# ODYSSEY MARINE EXPLORATION INC

## FORM 8-K
(Current report filing)

Filed 10/06/16 for the Period Ending 10/01/16

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|---|---|
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| CIK | 0000798528 |
| Symbol | OMEX |
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| Sector | Industrials |
| Fiscal Year | 12/31 |

# 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): October 1, 2016**

# Odyssey Marine Exploration, Inc.

**(Exact name of registrant as specified in its charter)**

| **Nevada** | **001-31895** | **84-1018684** |
|---|---|---|
| **(State or Other Jurisdiction of Incorporation)** | **(Commission File Number)** | **(IRS Employer Identification No.)** |

**5215 West Laurel Street**
**Tampa, Florida 33607**
**(Address of Principal Executive Offices and Zip Code)**

**Registrant's telephone number, including area code: (813) 876-1776**

**Not Applicable**
**(Former Name or Former Address, if Changed Since Last Report)**

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

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

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

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

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

**Item 1.01.** ***Entry Into a Material Definitive Agreement.***

The disclosure set forth below under Item 2.03 (Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant) is hereby incorporated by reference into this Item 1.01.

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

On October 1, 2016, Odyssey Marine Exploration, Inc. ("Odyssey") and Odyssey Marine Enterprises, Ltd., an indirect, wholly owned subsidiary of Odyssey ("OME"), entered into an Amended and Restated Note Purchase Agreement (the "Restated Note Purchase Agreement") with Epsilon Acquisitions LLC ("Epsilon"). Epsilon is an investment vehicle controlled by Mr. Alonso Ancira.

Pursuant to the Restated Note Purchase Agreement, Epsilon agreed to lend an aggregate of $6.0 million to OME, $3.0 million of which has already been advanced. Subject to the satisfaction or waiver of the conditions set forth in the Restated Note Purchase Agreement, Epsilon will lend the remaining $3.0 million to OME upon request by OME. The indebtedness is evidenced by an amended and restated secured convertible promissory note (the "Restated Note") and bears interest at a rate equal to 10.0% per annum. Unless otherwise converted as described below, the entire outstanding principal balance under the Restated Note and all accrued interest and fees are due and payable on March 18, 2017. Odyssey unconditionally and irrevocably guaranteed all of OME's obligations under the Restated Note Purchase Agreement and the Restated Note.

Epsilon has the right to convert all amounts outstanding under the Restated Note into shares of Odyssey common stock upon 75 days' notice to OME or upon a merger, consolidation, third party tender offer, or similar transaction relating to Odyssey at the applicable conversion price, which is (a) $5.00 per share with respect to the $3.0 million already advanced under the Restated Note and (b) with respect to additional advances under the Restated Note, the five-day volume-weighted average price of Odyssey's common stock for the five trading day period ending on the trading day immediately prior to the date on which OME submits a borrowing notice for such advance. Upon the occurrence and during the continuance of an event of default, the conversion price will be reduced to one-half of the otherwise applicable conversion price. Pursuant to an Amended and Restated Waiver and Consent (the "Restated Waiver") to the Stock Purchase Agreement, dated as of March 11, 2015 (as amended, the "Stock Purchase Agreement"), among Odyssey, Penelope Mining LLC ("Penelope"), and Minera del Norte, S.A. de C.V. ("Minosa") executed in connection with the Restated Note Purchase Agreement, following any conversion of the indebtedness evidenced by the Restated Note, Penelope may elect to reduce its commitment to purchase preferred stock of Odyssey under the Stock Purchase Agreement by the amount of indebtedness converted by Epsilon.

Pursuant to the Restated Waiver, Odyssey agreed to waive its rights to terminate the Stock Purchase Agreement in accordance with the terms thereof until March 31, 2017. The obligations under the Restated Note may be accelerated upon the occurrence of specified events of default including (a) OME's failure to pay any amount payable under the Restated Note on the date due and payable; (b) OME's or Odyssey's failure to perform or observe any term, covenant, or agreement in the Restated Note or the related documents, subject to a five-day cure period; (c) the occurrence and expiration of all applicable grace periods, if any, of an event of default or material breach by OME, Odyssey or any of their affiliates under any of the other loan documents; (d) the termination of the Stock Purchase Agreement; (e) commencement of certain specified dissolution, liquidation, insolvency, bankruptcy, reorganization, or similar cases or actions by or against OME or any of its subsidiaries, in specified circumstances unless dismissed or stayed within 60 days; (f) the entry of a judgment or award against

OME or any of its subsidiaries in excess of $100,000; and (g) the occurrence of a change in control (as defined in the Restated Note).

Pursuant to amended and restated pledge agreements (the "Restated Pledge Agreements") entered into by Odyssey, OME, and Marine Exploration Holdings, LLC (collectively, the "Odyssey Pledgors") in favor of Epsilon, the Odyssey Pledgors pledged and granted security interests to Epsilon in (a) the 54 million quotas (a unit of ownership under Panamanian law) of Oceanica Resources S. de R.L. ("Oceanica") held by OME, (b) all notes and other receivables from Oceanica and its subsidiary owed to the Odyssey Pledgors, and (c) all of the outstanding equity in OME.

In connection with the execution and delivery of the Restated Note Purchase Agreement, Odyssey and Epsilon entered into an amended and restated registration rights agreement (the "Restated Registration Rights Agreement") pursuant to which Odyssey agreed to register the offer and sale of the shares (the "Conversion Shares") of Odyssey common stock issuable upon the conversion of the indebtedness evidenced by the Restated Note. Subject to specified limitations set forth in the Restated Registration Rights Agreement, including that Odyssey is eligible to use Form S-3, the holder of the Restated Note can require Odyssey to register the offer and sale of the Conversion Shares if the aggregate offering price thereof (before any underwriting discounts and commissions) is not less than $3.0 million. In addition, Odyssey agreed to file a registration statement relating to the offer and sale of the Conversion Shares on a continuous basis promptly (but in no event later than 60 days after) after the conversion of the Restated Note into the Conversion Shares and to thereafter use its reasonable best efforts to have such registration statement declared effective by the Securities and Exchange Commission.

In connection with the execution and delivery of the Restated Note Purchase Agreement, Odyssey also delivered to Epsilon a common stock purchase warrant (the "Warrant") pursuant to which Epsilon has the right to purchase up to 120,000 shares of Odyssey's common stock at an exercise price of $3.52 per share, which exercise price represents the five-day volume-weighted average price of Odyssey's common stock for the five trading day period ending on the trading day immediately prior to the day on which the Warrant was issued. Epsilon may exercise the Warrant in whole or in part at any time during the period ending October 1, 2021. The Warrant includes a cashless exercise feature and provides that, if Epsilon is in default of its obligations to fund any advance pursuant to and in accordance with the Restated Note Purchase Agreement, then, thereafter, the maximum aggregate number of shares of common stock that may be purchased under the Warrant shall be the number determined by multiplying 120,000 by a fraction, (a) the numerator of which is the aggregate principal amount of advances that have been extended to the OME by Epsilon pursuant to the Restated Note Purchase Agreement on or after the date of the Warrant and prior to the date of such failure and (b) the denominator of which is $3.0 million.

The Restated Note Purchase Agreement, the Restated Note, the Restated Pledge Agreements, the Restated Registration Rights Agreement, and the Warrant include representations and warranties and other covenants, conditions, and other provisions customary for comparable transactions.

The foregoing descriptions of the Restated Note Purchase Agreement, the Restated Note, the Restated Waiver, and the Warrant are summaries and do not purport to be complete descriptions of all of the terms of such documents and are qualified in their entirety by reference to such documents, which are attached hereto as Exhibits 10.1, 10.2, 10.3, and 10.4, respectively.

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

(a) *Financial Statements of Businesses Acquired.*

Not applicable.

(b) *Pro Forma Financial Information.*

Not applicable.

(c) *Shell Company Transactions.*

Not applicable.

