisdiction and (2) all existing Events of Default, except nonpayment of principal, premium, if any, or interest on the Notes that became due solely because of the acceleration of the Notes, have been cured or waived.

If an Event of Default pursuant to Section 6.1(a)(6) or (7) occurs, the principal, premium, if any, and accrued and unpaid interest on all the Notes will become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holders.

At any time after a declaration of acceleration, but before a judgment or decree for the payment of the money due has been obtained by the Trustee, the Holders of a majority in principal amount of the Outstanding Notes may by notice to the Trustee and the Company (including, without limitation, waivers and consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes) waive all past defaults (except with respect to nonpayment of principal, premium, if any, or interest) and rescind any such acceleration with respect to the Notes and its consequences if (1) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (2) all existing Events of Default, other than the nonpayment of the principal of, premium, if any, and interest on the Notes that have become due solely by such declaration of acceleration, have been cured or waived.

ARTICLE VII

SATISFACTION AND DISCHARGE; DEFEASANCE

The satisfaction and discharge and Defeasance and Covenant Defeasance provisions in Articles IV and XIII of the Base Indenture shall be applicable to the Notes and any Guarantee thereof.

In the case of a Covenant Defeasance, (i) the Company will be released from its obligations to comply with Sections 4.1 and 4.2 of this Supplemental Indenture (for the benefit of Holders of Notes) and Section 1004 of the Base Indenture (for the benefit of Holders of Notes) and Section 801 of the Base Indenture (other than Section 8.01(2)) and (ii) the events described in Section 6.1(a), clauses (3), (4), (5) and (8) of this Supplemental Indenture shall no longer constitute Events of Default with respect to Notes.

If the Company exercises its Defeasance or its Covenant Defeasance option or satisfies and discharges the Indenture with respect to the Notes, in each case all Guarantees (if any are in effect at such time) will terminate.

ARTICLE VIII

AMENDMENT, SUPPLEMENT AND WAIVER

Article IX of the Base Indenture shall not apply to the Notes, provided that nothing in this Supplemental Indenture shall limit or affect the provisions of Article IX of the Base Indenture (including Section 901(5) and Section 901(7) thereof) insofar as relating to any amendment or waiver in respect of any series of Securities other than the Notes.

SECTION 8.1. Without Consent of Holders. Notwithstanding Section 8.2 and Section 8.3, without the consent of any Holder of Notes, the Company and the Trustee may amend or supplement this Supplemental Indenture, the Base Indenture as it relates to the Notes (including the Subsidiary Guarantee) and the Notes to:

- (1) cure any ambiguity, omission, defect or inconsistency;
- (2) provide for the assumption by a successor entity of the obligations of the Company under this Supplemental Indenture, the Base Indenture (as it relates to the Notes) or the Notes in accordance with Section 801 and Section 802 of the Base Indenture;
- (3) provide for or facilitate the issuance of uncertificated Notes in addition to or in place of certificated Notes (provided that the uncertificated Notes are issued in registered form for purposes of Section 163(f) of the Code);
- (4) add Guarantees with respect to the Notes, evidence the release of a Guarantor from its Guarantee or provide for the assumption by a successor entity of the obligations of a Guarantor in accordance with the applicable provisions of the Indenture;
- (5) secure the Notes or any Guarantee thereof;
- (6) add covenants of the Company or other obligor under the Indenture or the Notes or any Guarantees, as the case may be, or Events of Default for the benefit of the Holders of the Notes or the Guarantee or to make other changes that would provide additional rights to the Holders of the Notes or to surrender any right or power conferred upon the Company or other such obligor;
- (7) make any change that does not adversely affect the legal or contractual rights of any Holder under the Indenture or the Notes;

(8) evidence and provide for the acceptance of an appointment under the Indenture of a successor trustee; *provided* that the successor trustee is otherwise qualified and eligible to act as such under the terms of the Indenture;

(9) provide for the issuance of Additional Notes permitted to be issued under the Indenture;

(10) comply with the rules of any applicable securities depository; or

(11) conform the text of this Supplemental Indenture, the Base Indenture (as it relates to the Notes and the Subsidiary Guarantee), the Notes or the Guarantee to any provision of the section of the Company's Prospectus Supplement dated November 29, 2022 entitled "Description of Notes" or the "Description of Debt Securities" set forth in the accompanying base prospectus to the extent that such provision in the "Description of Notes" or the "Description of Debt Securities" was intended to be a verbatim recitation of a provision of the Indenture, the Notes or the Guarantee, which intent shall be established by an Officer's Certificate.