(d) *Exhibits.*

| | |
|---|---|
| 10.1 | Amended and Restated Note Purchase Agreement, dated October 1, 2016, among Epsilon Acquisitions LLC, Odyssey Marine Enterprises, Ltd., and Odyssey Marine Exploration, Inc. |
| 10.2 | Amended and Restated Convertible Promissory Note, dated October 1, 2016, by Odyssey Marine Enterprises, Ltd., in favor of Epsilon Acquisitions LLC. |
| 10.3 | Amended and Restated Waiver and Consent, dated October 1, 2016, among Odyssey Marine Exploration, Inc., Odyssey Marine Enterprises, Ltd., Penelope Mining LLC, and Minera del Norte S.A. de C.V. |
| 10.4 | Common Stock Purchase Warrant, dated October 1, 2016, issued by Odyssey Marine Exploration, Inc. to Epsilon Acquisitions LLC. |

**SIGNATURES**

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

**Odyssey Marine Exploration, Inc.**

Dated: October 6, 2016

By: /s/ Jay A. Nudi
Jay A. Nudi
*Interim Chief Financial Officer*

**Exhibit 10.1**

# AMENDED AND RESTATED

# NOTE PURCHASE AGREEMENT

**BY AND AMONG**

**EPSILON ACQUISITIONS LLC,**

**ODYSSEY MARINE ENTERPRISES, LTD.**

**AND**

**ODYSSEY MARINE EXPLORATION, INC.**

**DATED AS OF MARCH 18, 2016**

**AMENDED AND RESTATED AS OF OCTOBER 1, 2016**

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**ADDENDA**

ANNEXES

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| Annex A | Definitions |
| Annex B | Cross Reference Sheet of Terms Defined Herein |

EXHIBITS – FORMS OF

| | |
|---|---|
| Exhibit A | Note |
| Exhibit B | A&R OME Pledge Agreement |
| Exhibit C | A&R MEH-Parent Pledge Agreement |
| Exhibit D | A&R Registration Rights Agreement |

**AMENDED AND RESTATED NOTE PURCHASE AGREEMENT**

**THIS AMENDED AND RESTATED NOTE PURCHASE AGREEMENT** (this " *Agreement* ") is made and entered into as of March 18, 2016, amended and restated as of October 1, 2016, by and among Odyssey Marine Exploration Inc., a Nevada corporation (the " *Parent* "), Odyssey Marine Enterprises, Ltd., a Bahamas company and wholly owned subsidiary of the Parent (the " *Company* "), and Epsilon Acquisitions LLC, a Delaware limited liability company (the " *Lender* "). Capitalized terms used but not defined herein shall have the meanings ascribed to them in Annex A hereto.

**RECITALS:**

**WHEREAS** , pursuant to that certain Note Purchase Agreement, dated as of March 18, 2016 (the " *Original Note Purchase Agreement* "), by and among the Parent, the Company and the Lender, the Company issued and sold their secured convertible promissory note due March 18, 2017, in the initial principal amount of $3,000,000 (the " *Original Note* ").

**WHEREAS** , on the terms and subject to the conditions set forth herein, the Lender is willing to extend additional loans in an amount up to $3,000,000 from time to time to the Company which will be evidenced by an amended and restated secured convertible promissory note in the aggregate principal amount of $6,000,000 (the " *Note* ").

**NOW, THEREFORE** , in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

**ARTICLE I.**
**ISSUANCE AND SALE OF NOTE; CLOSING**

**Section 1.1. Loans.** On the terms and subject to the conditions set forth in this Agreement, Lender commits to loan to the Parent and its Affiliates, in one or more transactions (each such transaction, a " *Loan* "), up to $6,000,000, of which $3,000,000 has been advanced. The Parent has irrevocably instructed Lender that any Loan shall be made directly to the Company. The Company's obligation to repay the Loan will be evidenced by the Note in the form attached hereto as Exhibit A . The Note will be guaranteed by the Parent pursuant to Section 8 of the Note.

**Section 1.2. Procedures for Borrowing.** The Company may borrow under the Revolving Credit Commitment on any Business Day during the Revolving Credit Commitment Period; provided that, the Company shall deliver to the Lender an irrevocable Borrowing Notice, which Borrowing Notice shall specify the applicable Borrowing Date Conversion Price as set forth in the Note (which Borrowing Notice must be received by the Lender no later than 10:00 A.M. New York City time three Business Days prior to the requested Closing Date). Each Loan shall be in an amount equal to $1,000,000 or a whole multiple of $250,000 in excess thereof.

**Section 1.3. Repayment of Loans.** The Company hereby unconditionally promises to pay to the Lender in full in cash, to the extent not previously paid, the then-unpaid principal amount of all Loans on the Maturity Date.

**Section 1.4. Deliveries Upon Execution.**

(a) Simultaneously with the execution and delivery of this amended and restated Agreement by the parties hereto, deliver to Lender:

(i) the Note;

(ii) an amended and restated pledge agreement from the Company, pledging 54,000,000 shares of Oceanica stock (the " *Pledged Oceanica Shares* ") and any receivables due from Oceanica and its Subsidiaries, to secure repayment of the Note, in the form of Exhibit B hereto (the " *A&R OME Pledge Agreement* ");

(iii) an amended and restated pledge agreement from (A) Marine Exploration Holdings, LLC, a Nevada limited liability company (" *MEH* ", and together with the Company, the " *Intermediate Holdcos* "), pledging all of the outstanding equity in the Company, and any receivables due from Oceanica and its Subsidiaries and (B) Parent, pledging all of the outstanding equity in MEH and any receivables due from Oceanica and its Subsidiaries, to secure repayment of the Note, in the form of Exhibit C hereto (the " *A&R MEH-Parent Pledge Agreement* ", and together with the A&R OME Pledge Agreement, the " *Pledge Agreements* ");

(iv) an Amended and Restated Registration Rights Agreement in the form of Exhibit D hereto;

(v) a Warrant to Purchase Common Stock in the form of Exhibit E hereto;

(vi) customary secretary's certificates attaching authorizing resolutions, charter documents and incumbency information relating to the Company, in form and substance reasonably satisfactory to the Lender; and

(vii) all other instruments and certificates that the Parent or the Company is required to deliver pursuant to the terms of this Agreement or the other Transaction Documents.

(b) Simultaneously with the execution and delivery of this Agreement by the parties hereto, the Lender shall deliver all instruments and certificates that the Lender is required to deliver pursuant to the terms of this Agreement.

**Section 1.5. Loan Closings.**

(a) The Lender shall extend a Loan (each, a " *Loan* ") in the amount set forth in the Borrowing Notice with respect to such Loan, and such Loan shall be delivered in the form of wire transfer of immediately available funds to an account designated in writing by the Company, subject to the satisfaction of the following conditions:

(i) No "Event of Default" shall have occurred with respect to the Promissory Note, dated as of March 11, 2015 (as amended from time to time), by and among the Parent, the Company and Minera del Norte, S.A. de C.V. (the " *Existing Loan* ");

(ii) the Pledged Oceanica Shares being owned by the Company free and clear of all Liens other than a pledge securing the Existing Loan;

(iii) the representations and warranties set forth in Article II shall be true and correct in all material respects at, and as of, the Closing, and there shall be no breach of, or default under, any Transaction Document by the Company or any of its Affiliates;

(iv) trading in the Common Stock shall not have been suspended by NASDAQ;

(v) the registration of the Existing Pledge in the Panamanian Public Registry shall be in effect and continuing and there shall be no prior pledge registered; and

(vi) the Lender shall, in its sole discretion, be satisfied that the Company is actively pursuing the Permits necessary to complete the Don Diego Project.

(b) The closing of any Loan (a " *Closing* ") shall be held at the offices of Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York at 10:00 a.m. Eastern Time on the date set forth in the Borrowing Notice with respect to such Loan; provided, that each Closing may occur on such other date or at such other time and place as the Parent and the Lender may mutually agree in writing in their sole discretion. The date on which each Closing actually occurs is referred to as a " *Closing Date* ."

**Section 1.6. Deliveries at the Closings.**

(a) At each Closing, the Parent shall, or shall cause the Company to, deliver to the Lender such documents as the Lender shall reasonably request.

(b) At each Loan Closing, the Lender shall deliver:

(i) the Loan, which shall be delivered in the form of wire transfer of immediately available funds to an account designated in writing by the Company; and

(ii) all other instruments and certificates that the Lender is required to deliver pursuant to the terms of this Agreement.