After an amendment, supplement or waiver under the Indenture becomes effective, the Company is required to send to the Holders a notice briefly describing such amendment, supplement or waiver. However, the failure to give such notice to all the Holders, or any defect in the notice, will not impair or affect the validity of any amendment, supplement or waiver.

SECTION 8.2. With Consent of Holders. Except as set forth in Section 8.1 and Section 8.3, the Company and the Trustee may amend or supplement this Supplemental Indenture, the Base Indenture (as it relates to the Notes) and the Notes with the consent of the Holders of a majority in principal amount of the Notes then Outstanding voting as a single class (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes) and any past default or compliance with any provisions of this Supplemental Indenture, the Base Indenture (as it relates to the Notes) and the Notes may be waived with the consent of the Holders of a majority in principal amount of the Notes then Outstanding voting as a single class (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, Notes).

The consent of the Holders is not necessary under the Indenture to approve the particular form of any proposed amendment, supplement or waiver. It is sufficient if such consent approves the substance of the proposed amendment, supplement or waiver. A consent to any amendment, supplement or waiver under the Indenture by any Holder of Notes given in connection with a tender of such Holder's Notes will not be rendered invalid by such tender.

SECTION 8.3. Limitations. Notwithstanding Section 8.2, without the consent of each Holder of an Outstanding Note affected, no amendment, supplement or waiver may (with respect to any Notes held by a non-consenting Holder):

(1) reduce the principal amount of Notes whose Holders must consent to an amendment, supplement or waiver;

- (2) reduce the stated rate of interest or extend the stated time for payment of interest on any Note;
- (3) reduce the principal of or extend the Stated Maturity of any Note;
- (4) waive a Default or Event of Default in the payment of principal of, premium, if any, or interest on the Notes (except a rescission of acceleration of the Notes by Holders of a majority in aggregate principal amount of the then outstanding Notes with respect to a nonpayment default and a waiver of the payment default that resulted from such acceleration);
- (5) reduce the premium payable upon the redemption of any Note or change the time at which any Note may be redeemed as described under Article III, whether through an amendment or waiver of Article III, related definitions or otherwise;
- (6) make any Note payable in money other than that stated in the Note;
- (7) impair the right of any Holder to receive payment of principal, premium, if any, and interest on such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Notes;
- (8) modify the Subsidiary Guarantee of the Notes in any manner adverse to the Holders of the Notes; or
- (9) make any change in the amendment or waiver provisions that require each Holder's consent.

SECTION 8.4. Compliance with Trust Indenture Act. Every amendment to this Supplemental Indenture, the Base Indenture (as it relates to the Notes) or the Notes shall be set forth in a supplemental indenture hereto that complies with the Trust Indenture Act as then in effect. The Trustee shall have no responsibility or liability for whether this Supplemental Indenture, the Base Indenture, the Notes, or any amendment to any of them complies with the Trust Indenture Act or the Company's compliance with the Trust Indenture Act.

SECTION 8.5. Revocation and Effect of Consents. Until an amendment, supplement or waiver becomes effective, a consent to it by a Holder of Notes is a continuing consent by the Holder and every subsequent Holder of the Notes or portion of such Notes that evidences the same debt as the consenting Holder's Note or Notes, even if notation of the consent is not made on any such Note. However, any such Holder or subsequent Holder may revoke the consent as to its Notes or portion of such Notes if the Trustee receives the notice of revocation before the date the amendment or waiver becomes effective.