## ARTICLE II.
## REPRESENTATIONS AND WARRANTIES OF THE PARENT AND THE COMPANY

The Parent and the Company each hereby represent and warrant to the Lender the following:

**Section 2.1. Organization, Existence and Good Standing.**

(a) Each of the Parent and the Company is duly organized and is validly existing and in good standing under the Laws pursuant to which it was formed, and has all requisite corporate or other entity power authority to carry on its businesses as now conducted and as presently proposed to be conducted. Each of the Parent and the Company is duly licensed or qualified to transact business as a foreign corporation or other equivalent entity and is in good standing in each jurisdiction in which the nature of the business transacted by it or the character of the properties owned or leased by it requires such licensing or qualification, except where the failure to be so licensed or qualified would not reasonably be expected to have a material adverse effect upon the Parent or the Company.

(b) Neither the Parent nor the Company is, or has been within the past five (5) years, an "investment company" within the meaning of the Investment Company Act of 1940.

**Section 2.2. Authorization.**

(a) Each of the Parent, the Company and each of their respective Subsidiaries, as applicable, has all requisite power and authority to execute and deliver this Agreement and the other Transaction Documents to which it is a party, and to carry out the provisions of this Agreement and the other Transaction Documents to which it is a party, including with respect to the Parent, the power and authority to issue the Common Stock issuable upon conversion of the Note.

(b) All action on the part of the Parent, the Company and each of their Subsidiaries, as applicable, their respective officers, directors and stockholders necessary for the authorization, execution and delivery of this Agreement and the other Transaction Documents to which the Parent, the Company and each of their Subsidiaries, as applicable, is a party, and the performance of all obligations of the Parent, the Company and their Subsidiaries hereunder and thereunder, and the authorization, issuance (or reservation for issuance) and delivery of the Common Stock issuable upon conversion of the Note has been taken. This Agreement has been duly and validly executed and delivered by the Parent and the Company, and the other Transaction Documents to which the Parent, the Company or any Subsidiary is a party, when executed and delivered, will constitute, assuming this Agreement and the other Transaction Documents have been duly authorized, executed and delivered by Lender, and are, valid and legally binding obligations of the Parent and the Company, enforceable in accordance with their respective terms except: (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other Laws of general application affecting enforcement

of creditors' rights generally; and (ii) as limited by Laws relating to the availability of specific performance, injunctive relief or other equitable remedies (the " *Enforceability Exceptions* ").

(c) The Board of Directors of the Parent (the " *Board of Directors* "), by resolutions unanimously adopted at a meeting duly called and held, has (i) determined and declared that this Agreement and the Contemplated Transactions are advisable and fair to, and in the best interests of, the Parent and its stockholders and (ii) authorized and approved the execution, delivery and performance of this Agreement and the Transaction Documents. Such resolutions have not been rescinded, modified or withdrawn in any way as of the date of this Agreement.

**Section 2.3. No Conflict or Violation .** The execution, delivery and performance by the Parent, the Company and their Subsidiaries of this Agreement and the other Transaction Documents to which they are a party and the consummation by the Parent, the Company and their Subsidiaries of the Contemplated Transactions in accordance with the terms hereof or thereof will not (with notice or lapse of time, or both) (a) conflict with or violate any provision of (i) the articles of incorporation or bylaws of the Parent, (ii) the articles of incorporation or bylaws of the Company or (iii) any equivalent organizational or governing document of any Subsidiary of the Parent or the Company, (b) require any consent or approval under, violate, conflict with or result in any breach of or any loss of any benefit under, or constitute a default under, or result in termination or give to others any right of termination, vesting, amendment, acceleration or cancellation of, or result in the creation of a Lien upon any of the respective properties, rights or assets of the Parent, the Company or any of their Subsidiaries, (c) conflict with or violate any Order binding upon the Parent, the Company or any of their Subsidiaries, or (d) conflict with or violate any Law applicable to the Parent or any of its Subsidiaries, except in the case of each of the foregoing clauses (a)(iii), (b), (c) and (d), for such violations, conflicts, breaches, defaults, impairments or revocations that would not reasonably be expected to be material.

**Section 2.4. Governmental Consents and Approvals .** The execution, delivery and performance by the Parent, the Company and their Subsidiaries of this Agreement and the other Transaction Documents to which they are a party and the consummation by the Parent, the Company and their Subsidiaries of the Contemplated Transactions in accordance with the terms hereof or thereof will not (with notice or lapse of time, or both) require any Permit or filing or registration with or notification to any Governmental Agency with respect to the Parent, the Company and their Subsidiaries except for filings necessary or appropriate to perfect Lender's security interests in collateral securing the Loans and except where the failure to obtain such Permits, or to make such filings, registrations or notifications would not reasonably be expected to be material.

**Section 2.5. Capitalization and Voting Rights.**

(a) As of the date hereof, the equity capitalization of the Parent consists of:

(i) 75,000,000 authorized shares of Common Stock, of which 7,544,345 shares are issued and outstanding and 464,742 will be issuable upon the exercise of outstanding options or settlement of restricted stock units; and

(ii) 25,000,000 shares of Preferred Stock, 0 of which are designated, issued, or outstanding.

(b) The outstanding Common Stock has been duly authorized and validly issued, is fully paid and non-assessable, and was issued in accordance with the registration or distribution provisions of the applicable securities Laws or pursuant to valid exemptions therefrom.

(c) As of the date hereof, except as set forth on Schedule 2.5(c) and except pursuant to the Stock Purchase Agreement, by and among the Parent, Penelope Mining LLC, and Minera Del Norte S.A. de C.V., dated as of March 11, 2015 (the " *Stock Purchase Agreement")* there is no:

(i) outstanding option, warrant, right (contingent or other, including conversion, exchange, participation, right of first refusal, co-sale or pre-emptive rights or rights regarding phantom stock or stock appreciation rights) or agreement for the purchase or acquisition from the Parent or the Company of any Common Stock, Preferred Stock or any other shares or securities of the Parent or the Company, or any options, warrants or rights convertible into or exchangeable for any thereof;

(ii) commitment by the Parent or the Company to issue shares, subscriptions, warrants, options, convertible or exchangeable securities or other such rights or to distribute to holders of its equity securities any evidence of indebtedness or assets;

(iii) bond, debenture, note or other indebtedness of the Parent or the Company that entitles the holder thereof to vote (or is convertible into, or exchangeable or exercisable for, securities having the right to vote) with the Stockholders on any matter;

(iv) outstanding contractual obligations, commitments or arrangements of any character (contingent or otherwise) that are binding on the Parent or the Company or any of their Subsidiaries to repurchase, redeem or otherwise acquire any shares of capital stock of, or other equity or voting interests in, the Parent or the Company; or

(v) obligation, contingent or otherwise, by reason of any agreement to register the offer and sale or resale of any of the Parent's or the Company's capital stock or other equity or voting securities under the Securities Act.

(d) Neither the Parent nor or the Company has or intends to accelerate any rights or waive any conditions existing under any outstanding option, warrant, right or agreement (contingent or otherwise, including exercise, vesting, payment, conversion,

exchange, participation, right of first refusal, co-sale or pre-emptive rights or rights regarding phantom stock or stock appreciation rights) for the purchase or acquisition from the Parent or the Company of any Common Stock, Preferred Stock or any other shares or securities of the Parent or the Company, or any options, warrants or rights convertible into or exchangeable for any thereof.

(e) Neither the Parent nor or the Company is an "Issuing Corporation" as such term is defined in Section 78.3788 of the Nevada Revised Statutes by virtue of the fact that either it has less than 200 holders of record and/or it has less than 100 holders of record who have addresses in the State of Nevada, in either case, appearing on the stock ledger of the Parent or the Company.

**Section 2.6. Subsidiaries.** The Parent owns all of the issued and outstanding membership interests in MEH, free and clear of all Liens other than the Liens pursuant to the A&R MEH-Parent Pledge Agreement, and MEH owns 500,000,000 shares of the Company representing all of the issued and outstanding shares of Company free and clear of all Liens other than the Liens pursuant to the A&R OME Pledge Agreement. Each of MEH, the Company and each Subsidiary of the Company: (a) is validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation, (b) has all requisite corporate power and authority and all authorizations, licenses and permits necessary to own, lease and operate its properties and assets and to carry on its businesses as now conducted and (c) is duly qualified or licensed to do business in every jurisdiction in which its ownership, leasing or operation of property or assets or the conduct of businesses as now conducted requires it to be qualified or licensed, other than in the case of the Intermediate Holdcos, except as would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the business, prospects, condition (financial or otherwise), affairs, properties, assets or Liabilities of the Parent and its Subsidiaries, taken as a whole (a " *Material Adverse Effect* ").

**Section 2.7. Oceanica.** As of the date hereof and as of each Closing Date:

(a) The Company owns 54,000,000 shares of Oceanica, free and clear of all Liens except as set forth on Schedule 2.7(a) .

(b) The outstanding equity capitalization of Oceanica is as set forth on Schedule 2.7(b) .

(c) As of the date hereof, except as set forth on Schedule 2.7(c) and except as contemplated pursuant to the Approved Monaco Transaction, there is no:

(i) outstanding option, warrant, right (contingent or other, including conversion, exchange, participation, right of first refusal, co-sale or pre-emptive rights or rights regarding phantom stock or stock appreciation rights) or agreement for the purchase or acquisition from any of the Intermediate Holdcos or Oceanica of any equity, or any options, warrants or rights convertible into or exchangeable for any such equity;

(ii) commitment by the Intermediate Holdcos or Oceanica to issue shares, subscriptions, warrants, options, convertible or exchangeable securities or other such rights or to distribute to holders of its equity securities any evidence of indebtedness or assets;

(iii) bond, debenture, note or other indebtedness of the Intermediate Holdcos or Oceanica that entitles the holder thereof to vote (or is convertible into, or exchangeable or exercisable for, securities having the right to vote) with the holders of equity in the Intermediate Holdcos or Oceanica on any matter;

(iv) outstanding contractual obligation, commitment or arrangement of any character (contingent or otherwise) that are binding on the Intermediate Holdcos or Oceanica to repurchase, redeem or otherwise acquire any shares of capital stock of, or other equity or voting interests in the Intermediate Holdcos or Oceanica; and

(v) obligation, contingent or otherwise, by reason of any agreement to register the offer and sale or resale of any of the capital stock of the Intermediate Holdcos or Oceanica under the Securities Act.

(d) Set forth on Schedule 2.7(d) is a true and complete list of each Permit Oceanica has obtained, or made filings to obtain, in connection with the construction, development and operation of the Don Diego Project (each, a " *Project Permit* "). True and complete copies of all such Permits and filings and all material written correspondence with any Governmental Agency regarding any Project Permit has been furnished to Lender. Except as disclosed in the Parent Reports, no Governmental Agency has provided the Parent, Oceanica or any of their Subsidiaries, or to the knowledge of the Parent any other Person, written notice that such Governmental Agency does not intend to issue any Project Permit or any other Permit that is reasonably necessary for the construction, development and operation of the Don Diego Project. There is no Proceeding pending or threatened (in writing or otherwise) (i) with respect to any alleged error or omission contained in any filing related to any Project Permit, or (ii) following the issuance of any Project Permit, with respect to any alleged failure to be in compliance with the terms thereof, or which is likely to result in the revocation or termination of such Project Permit.

(e) Oceanica or a Subsidiary thereof has the exclusive ownership of the mineral rights related to the Don Diego Project covering not less than 300,000 hectares, each of which are listed on Schedule 2.7(e) (the " *Project Mineral Rights* "), free and clear of any Liens other than Permitted Liens. The Project Mineral Rights are sufficient to conduct the Don Diego Project in a manner consistent with the business plans of the Parent.

(f) The Parent is not aware of any facts or circumstances that would cause the Technical Report: Revised Assessment of the Don Diego West Phosphorite Deposit, Mexican Exclusive Economic Zone (EEZ), dated June 30, 2014, to not be true and correct in all material respects.

**Section 2.8. Parent Reports; Financial Statements; Undisclosed Liabilities.**

(a) The filings, including all material forms, registration, proxy and information statements, prospectuses, reports, agreements (oral or written) and all documents, exhibits, amendments and supplements appertaining thereto, filed or furnished by the Parent since January 1, 2015 under the Securities Act or the Exchange Act (the " *Parent Reports* "), have been timely filed or furnished (as applicable) with the SEC and complied, as of their respective filing dates, in all material respects with all applicable requirements of the statutes and the rules and regulations thereunder, in each case as in effect on the dates so filed, including any amendments of such Parent Reports filed with the SEC. None of the Parent Reports contained, at the time such Parent Report was filed, or if amended or restated, at such time when finally amended, restated or subsequently mailed to securityholders, any untrue statement of any material fact or omitted to state any material fact required to be stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. All such Parent Reports complied in all material respects with the applicable requirements of the Securities Act or the Exchange Act, as the case may be.

(b) As of the date hereof, there are no outstanding or unresolved comments in comment letters from the SEC staff with respect to the Parent Reports, and to the Knowledge of the Parent, neither the Parent nor any Parent Report is the subject of an ongoing SEC review or outstanding SEC investigation.

(c) Each of the consolidated financial statements, consolidated balance sheets, consolidated statements of operations and consolidated statements of cash flows (including, in each case, any related notes and schedules thereto) of the Parent included in or incorporated by reference into the Parent Reports: (i) complied, as of the respective filing dates thereof, in all material respects with the applicable rules and regulations of the SEC with respect thereto as in effect on the respective filing dates thereof, (ii) were prepared in accordance with U.S. generally accepted accounting principles consistently applied during the periods involved (" *GAAP* "), except as may be footnoted therein, (iii) fairly presented, in all material respects, the consolidated financial position of the Parent, as of the respective dates thereof, and the consolidated results of operations, retained earnings (accumulated deficit) and cash flows, as the case may be, of the Parent for the respective periods then ended (subject, in the case of unaudited financial statements, to normal year-end adjustments). Neither the Parent nor any of its Subsidiaries has received, in writing, any material complaint, allegation, assertion or claim regarding the accounting or auditing practices, procedures, methodologies or methods of the Parent or any of its Subsidiaries or their respective internal accounting controls. To the Knowledge of the Parent, no attorney representing the Parent or its Subsidiaries has reported evidence of a material violation of securities laws, breach of fiduciary duty or similar violation by the Parent or any of its Subsidiaries or any of their respective officers, directors, employees or agents to the Board of Directors or any committee thereof pursuant to the rules of the SEC adopted under Section 307 of the Sarbanes-Oxley Act of 2002.

(d) The Parent has (A) implemented and maintains (x) disclosure controls and procedures (as defined in Rule 13a-15(e) of the Exchange Act) designed to ensure that material information relating to the Parent and its Subsidiaries is made known on a timely basis to the management of the Parent and (y) a system of internal control over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act) designed to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP and (B) disclosed to the Parent's outside auditors and the audit committee of the Board of Directors (x) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Parent's and its Subsidiaries' ability to record, process, summarize and report financial data and (y) any fraud, whether or not material, that involves management or other employees who have a significant role in the Parent's internal control over financial reporting.

(e) There are no Liabilities of the Parent or its Subsidiaries of a nature (whether accrued, absolute, contingent or otherwise) other than: (i) Liabilities set forth in the consolidated balance sheet, including the notes thereto, of the Parent included in the most recent Parent Reports; (ii) Liabilities or obligations incurred in the ordinary course of business consistent with past practices since the date of such balance sheet; (iii) Liabilities under Contracts, none of which arise out of any breach, default or non-performance by the Parent or its Subsidiaries; and (iv) Liabilities disclosed on the Disclosure Schedules to this Agreement.

**Section 2.9. Orders and Proceedings.** There are no outstanding Orders to which the Parent or any of its Subsidiaries or any of their respective properties or assets is subject or bound that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and there are no Proceedings pending or, to the Knowledge of the Parent, threatened against the Parent or any of its Subsidiaries or to which any of their respective properties or assets is subject or bound that, if adversely determined, would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

**Section 2.10. Compliance.**

(a) The Parent and its Subsidiaries are, and for the past three years have been, in material compliance with all material Laws applicable to them; and during the past three years, neither the Parent nor any of its Subsidiaries has received written notice from any Governmental Agency or any other Person regarding any actual, alleged, possible, or potential violation of, or failure to materially comply with, any material Law, except for such non-compliance as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) The Parent and its Subsidiaries are not in breach or default under any of their contracts with Monaco and its Affiliates.

**Section 2.11. Receivables.** As of the date hereof, the amount due and owing from Oceanica and its Subsidiaries to the Parent and its Subsidiaries is as set forth on Schedule 2.11 , which schedule sets forth the debtor, the creditor and that amount due.