Any amendment or waiver in respect of the Notes once effective shall bind every Holder of Notes affected by such amendment or waiver unless it is of the type described in any of the clauses of Section 8.3. In that case, the amendment or waiver shall bind each Holder of a Note who has consented to it and every subsequent Holder of a Note or portion of a Note that evidences the same debt as the consenting Holder's Note.

The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Holders entitled to give their consent or take any other action described above or required or permitted to be taken pursuant to this Supplemental Indenture in respect of the Notes or the Base Indenture (as it relates to the Notes). If a record date is fixed, then notwithstanding the immediately preceding paragraph, those Persons who were Holders of Notes at such record date (or their duly designated proxies), and only those Persons, shall be entitled to give such consent or to revoke any consent previously given or to take any such action, whether or not such Persons continue to be Holders of Notes after such record date.

SECTION 8.6. Notation on or Exchange of Notes. The Trustee may place an appropriate notation about an amendment or waiver on the Notes. The Company in exchange for the Notes may issue and the Trustee shall authenticate upon written request new Notes that reflect the amendment or waiver.

SECTION 8.7. Effect of Supplemental Indenture. Upon the execution of any supplemental indenture under this Article VIII, the Indenture (including this Supplemental Indenture) shall be modified in accordance therewith, and such supplemental indenture shall form a part of the Indenture for all purposes; and, subject to Section 8.3, every Holder of Notes theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

ARTICLE IX

SUBSIDIARY GUARANTEE

Article XIV of the Base Indenture shall apply to the Notes, except as described in this Article IX. The Notes will be fully and unconditionally Guaranteed (such Guarantee, the "Subsidiary Guarantee") by Diamondback E&P LLC (such entity during the period (and only during such period) that the Subsidiary Guarantee is in effect, the "Subsidiary Guarantor") as a "Guarantor" as defined in the Base Indenture.

SECTION 9.1. Release of a Guarantor. Solely with respect to the Notes, the ninth paragraph of Section 1401 of the Base Indenture shall not apply to the Notes and instead the following shall apply:

The Subsidiary Guarantor shall be released and discharged automatically and unconditionally from all its obligations under the Indenture and its Guarantee with respect to the Notes, and will cease to be a Guarantor with respect to the Notes, without any further action required on the part of the Trustee or any Holder, (a) upon the release or discharge of the Company's Guarantee of the Subsidiary Guarantor's obligations under its revolving credit facility (as amended, modified, restated, amended and restated or otherwise replaced or refinanced from time to time, the "Subsidiary Credit Facility"), (b) upon the release or discharge of the Subsidiary Guarantor's obligations under the Subsidiary Credit Facility, (c) in connection with any Covenant Defeasance or Defeasance pursuant to Article XIII of the Base Indenture as to the Notes or satisfaction and discharge of the Notes pursuant to Article IV of the Base Indenture and Article VII of this Supplemental Indenture, or (d) if no Event of Default has occurred and is then continuing, upon the liquidation or dissolution of the Subsidiary Guarantor.

In the event the Subsidiary Guarantor is sold or disposed of (whether by merger, consolidation, the sale of a sufficient amount of its (or an intermediate holding company's) Capital Stock so that the Subsidiary Guarantor no longer constitutes a Subsidiary of the Company or the sale of all or substantially all of its assets (other than by lease)), and whether or not the Subsidiary Guarantor is the surviving entity in such transaction, to a Person that is not (and does not thereupon become) the Company or a Subsidiary of the Company, the Subsidiary Guarantor will be released and discharged automatically and unconditionally from all its obligations under the Subsidiary Guarantee and will cease to be the Subsidiary Guarantor, without any further action required on the part of the Trustee or any Holder.

Upon delivery by the Company to the Trustee of an Officer's Certificate and an Opinion of Counsel to the effect that any of the conditions described above has occurred, the Trustee shall execute any supplemental indenture or other documents reasonably requested by the Company in order to evidence the release of the Subsidiary Guarantor from its obligations under the Subsidiary Guarantee and the Indenture as to the Notes.

SECTION 9.2. Guarantee Evidenced by Indenture; No Notation of Guarantee.