**Section 2.12. Anti-Corruption; Anti-Money Laundering.**

(a) Neither the Parent nor the Company or any of their respective Subsidiaries, nor any director or officer of any of the Parent, the Company or their respective Subsidiaries, nor, to the Knowledge of the Parent, the Company, any stockholder, employee, vendor, sub-contractor or representative acting on behalf of any of the Parent, the Company and their Subsidiaries, has taken any action, directly or indirectly, that would result in a material violation of any Anti-Corruption Law, Anti-Money Laundering Law, or OFAC Law, whether within the United States of America or elsewhere.

(b) The Parent and the Company have established and maintains procedures and controls that are reasonably designed to ensure that the Parent, the Company and their respective Subsidiaries are in compliance in all material respects with any applicable Anti-Corruption Laws, Anti-Money Laundering Laws or OFAC Laws.

(c) None of the Parent, the Company and their respective Subsidiaries has found material violations of any Anti-Corruption Law, Anti-Money Laundering Law or OFAC Law in an internal investigation, made a voluntary or other disclosure to a Governmental Agency related to any Anti-Corruption Law, Anti-Money Laundering Law or OFAC Law or received any written official notice, citation, complaint or report related to alleged violations of any Anti-Corruption Law, Anti-Money Laundering Law or OFAC Law and either filed with a court, tribunal, or other Governmental Agency or transmitted by a Governmental Agency. Neither the Parent nor the Company has any Knowledge that it or any of its respective Subsidiaries is under investigation by any Governmental Agency for possible violations of any Anti-Corruption Law, Anti-Money Laundering Law or OFAC Law.

(d) None of the Parent, the Company and their respective Subsidiaries, nor any director or officer of the Parent, the Company or any of their respective Subsidiaries and, to the Knowledge of the Parent, no employee or agent of any of the Parent or any of its Subsidiaries is (i) a blocked person or denied party under any Anti-Money Laundering Law or (ii) a Person with whom dealing or engaging in transactions is prohibited or sanctioned under any Laws of the United States of America or any other applicable jurisdiction. Neither the Parent, the Company nor any of their respective Subsidiaries is a party to any Contract or other agreement or has engaged in any transaction or other business dealing with any country that, at the time of the relevant transaction, was subject to comprehensive (as opposed to list-based) OFAC Laws.

**Section 2.13. Brokers.** No person, firm or corporation has or, as a result of any action taken by the Parent, the Company, their respective Subsidiaries or any of their authorized representatives, will have, in the context of the transactions contemplated by this Agreement, any right, interest or valid claim against or upon the Parent, the Company, their respective Subsidiaries or the Lender for any commission, fee or other compensation as a finder or broker or in any similar capacity.

**Section 2.14. Offering.** Assuming the accuracy of the Lender's representations and warranties set forth in this Agreement, the issuance of Common Stock issuable upon conversion of the Note is exempt from the registration and prospectus requirements of the Securities Act, and any other applicable securities Law, and will be issued in compliance with all applicable federal and state securities and blue sky Laws. Neither the Parent, the Company nor any Person acting on their behalf will take any action hereafter that would cause the loss of such exemption. The issuance of the Common Stock issuable upon conversion of the Note to the Lender will not be integrated with any other issuance of the Parent's securities (past, current or future) for purposes of any stockholder approval provisions applicable to the Parent or its securities.

**Section 2.15. Anti-Takeover Provisions .** The Parent has taken all actions necessary to render inapplicable to this Agreement and the Contemplated Transactions, and inapplicable to Lender and the Common Stock issuable upon conversion of the Note in connection with this Agreement and the Contemplated Transactions, any and all "fair price," "moratorium," "control share acquisition," "business combination" and other similar statutes or regulations of any state or jurisdiction (collectively, " *Takeover Laws* "); and without limiting the foregoing, the Board of Directors has taken all actions necessary so that the restrictions on business combinations contained in Sections 78.378-78.3793 and 78.411-78.444 of the Nevada Revised Statutes, and, accordingly, any other section or any other Nevada Takeover Law or similar statute or regulation will not apply with respect to, or as a result of, the execution of this Agreement, the other Transaction Documents or the consummation of the Contemplated Transactions, without any further action on the part of the Stockholders or of the Board of Directors.

## ARTICLE III.
## REPRESENTATIONS AND WARRANTIES OF THE LENDER

The Lender hereby represents and warrants to the Parent as of the date hereof that:

**Section 3.1. Organization, Existence and Good Standing .** Lender is duly organized and is validly existing and in good standing under the Laws pursuant to which it was formed, and has all requisite corporate power and corporate authority to carry on its businesses as now conducted and as presently proposed to be conducted. Lender is duly licensed or qualified to transact business as a foreign corporation or other equivalent entity and is in good standing in each jurisdiction in which the nature of the business transacted by it or the character of the properties owned or leased by it requires such licensing or qualification, except for those jurisdictions where the failure to be so licensed, qualified or in good standing would not reasonably be expected to have an Lender Material Adverse Effect.

**Section 3.2. Authorization.** Lender has full power and authority to execute and deliver this Agreement and the other Transaction Documents to which it is a party, and to carry out the provisions of this Agreement and the other Transaction Documents to which it is a party. Any and all corporate or partnership action on the part of Lender necessary for the authorization, execution and delivery of this Agreement and the performance of all obligations of Lender hereunder at each Closing has been, or will by each Closing have been, taken. This Agreement

has been duly and validly executed and delivered and constitutes, and the Transaction Documents to which Lender is a party when executed and delivered will constitute, assuming due execution and delivery by the other parties thereto of this Agreement and the Transaction Documents, valid and legally binding obligations of Lender, enforceable against Lender in accordance with their respective terms, subject to the Enforceability Exceptions.

**Section 3.3. Receipt of Information.** Lender believes it has received all the information the Lender considers necessary or appropriate for deciding whether to purchase the Note. Lender further represents that Lender has had an opportunity to ask questions and receive answers from the Parent regarding the terms and conditions of the offering of the Note and the business, properties, prospects and financial condition of the Parent and to obtain additional information (to the extent the Parent possessed such information or could acquire it without unreasonable effort or expense) necessary to verify the accuracy of any information furnished to Lender or to which Lender had access. The foregoing, however, does not limit or modify the representations and warranties of the Parent and the Company in ARTICLE II of this Agreement or the right of Lender to rely thereon.

**Section 3.4. Investment Experience.** Lender confirms that it has such knowledge and experience in financial and business matters that Lender is capable of evaluating the merits and risks of an investment in the Note and of making an informed investment decision and understands that: this investment is suitable only for an investor which is able to bear the economic consequences of losing its entire investment; the purchase of the Note by the Lender hereunder is a speculative investment which involves a high degree of risk of loss of the entire investment; there are substantial restrictions on the transferability of, and there will be no public market for, the Note, and accordingly, it may not be possible for the Lender to liquidate its investment in case of emergency; and this Agreement and the other Transaction Documents create a complex set of rights and obligations of the Lender.

**Section 3.5. Qualifications of Lender.** Lender is an "Accredited Lender" as such term is defined in Rule 501(a) under the Securities Act (without reliance on Rule 501(a)(4) thereof). The Lender will provide reasonable information requested by the Parent in connection with any filing required to be made with applicable securities regulators in connection with any issuance of Common Stock issuable upon conversion of the Note. Lender is not a "Bad Actor" within the meaning of Rule 506 of the Securities Act.

**Section 3.6. Restricted Securities** . Lender understands that no securities of the Parent may be sold, transferred, or otherwise disposed of without registration under the Securities Act or an exemption therefrom, and that in the absence of either an effective registration statement covering the Note or the Common Stock into which it may have been converted, as applicable, compliance with such distribution requirements or an available exemption from registration under the Securities Act, the Note or the Common Stock into which it may have been converted, as applicable, must be held indefinitely. Lender understands that the Note and the Common Stock into which it may have been converted will carry legends required by Law. In particular, the Lender is aware that the Note may not be sold pursuant to Rule 144 promulgated under the Securities Act unless all of the conditions of that rule are met.

## ARTICLE IV.
## MISCELLANEOUS

**Section 4.1. Rules of Construction.**

(a) When a reference is made in this Agreement to an Article, a Section, an Exhibit or a Schedule, such reference shall be to an Article of, a Section of, or an Exhibit or a Disclosure Schedule to this Agreement unless otherwise indicated.