(a) The Subsidiary Guarantee of the Subsidiary Guarantor shall be evidenced solely by its execution and delivery of this Supplemental Indenture and not by an endorsement on, or attachment to, any Note or any Guarantee or notation thereof.

(b) The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of the Subsidiary Guarantee as to the Notes set forth in this Supplemental Indenture on behalf of the Subsidiary Guarantor as to the Notes.

ARTICLE X

MISCELLANEOUS

SECTION 10.1. Governing Law. This Supplemental Indenture, the Indenture, the Notes and any Guarantees shall be governed by, and construed in accordance with, the laws of the State of New York.

EACH OF THE COMPANY, THE SUBSIDIARY GUARANTOR 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 SUPPLEMENTAL INDENTURE, THE INDENTURE (AS IT RELATES TO THE NOTES), THE NOTES OR THE TRANSACTION CONTEMPLATED HEREBY.

SECTION 10.2. Successors. All agreements of the Company and the Subsidiary Guarantor in this Supplemental Indenture and the Notes shall bind their respective successors. All agreements of the Trustee in this Supplemental Indenture shall bind its successors.

SECTION 10.3. Multiple Originals. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy shall be an original, but all of them together represent the same agreement. One signed copy is enough to prove this Supplemental Indenture. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto and may be used in lieu of the original instrument for all purposes. Signature pages of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes. This Section 10.3 is subject to Section 119 of the Base Indenture.

SECTION 10.4. Paying Agent and Security Registrar. The Company initially appoints the Trustee as Paying Agent and Security Registrar with respect to any Global Notes.

SECTION 10.5. Severability. In case any provision in this Supplemental Indenture, the Indenture, the Notes or the Subsidiary 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.

SECTION 10.6. Trust Indenture Act Controls. If any provision of the Indenture limits, qualifies, or conflicts with another provision that is required or deemed to be included in the Indenture by the Trust Indenture Act, such required or deemed provision shall control. If any provision of the Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the provision of the Trust Indenture Act shall be deemed to apply to the Indenture as so modified or shall be excluded, as the case may be.

SECTION 10.7. Table of Contents; Headings. The table of contents, cross-reference sheet and headings of the Articles and Sections of this Supplemental Indenture have been inserted for convenience of reference only, are not intended to be considered a part hereof and shall not modify or restrict any of the terms or provisions hereof.

SECTION 10.8. No Adverse Interpretation of Other Agreements. The Indenture insofar as relating to the Notes may not be used to interpret any other indenture, loan or debt agreement (including the Indenture (including any other supplemental indenture thereto) insofar as relating to any series of Securities other than the Notes) of the Company or any Subsidiaries or of any other Person. Any such indenture, loan or debt agreement (including the Indenture (including any other supplemental indenture thereto) insofar as relating to any series of Securities other than the Notes) may not be used to interpret the Indenture insofar as relating to the Notes.

SECTION 10.9. Ratification and Incorporation of Base Indenture. As supplemented hereby, the Base Indenture is in all respects ratified and confirmed, and the Base Indenture and this Supplemental Indenture shall be read, taken and construed as one and the same instrument. This Supplemental Indenture shall form a part of the Indenture for all purposes (as it relates to the Notes), and every Holder of Notes shall be bound hereby.

SECTION 10.10. Benefits of Supplemental Indenture. Nothing in this Supplemental Indenture or the Base Indenture (as it relates to the Notes) or in the Notes, express or implied, shall give to any Person, other than the parties to this Supplemental Indenture and their successors hereunder and the Holders of the Notes, any benefit or any legal or equitable right, remedy or claim under this Supplemental Indenture as it relates to the Notes or the Indenture.

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

DIAMONDBACK ENERGY, INC., as the Company

By: /s/ Teresa L. Dick

Name: Teresa L. Dick

Title: Executive Vice President, Chief Accounting Officer and Assistant Secretary

DIAMONDBACK E&P LLC, as Subsidiary Guarantor

By: /s/ Teresa L. Dick

Name: Teresa L. Dick

Title: Executive Vice President, Chief Accounting Officer and Assistant Secretary

[Signature Page to the First Supplemental Indenture]

TRUSTEE:

COMPUTERSHARE TRUST COMPANY, NATIONAL ASSOCIATION,
as Trustee

By: /s/ Niki Austin

Name: Niki Austin

Title: Assistant Vice President

[Signature Page to the First Supplemental Indenture]

FORM OF FACE OF NOTE

[THIS SECURITY IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF A DEPOSITARY OR A SUCCESSOR DEPOSITARY. UNLESS AND UNTIL IT IS EXCHANGED IN WHOLE OR IN PART FOR SECURITIES IN CERTIFICATED FORM, THIS SECURITY MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION (THE "DEPOSITARY") TO THE NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO THE DEPOSITARY OR ANOTHER NOMINEE OF THE DEPOSITARY OR BY THE DEPOSITARY OR ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.

UNLESS THIS SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY SECURITY ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]⁽¹⁾

⁽¹⁾ Depositary legend, if applicable.

No.

Principal Amount \$
[as revised by the Schedule of Increases
and Decreases in the Global Note attached hereto]¹

CUSIP NO. 25278X AW9
ISIN US25278XAW92

DIAMONDBACK ENERGY, INC.

6.250% SENIOR NOTE DUE 2053

Diamondback Energy, Inc., a Delaware corporation, promises to pay to [Cede & Co.]¹ or registered assigns, the principal sum of [] Dollars, [as revised by the Schedule of Increases and Decreases in the Global Note attached hereto]¹, on March 15, 2053.

Interest Payment Dates: March 15 and September 15, commencing March 15, 2023.

Regular Record Dates: March 1 and September 1.

Additional provisions of this Note are set forth on the other side of this Note.

¹ For Global Notes.

IN WITNESS WHEREOF, the Company has caused this Note to be signed manually or by facsimile by its duly authorized officer.

DIAMONDBACK ENERGY, INC.

By: _____
Name:
Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

Dated:

[_____],

as Trustee, certifies that this is one of the Notes referred to in the Indenture.

By: _____
Authorized Signatory

FORM OF REVERSE SIDE OF NOTE

6.250% Senior Note due 2053

1. Interest

Diamondback Energy, Inc., a Delaware corporation (such corporation, and its successors and assigns under the Indenture hereinafter referred to, being herein called the "Company"), promises to pay interest on the principal amount of this Note at the rate per annum shown above.

The Company shall pay interest semiannually on March 15 and September 15 of each year, commencing March 15, 2023. Interest on the Notes shall accrue from the most recent date to which interest has been paid on the Notes or, if no interest has been paid, from December 13, 2022. The Company shall pay interest on overdue principal or premium, if any (plus interest on overdue installments of interest to the extent lawful), at the rate borne by the Notes to the extent lawful. Interest shall be computed on the basis of a 360-day year comprised of twelve 30-day months.

2. Method of Payment

By no later than 12:30 p.m. (New York City time) on the date on which any principal of, premium, if any, or interest on any Note is due and payable, the Company shall irrevocably deposit with the Trustee or the Paying Agent money sufficient to pay such principal, premium, if any, or interest. The Company shall pay interest (except Defaulted Interest) to the Persons who are registered Holders at the close of business on the March 1 or September 1 immediately preceding the interest payment date even if the Notes are cancelled or repurchased after the Regular Record Date and on or before the Interest Payment Date. Holders must surrender the Notes to a Paying Agent to collect principal payments. The Company shall pay principal of, premium, if any, and interest on the Notes in money of the United States that at the time of payment is legal tender for payment of public and private debts. The Company shall pay principal of, premium, if any, and interest on the Notes at the office or agency designated by the Company, which is initially the corporate trust office of the Trustee in Minneapolis, Minnesota. The Company shall pay principal of, premium, if any, and interest on the Global Notes registered in the name of or held by the Depositary or its nominee in immediately available funds to the Depositary or its nominee, as the case may be, as the registered holder of such Global Note. The Company shall make all payments in respect of a Definitive Note by mailing a check to the registered address of each Holder thereof as such address shall appear on the Security Registrar's books; *provided, however*, that payments on the Notes represented by Definitive Notes may also be made, in the case of a Holder of at least \$1,000,000 aggregate principal amount of Notes represented by Definitive Notes, by wire transfer to a U.S. dollar account maintained by the payee with a bank in the United States if such Holder elects payment by wire transfer by giving written notice to the Trustee or the Paying Agent in accordance with the terms of the Indenture.