(b) Whenever the words "include," "includes" or "including" are used in this Agreement or any other Transaction Document, they shall be deemed to be followed by the words "without limitation."

(c) Whenever the word " *or* " is used in this Agreement, it shall not be deemed exclusive.

(d) All terms defined in this Agreement shall have the defined meanings when used in any other Transaction Document or in any certificate or other document made or delivered pursuant hereto or thereto unless otherwise defined therein. The definitions contained in this Agreement and any other Transaction Document are applicable to the singular as well as to the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms. Whenever the context requires, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms.

(e) Except as expressly stated in this Agreement, all references to any Law are to such Law as amended, modified, supplemented or replaced from time to time, and all references to any section of any Law include any successor to such section.

(f) Except as expressly stated in this Agreement, all references to any agreement are to such agreement and include any exhibits, annexes and schedules attached to such agreement, in each case, as the same is in effect as of the date of this Agreement and in the case of any such agreement to which the parties are other than all of the parties to this Agreement, without giving effect to any subsequent amendment or modification.

(g) All references to "$" or "dollars" mean the lawful currency of the United States of America.

(h) Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all determinations with respect to accounting matters hereunder shall be made, and all financial statements and certificates and reports as to financial matters required to be furnished hereunder shall be prepared in accordance with United States generally accepted accounting principles, as consistently applied by the Parent and the Company.

(i) No specific provision, representation or warranty shall limit the applicability of a more general provision, representation or warranty. It is the intent of the parties that each representation, warranty, covenant, condition and agreement contained in this Agreement shall be given full, separate, and independent effect and that such provisions are cumulative.

(j) The parties hereto have participated jointly in the negotiation and drafting of this Agreement and the other Transaction Documents with the assistance of counsel and other advisors and, in the event an ambiguity or question of intent or interpretation arises, this Agreement and the other Transaction Documents shall be construed as jointly drafted by the parties hereto and thereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement or any other Transaction Document.

(k) The table of contents and the headings contained in this Agreement and the other Transaction Documents are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement or the other Transaction Documents.

**Section 4.2. Entire Agreement.** This Agreement, the other Transaction Documents, the Disclosure Schedules hereto and thereto, and the other agreements included as exhibits hereto and thereto constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and, understandings, among the parties with respect to the subject matter hereof and thereof. In the event of a conflict between the terms of this Agreement and the other Transaction Documents, the terms of this Agreement shall govern.

**Section 4.3. Notices.** All notices and other communications hereunder shall be in writing and shall be deemed duly given (a) on the date of delivery if delivered personally, (b) on the date sent by facsimile (with confirmation of transmission) or electronic mail if sent during normal business hours of the recipient during a Business Day, and otherwise on the next Business Day, if sent after normal business hours of the recipient, provided that in the case of electronic mail, each notice or other communication shall be confirmed within one Business Day by dispatch of a copy of such notice pursuant to one of the other methods described herein, (c) if dispatched via a nationally recognized overnight courier service (delivery receipt requested) with charges paid by the dispatching party, on the later of (i) the first Business Day following the date of dispatch, or (ii) the scheduled date of delivery by such service, or (d) on the fifth Business Day following the date of mailing, if mailed by registered or certified mail, return receipt requested, postage prepaid to the party to receive such notice, at the following addresses, or such other address as a party may designate from time to time by notice in accordance with this Section.

(a) If to the Parent or Company, to:

Odyssey Marine Exploration, Inc.
5215 W. Laurel Street
Suite 210
Tampa, Fl 33607
Attention: Chief Executive Officer

with a copy to:

Akerman LLP
401 E. Jackson Street, Suite 1700
Tampa, FL 33602
Attention: David M. Doney
Facsimile: (813) 218-5404

(b) If to the Lender, to:

Epsilon Acquisitions LLC
c/o: Altos Hornos de Mexico S.A.B. de C.V.
Campos Eliseos No. 29
Col. Rincon del Bosque
11580 Mexico D.F.
Mexico
Attention: General Counsel
Facsimile: 52 866 633-8050

with a copy to:

Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019
Attention: Maurice M. Lefkort
Facsimile: (212) 728-8111

**Section 4.4. Fees, Costs and Expenses.** The Parent shall reimburse Lender for its and its Affiliates' reasonable, out-of-pocket fees, costs and expenses in an amount not to exceed $50,000 incurred in connection with the Contemplated Transaction through the increase in the principal amount of the Note by the amount of such fees, costs and expenses. All fees, costs and expenses incurred by the Parent in connection with this Agreement and the other Transaction Documents and the Contemplated Transactions shall be borne by Parent whether or not the Contemplated Transactions are consummated.

**Section 4.5. Publicity and Reports.** Each party agrees that, except as otherwise required by Law, it will not issue any reports, statements or releases, in each case relating to the Contemplated Transactions, without the prior written consent of the other parties hereto, which consent shall not unreasonably be withheld or delayed. To the extent disclosure is required by Law, the non-disclosing party shall have the right to review any report, statement or release as promptly as possible prior to its publication and to reasonably consult with the disclosing party with respect to the content thereof.

**Section 4.6. Amendments; Waiver.**

(a) This Agreement may be amended, superseded, canceled, renewed or extended only by a written instrument signed by each of the parties hereto.

(b) A party may by written instrument signed on behalf of such party: (i) extend the time for the performance of any of the obligations or other acts of another party due to it, (ii) waive any inaccuracies in the representations and warranties made to it contained in this Agreement or any Transaction Document, or (iii) waive compliance with any covenants, obligations, or conditions in its favor contained in this Agreement or in any Transaction Document. No claim or right arising out of this Agreement or any Transaction Document can be waived by a party, in whole or in part, unless made in a writing signed by such party. Neither any course of conduct or dealing nor failure or delay by any party in exercising any right, power, or privilege under this Agreement or any of the Transaction Documents will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. A waiver given by a party will be applicable only to the specific instance for which it is given.

**Section 4.7. Binding Effect; Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither this Agreement, nor any right, duty or obligation of any party hereunder, may be assigned or delegated by the Parent without the prior written consent of Lender. Lender may assign its rights and delegate its obligations hereunder; provided that no such assignment or delegation shall relieve Lender of its obligations hereunder. Any purported assignment of rights or delegation of obligations in violation of this Section will be void. References to a party in this Agreement and in any Transaction Document also refer to such party's successors and permitted assigns.

**Section 4.8. No Third-Party Beneficiaries.** Except for the Persons expressly referenced in Section 4.9 , nothing in this Agreement is intended or shall be construed to give any person, other than the parties hereto, their successors and permitted assigns, any legal or equitable right, remedy or claim under, or in respect of, this Agreement the Transaction Documents or any provision contained herein or therein.

**Section 4.9. No Recourse Against Nonparty Affiliates.** All claims, obligations, liabilities, or causes of action (whether in contract, common or statutory law, equity or otherwise) that arise out of or relate to this Agreement or any other Transaction Document, or the negotiation, execution, or performance of this Agreement or any other Transaction Document (including any representation or warranty made in, in connection with or as an inducement to this Agreement or any other Transaction Document), may be made only against the parties that are signatories to this Agreement or such other Transaction Document, as the case may be (" *Contracting Parties* "). No Person who is not a Contracting Party, including any officer, employee, member, partner or manager signing this Agreement, the Transaction Documents or any certificate delivered in connection herewith or therewith on behalf of any Contracting Party (" *Nonparty Affiliates* ") shall have any liability (whether in contract, tort, common or statutory law, equity or otherwise) for any claims, obligations, liabilities or causes of action arising out of, or relating in any manner to, this Agreement or any other Transaction Document or based on, in respect of, or by reason of this Agreement or any other Transaction Document or the negotiation, execution, performance, or breach of the Agreement or any other Transaction Document; and, to the maximum extent permitted by Law, each Contracting Party hereby waives and releases all such liabilities, claims, causes of action, and obligations against any such Nonparty Affiliates.

**Section 4.10. Governing Law.** This Agreement, the other Transaction Documents, and any dispute, controversy or proceeding arising out of or relating to this Agreement, the other Transaction Documents, or the Contemplated Transactions or the subject matter hereof or thereof or the relationship among the parties hereto or thereto in connection herewith or therewith (in each case whether in contract, tort, common or statutory law, equity or otherwise) shall be governed by the substantive Laws of the State of Delaware without regard to conflict of law principles thereof or of any other jurisdiction that would cause the application of laws of any jurisdiction other than those of the State of Delaware.