3. Paying Agent and Security Registrar

Initially, Computershare Trust Company, National Association, the trustee under the Indenture (such corporation, and its successors and assigns under the Indenture hereinafter referred to, being herein called the “Trustee”), shall act as Paying Agent and Security Registrar. The Company may appoint and change any Paying Agent or Security Registrar without notice to any Holder. The Company or any of its Subsidiaries may act as Paying Agent or Security Registrar.

4. Indenture

The Company issued the Notes as a series of Securities under the Indenture dated as of December 13, 2022 (the “Base Indenture”) between the Company and the Trustee, as supplemented by the First Supplemental Indenture dated as of December 13, 2022 (the “Supplemental Indenture”) and, together with the Base Indenture and any one or more additional supplemental indentures thereto applicable to the Notes, herein called the “Indenture”) among the Company, Diamondback E&P LLC, a Delaware limited liability company (the “Subsidiary Guarantor”), and the Trustee. The terms of the Notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act. Capitalized terms used herein and not defined herein have the meanings ascribed thereto in the Indenture. The Notes are subject to all such terms, and Holders are referred to the Indenture and the Trust Indenture Act for a statement of those terms. In the event of any inconsistency between the terms of this Note and the terms of the Indenture, the terms of the Indenture shall control.

The aggregate principal amount of Notes that may be authenticated and delivered under the Indenture is unlimited. This Note is one of the 6.250% Senior Notes due 2053 referred to in the Indenture. The Notes include (i) \$650,000,000 aggregate principal amount of the Company’s 6.250% Senior Notes due 2053 issued under the Indenture on December 13, 2022 in an offering registered under the Securities Act (the “Initial Notes”), and (ii) if and when issued, an unlimited principal amount of additional 6.250% Senior Notes due 2053 that may be issued from time to time, under the Indenture, subsequent to December 13, 2022 (the “Additional Notes”) and, together with the Initial Notes, the “Notes”). The Initial Notes and the Additional Notes shall be considered collectively as a single series of Securities for all purposes of the Indenture.

5. Redemption

(a) Prior to September 15, 2052 (the “Par Call Date”), the Company may redeem the Notes at its option, in whole or in part, at any time and from time to time, at a Redemption Price (expressed as a percentage of principal amount and rounded to three decimal places) equal to the greater of (1) (a) the sum of the present values of the remaining scheduled payments of principal and interest on the Notes to be redeemed discounted to the Redemption Date (assuming the Notes matured on the Par Call Date) on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate plus 40 basis points less (b) interest accrued to the Redemption Date, and (2) 100% of the principal amount of the Notes to be redeemed, plus, in either case, accrued and unpaid interest thereon to but not including the Redemption Date.

(b) On or after the Par Call Date, the Company may redeem the Notes, in whole or in part, at any time and from time to time, at a Redemption Price equal to 100% of the principal amount of the Notes being redeemed plus accrued and unpaid interest thereon to but not including the Redemption Date.

6. Denominations; Transfer; Exchange

The Notes are in registered form without coupons in denominations of principal amount of \$2,000 or an integral multiple of \$1,000 in excess thereof. A Holder may transfer or exchange Notes in accordance with the Indenture. The Security Registrar and the Trustee may require a Holder, among other things, to furnish appropriate endorsements and transfer documents. No service charge will be imposed by the Company, the Trustee or the Security Registrar for any registration of transfer or exchange of the Notes, but the Company may require a Holder to pay a sum sufficient to cover any transfer tax or other governmental taxes and fees required by law or permitted by the Indenture. The Company is not required to transfer or exchange any Note selected for redemption or any Note for a period of 15 days before a selection of the Notes to be redeemed.

7. Persons Deemed Owners

The registered Holder of this Note shall be treated as the owner of it for all purposes.

8. Unclaimed Money

If money for the payment of the principal of, or premium, if any, or interest remains unclaimed for two years, the Trustee or Paying Agent shall pay the money back to the Company at its written request unless an abandoned property law designates another Person. After any such payment, Holders entitled to the money must look only to the Company and not to the Trustee or the Paying Agent for payment.

9. Defeasance

Subject to certain conditions set forth in the Indenture, the Company at any time may terminate some or all of its obligations under the Notes and the Indenture if the Company deposits with the Trustee money or U.S. Government Obligations for the payment of principal, premium, if any, and interest on the Notes to Stated Maturity or a specified redemption date.

10. Amendment, Supplement and Waiver

The Supplemental Indenture, the Base Indenture (as it relates to the Notes) and the Notes may be amended or supplemented and certain provisions may be waived as provided in the Indenture.

11. Defaults and Remedies

The Events of Default as to the Notes are defined in Section 6.1 of the Supplemental Indenture. Upon the occurrence of an Event of Default, the rights and obligations of the Company, the Subsidiary Guarantor, the Trustee and the Holders shall be as set forth in the applicable provisions of the Indenture.

12. Trustee Dealings with the Company.

Subject to certain limitations set forth in the Indenture, the Trustee, any Authenticating Agent, any Paying Agent, any Security Registrar or any other agent of the Company or the Subsidiary Guarantor, in its individual or any other capacity, may become the owner or pledgee of the Notes and may otherwise deal with the Company or the Subsidiary Guarantor with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Security Registrar or such other agent.

13. No Recourse Against Others

No past, present or future director, officer, employee, manager, member, partner, incorporator or stockholder of the Company or the Subsidiary Guarantor, as such, will have any liability for any obligations of the Company or the Subsidiary Guarantor, respectively, under the Notes or the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder of the Notes by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

14. Authentication

This Note shall not be valid until an authorized signatory of the Trustee (or an Authenticating Agent acting on its behalf) manually signs the certificate of authentication on the other side of this Note.

15. Abbreviations

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

16. CUSIP Numbers

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

17. Governing Law

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

ASSIGNMENT FORM

To assign this Note, fill in the form below:

I or we assign and transfer this Note to

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

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

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

Date: _____

Your Signature: _____

Signature Guarantee: _____

(Signature must be guaranteed)

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

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

[TO BE ATTACHED TO GLOBAL NOTES]

SCHEDULE OF INCREASES AND DECREASES IN GLOBAL NOTE⁽⁴⁾

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

Date of Increase / Decrease	Amount of decrease in Principal Amount of this Global Note	Amount of increase in Principal Amount of this Global Note	Principal Amount of this Global Note following such decrease or increase	Signature of authorized signatory of Trustee or Notes Custodian
------------------------------------	---	---	---	--

(4) For Global Notes.

December 13, 2022

Diamondback Energy, Inc.
500 West Texas Ave
Suite 100
Midland, Texas 79701

Re: *Diamondback Energy, Inc.*
Registration Statement on Form S-3 File No. 333-268495

Ladies and Gentlemen:

We have acted as counsel to Diamondback Energy, Inc., a Delaware corporation (the “*Company*”), in connection with the registration, pursuant to a Registration Statement on Form S-3/ASR (File No. 333-268495), originally filed with the Securities and Exchange Commission (the “*Commission*”) under the Securities Act of 1933, as amended (the “*Act*”), on November 21, 2022 (the “*Registration Statement*”), of the offering and sale (i) by the Company of \$650,000,000 aggregate principal amount of its 6.250% Senior Notes due 2053 (the “*Notes*”) of the Company and (ii) by Diamondback E&P LLC, a Delaware limited liability company (the “*Guarantor*”), of the related guarantee (the “*Guarantee*”) by the Guarantor of the Notes, all to be issued under the First Supplemental Indenture (the “*Supplemental Indenture*”), dated as of the date hereof, among the Company, the Guarantor and Computershare Trust Company, National Association, as trustee (in such capacity, the “*Trustee*”), which supplements that certain Indenture, dated as of the date hereof (the “*Base Indenture*”) and, as supplemented by the Supplemental Indenture, the “*Indenture*”), by and between the Company and the Trustee, and sold pursuant to the terms of an underwriting agreement (the “*Underwriting Agreement*”) and, together with the Base Indenture and the Supplemental Indenture, the “*Transaction Documents*”), dated November 29, 2022, among the Company, the Guarantor and TD Securities (USA) LLC, Citigroup Global Markets Inc., and Truist Securities, Inc., as representatives of the several underwriters named therein (the “*Underwriters*”). This letter is being furnished at the request of the Company and in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Act.