**Section 4.11. Exclusive Forum in Designated Courts.** Any dispute, controversy, proceeding or claim arising out of or relating to: (i) this Agreement or any other Transaction Document, or any of the Contemplated Transactions or the subject matter hereof or thereof, (ii) the breach, termination, enforcement, interpretation or validity of this Agreement, or any other Transaction Document, including the determination of the scope or applicability of this agreement to arbitrate, or (iii) the relationship among the parties hereto or thereto, in each case, whether in contract, tort, common or statutory law, equity or otherwise, shall be brought exclusively in either (x) the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware, (y) if such court lacks subject matter jurisdiction, the United States District Court for the District of Delaware, to the extent that such court has subject matter jurisdiction or (z) if such court lacks subject matter jurisdiction, the courts of the State of Delaware (the " *Designated Court* "). Each of the parties hereto hereby irrevocably submits with regard to any such action or proceeding for itself and in respect of its property, generally and unconditionally, to the personal jurisdiction of the Designated Court and agrees that it will not bring any action whether in tort, contract, common or statutory law, equity or otherwise arising out of or relating to this Agreement or any other Transaction Document or any of the Contemplated Transactions or the subject matter hereof or thereof in any court other than the Designated Court. Each of the parties hereto hereby irrevocably waives, and agrees not to assert as a defense, counterclaim or otherwise, in any action or proceeding with respect to this Agreement or any other Transaction Document, (a) any claim that it is not personally subject to the jurisdiction of the Designated Court, (b) any claim that it or its property is exempt or immune from jurisdiction of the Designated Court or from any legal process commenced in such Designated Court (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise), and (c) to the fullest extent permitted by applicable Law, any claim that (i) the suit, action or proceeding in such Designated Court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper, or (iii) this Agreement, any other Transaction Document, or the subject matter hereof or thereof, may not be enforced in or by such Designated Court.

**Section 4.12. Consent to Service of Process.** Each of the parties hereto hereby irrevocably and unconditionally consents to service of process in the manner provided for notices in Section 4.3 and agrees that nothing in this Agreement or any other Transaction Document will affect the right of any party hereto to serve process in any other manner permitted by applicable Law.

**Section 4.13. Waiver of Jury Trial.** EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY DISPUTE IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT KNOWINGLY, VOLUNTARILY, INTENTIONALLY, IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY DISPUTE.

**Section 4.14. Specific Performance.** The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms and that monetary damages, even if available, would not be an adequate remedy therefor. It is accordingly agreed that the parties shall be entitled to specific performance of the terms hereof, this being in addition to any other remedy to which they are entitled at law or in equity. The parties acknowledge that the awarding of equitable remedies is within the discretion of the applicable court.

**Section 4.15. Remedies Cumulative.** The rights and remedies of the parties are cumulative and not alternative.

**Section 4.16. Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

**Section 4.17. Signatures/E-delivery; Reproduction of Documents.**

(a) A manually signed copy of this Agreement or any other Transaction Documents delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Agreement.

(b) This Agreement, the other Transaction Documents, and all certificates and documents relating hereto and thereto, including, without limitation, (i) consents, waivers and modifications that may hereafter be executed, (ii) documents received by each party pursuant hereto, and (iii) financial statements and other information previously or hereafter furnished to each party, may be reproduced by each party by electronic digital storage, computer tapes, photographic, photostatic, optical character recognition, microfilm, microcard, miniature photographic or other similar process, and each party may destroy any original document so reproduced. All parties hereto agree and stipulate that any such reproduction shall be admissible in evidence as would the original itself in any judicial, arbitration or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by each party in the regular course of business) and that any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

**Section 4.18. Severability.**

(a) If any provision of this Agreement or any other Transaction Document is determined to be invalid, illegal or unenforceable, the remaining provisions of this

Agreement and the other Transaction Documents shall remain in full force, if the essential terms and conditions of this Agreement and the other Transaction Documents for each party remain valid, binding and enforceable. Furthermore, in lieu of any such invalid or unenforceable term or provision, the parties hereto intend that there shall be added as a part of this Agreement a provision as similar in terms to such invalid or unenforceable provision as may be possible and be valid and enforceable.

(b) Any provision of this Agreement or any other Transaction Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof or thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

**Section 4.19. Adjustments for Share Splits, etc.** Wherever in this Agreement there is a reference to a specific number of shares of the Parent of any Class or series, or a price per share, or consideration received in respect of such shares, then, upon the occurrence of any subdivision or consolidation of the shares of such Class or series, the specific number of shares or the price so referenced in this Agreement shall automatically be proportionally adjusted to reflect the effect on the outstanding shares of such Class or series of shares by such subdivision or consolidation.

**Section 4.20. Release.** In consideration of, among other things, Lender's execution and delivery of this Agreement, each of the Parent, the Company, any party claiming on behalf of the Parent or the Company, the Parent or the Company's equityholders and residual claimants and the respective successors and assigns of each (collectively, the " *Releasors* "), hereby forever agrees and covenants not to sue or prosecute against the Releasees (as defined in this Section 4.20 ) and hereby forever waives, releases and discharges each Releasee from, any and all claims (including, without limitation, cross-claims, counterclaims, rights of set-off and recoupment), actions, causes of action, suits, debts, accounts, interests, Liens, promises, warranties, damages and consequential and punitive damages, demands, agreements, bonds, bills, specialties, covenants, controversies, torts, variances, trespasses, judgments, executions, costs, expenses or claims whatsoever (collectively, the " *Claims* "), that such Releasor now has (as of the date of this amendment and restatement) or hereafter may have, of whatsoever nature and kind, whether known or unknown, whether arising at law or in equity, against Lender in any capacity and its shareholders and "controlling persons" (within the meaning of the federal securities laws), and their respective successors and assigns and each and all of the officers, directors, employees, agents, attorneys, advisors, auditors, consultants, Affiliates and other representatives of each of the foregoing (collectively, the " *Releasees* "), based in whole or in part on facts whether or not now known, existing on or before the date hereof, that relate to, arise out of or otherwise are in connection with this Agreement or any of the Transaction Documents or any transactions contemplated thereby or any acts or omissions in connection therewith or the negotiation thereof, provided, however, that the foregoing shall not release Lender from its express obligations under this Agreement or any of the Transaction Documents. The provisions of this Section 4.20 shall survive the expiration and termination of this Agreement and any of the Transaction Documents.

***[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]***

**IN WITNESS WHEREOF** , the parties have executed this Agreement as of the date first above written.

**PARENT** :

**ODYSSEY MARINE EXPLORATION, INC.**

By: /s/ Mark D. Gordon
Name: Mark D. Gordon
Title: President and Chief Executive Officer

**COMPANY** :

**ODYSSEY MARINE ENTERPRISES, LTD.**

By: /s/ Mark D. Gordon
Name: Mark D. Gordon
Title: Vice President and Director

[Signature Page to A&R Note Purchase Agreement]

**LENDER** :

**EPSILON ACQUISITIONS LLC**

By: /s/ Alonso Ancira
Name: Alonso Ancira
Title: Managing Member

[Signature Page to A&R Note Purchase Agreement]

**ANNEX A**

**DEFINITIONS**

" *A&R Registration Rights Agreement* " means that certain Amended and Restated Registration Rights Agreement, dated as of March 18, 2016, amended and restated as of the date hereof, by and between the Parent and the Lender.

" *Affiliate* " has the meaning set forth in Rule 12b-2 of the rules and regulations promulgated under the Exchange Act; provided, however, that for purposes of this Agreement, Lender and its Affiliates, on the one hand, and the Parent and its Affiliates, on the other, shall not be deemed to be "Affiliates" of one another.

" *Anti-Corruption Laws* " means Laws or Orders relating to anti-bribery and anti-corruption (governmental or commercial) that apply to the business and dealings of the Parent or any of its Subsidiaries, including, without limitation, Laws that prohibit the payment, offer, promise or authorization of the payment or transfer of anything of value (including gifts or entertainment), directly or indirectly, to any foreign government official, foreign government employee or commercial entity to obtain a business advantage.