We have examined originals or certified copies of the Transaction Documents and such corporate or limited liability company records of the Company and the Guarantor and other certificates and documents of officials of the Company and the Guarantor and public officials and others as we have deemed appropriate for purposes of this letter. We have assumed the genuineness of all signatures, the legal capacity of all natural persons, the authenticity of all documents submitted to us as originals, the conformity to authentic original documents of all copies submitted to us as conformed, certified or reproduced copies, and that the Notes will conform to the specimen thereof we have reviewed. We have also assumed (i) the existence and entity power of each party to any document referred to herein other than the Company and the Guarantor; and (ii) that the Indenture is a valid and binding obligation of the Trustee, enforceable against the Trustee in accordance with its terms. As to various questions of fact relevant to this letter, we have relied, without independent investigation, upon the recitals, certifications, statements, representations and warranties and agreements set forth in (i) the Transaction Documents and (ii) certificates of public officials and certificates of officers of the Company and the Guarantor, all of which items specified in clauses (i) and (ii) we assume to be true, correct and complete.

2300 N. Field Street | Suite 1800 | Dallas, Texas 75201-2481 | 214.969.2800 | fax: 214.969.4343 | akingump.com

Based upon the foregoing, and subject to the assumptions, exceptions, qualifications and limitations set forth herein, we are of the opinion that when the Notes have been duly executed by the Company, duly authenticated by the Trustee in accordance with the terms of the Indenture, and delivered to and paid for by the Underwriters pursuant to the terms of the Underwriting Agreement, (i) the Notes will be valid and binding obligations of the Company and (ii) the Guarantee will be a valid and binding obligation of the Guarantor.

The opinions and other matters in this letter are qualified in their entirety and subject to the following:

(A) We express no opinion as to any constitutions, treaties, laws, statutes, rules or regulations or judicial or administrative decisions of any jurisdiction (collectively, "**Laws**") other than the following: (i) the Limited Liability Company Act of the State of Delaware; (ii) the General Corporation Law of the State of Delaware; and (iii) the Laws of the State of New York.

(B) The matters expressed in this letter are subject to and qualified and limited by: (i) applicable bankruptcy, insolvency, fraudulent transfer and conveyance, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally; (ii) general principles of equity, including without limitation, concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance or injunctive relief (regardless of whether considered in a proceeding in equity or at law); and (iii) securities Laws and public policy underlying such Laws with respect to rights to indemnification and contribution.

(C) This letter is limited to the matters expressly stated herein and no opinion is to be inferred or implied beyond the opinions expressly set forth herein. We undertake no, and hereby disclaim any, obligation to make any inquiry after the date hereof or to advise you of any changes in any matter set forth herein, whether based on a change in Law, a change in any fact relating to the Company, the Guarantor or any other person or entity or any other circumstance.

[The remainder of this page is intentionally left blank.]

We hereby consent to the filing of this letter as an exhibit to a Current Report on Form 8-K filed by the Company with the Commission on the date hereof, to the incorporation by reference of this letter into the Registration Statement and to the use of our name in the Prospectus dated November 21, 2022, and the Prospectus Supplement dated November 29, 2022, forming a part of the Registration Statement under the caption "Legal Matters." In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Act and the rules and regulations thereunder.

Very truly yours,

/s/ Akin Gump Strauss Hauer & Feld LLP

AKIN GUMP STRAUSS HAUER & FELD LLP