" *Anti-Money Laundering Laws* " means any Laws or Orders relating to anti-money laundering or terrorism financing that apply to the business and dealings of the Parent or any of its Subsidiaries.

" *Approved Monaco Transaction* " has the meaning ascribed to such term in the Waiver and Consent, dated March 18, 2016, by and among the Parent, the Company, Penelope Mining LLC, and Minera del Norte S.A. de C.V.

" *Borrowing Notice* " with respect to any request for a borrowing of a Loan hereunder, means a notice from the Borrower that sets forth the amount of and Closing Date for such Loan.

" *Business Day* " means any day except (a) a Saturday or Sunday or (b) a day on which the New York Stock Exchange or the NASDAQ Stock Market is closed for trading.

" *Class* " means any class of capital stock of the Parent designated as such in any of the articles of incorporation of the Parent.

" *Commitment Amount* " means (a) $6,000,000 minus (b) the amount of all Loans made by the Lender pursuant to this Agreement, it being understood that the Company shall not have the right to reborrow any amounts borrowed but repaid pursuant to this Agreement.

" *Common Stock* " means the common stock par value $.0001 per share of Parent.

" *Contemplated Transactions* " means the transactions contemplated by this Agreement and each of the Transaction Documents, including the issuance of the Common Stock upon conversion of the Note.

" *Contract* " means any contract, lease, deed, mortgage, license, instrument, note, commitment, undertaking, indenture, joint venture or any other agreement, commitment or legally binding arrangement, whether written or oral.

" *Disclosure Schedule* " means the disclosure schedule attached hereto.

" *Don Diego Project* " means the Don Diego West offshore phosphate project, located in the Pacific Ocean approximately 50 km southwest off the coast of Baja California Sur, Mexico.

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

" *Existing Pledge* " means that certain Pledge Agreement, dated as of March 11, 2015, by and among Minera del Norte S.A. de C.V., the Company and Oceanica.

" *Governmental Agency* " means any: (x) multinational, federal, state, regional, municipal, local or other government, governmental or public department, central bank, court, tribunal, arbitral body, commission, board, bureau or agency, domestic or foreign; (y) subdivision, agent, commission, board or authority of any of the foregoing; or (z) quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing.

" *Lender Material Adverse Effect* " means a material adverse effect on the ability of Lender to perform its obligations under the Transaction Documents.

" *Knowledge* " means that a matter is, as of the applicable date, actually known to, or based on their position and responsibilities would reasonably be expected to be known by, an executive officer of the Parent.

" *Law* " means: (1) laws (including common law), statutes, by-laws, rules, regulations, orders, ordinances, codes, treaties, decrees, judgments, awards or requirements, in each case of any Governmental Agency, and terms and conditions of any grant of approval, permission, authority or license of any Governmental Agency; and (2) all policies, notices, guidelines, protocols or directions of any Governmental Agency which are binding on the Person referred to in the context in which it is used.

" *Liabilities* " means liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise.

" *Lien"* means any charge, claim, community property interest, condition, equitable interest, lien, option, pledge, security interest, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income, or exercise of any other attribute of ownership.

" *Maturity Date* " means March 18, 2017.

" *Monaco* " means Monaco Financial, LLC.

" *Oceanica* " means Oceanica Resources S. de R.L., a Panamanian limitada.

" *OFAC Laws* " means any statutory and regulatory requirements of the laws administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury.

" *Order* " means any judgment, writ, decree, injunction, order, compliance agreement or settlement agreement of or with any Governmental Agency.

" *Permit"* means any permit, approval, consent, authorization, license, variance, or permission required by a Governmental Agency under any Law.

*"Permitted Liens"* means, with respect to any asset, (i) covenants, conditions, restrictions, encroachments, encumbrances, easements, rights of way, licenses, grants, building or use restrictions, exceptions, reservations, limitations or other imperfections of title (other than a Lien securing any indebtedness) with respect to such asset which, individually or in the aggregate, does not materially detract from the value of, or materially interfere with the present occupancy or use of, such asset and the continuation of the present occupancy or use of such asset; (ii) unfiled mechanic's, materialmen's and similar Liens with respect to amounts not yet due and payable or which are being contested in good faith through appropriate proceedings and, for which adequate reserves in accordance with GAAP are reflected on the consolidated balance sheet of the Parent included in the Parent Reports; (iii) Liens for Taxes not yet delinquent or which are being contested in good faith through appropriate proceedings and, for which adequate reserves in accordance with GAAP are reflected on the consolidated balance sheet of the Parent included in the Parent Reports; and (iv) Liens securing rental payments under capital lease arrangements, which capital lease arrangements are reflected in accordance with GAAP on the consolidated balance sheet of the Parent included in the Parent Reports.

" *Person* " means an individual, partnership, corporation, limited liability Parent, business trust, joint stock Parent, trust, unincorporated association, joint venture or any other entity or organization.

" *Preferred Stock* " means the preferred stock par value $.0001 per share of Parent.

" *Proceedings* " means any action, suit, litigation, arbitration, legal administrative or other civil or criminal proceeding, at law or in equity, or, to the extent within the Knowledge of the Parent or the knowledge of the Lender, as applicable, any investigation by or before any Governmental Agency.

" *Revolving Credit Commitment* " means the obligation of the Lender to make Loans in an aggregate principal amount not to exceed $6,000,000.

" *Revolving Credit Commitment Period* " means the period from the date of this Agreement to the Maturity Date.

" *SEC* " means the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

" *Securities Act* " means the Securities Act of 1933, as amended, or any similar successor federal statute and the rules and regulations thereunder, all as the same shall be in effect from time to time.

" *Stockholders* " means the stockholders of the Parent.

" *Subsidiary* " means, with respect to a Person other than a natural person: (a) any body corporate of which more than 50% of the outstanding shares ordinarily entitled to elect a majority of the board of directors thereof (whether or not shares of any other class or classes shall or might be entitled to vote upon the happening of a certain event or contingency) are at the time owned directly or indirectly by such specified body corporate, (b) any body corporate, partnership, joint venture or other entity over which the Person in question exercises direction or control or which is in a like relation to a subsidiary described in clause (a); and (c) any "subsidiary" as defined in Rule 405 promulgated under the Securities Act.

" *Taxes"* means all federal, state, local, foreign and other taxes, assessments and water and sewer charges and rents, including without limitation, income, gross receipts, excise, employment, sales, use, transfer, license, payroll, franchise, severance, stamp, withholding, Social Security, unemployment, real property, personal property, property gains, registration, capital stock, value added, single business, occupation, workers' compensation, alternative or add-on minimum, estimated, or other tax, including without limitation, any interest, penalties or additions thereto.

" *Transaction Documents* " means this Agreement, the Note, the Pledge Agreements, the A&R Registration Rights Agreement and any and all certificates, agreements, documents or other instruments to be executed and delivered by any Person in connection with such documents, any exhibits, attachments or schedules to any of the foregoing and any other written agreement that is expressly identified as a Transaction Document, as any of the foregoing may be amended, supplemented or otherwise modified from time to time.

**ANNEX B**

**CROSS REFERENCE SHEET OF TERMS DEFINED HEREIN**

| Terms | Section |
|---|---|
| A&R MEH-Parent Pledge Agreement | Section 1.3(a)(iii) |
| A&R OME Pledge Agreement | Section 1.3(a)(ii) |
| Agreement | Preamble |
| Board of Directors | Section 2.2(c) |
| Claims | Section 4.20 |
| Company | Preamble |
| Contracting Parties | Section 4.9 |
| Designated Court | Section 4.11 |
| Enforceability Exceptions | Section 2.2(b) |
| Existing Loan | Section 1.4(a)(i) |
| GAAP | Section 2.8(d) |
| Intermediate Holdcos | Section 1.3(a)(iii) |
| Lender | Preamble |
| Loan | Section 1.1 |
| Material Adverse Effect | Section 2.6 |
| MEH | Section 1.3(a)(iii) |
| Nonparty Affiliates | Section 4.9 |
| Note | Recitals |
| Parent | Preamble |
| Parent Reports | Section 2.8(a) |
| Pledge Agreements | Section 1.3(a)(iii) |
| Pledged Oceanica Shares | Section 1.3(a)(ii) |
| Project Mineral Rights | Section 2.7(e) |
| Project Permit | Section 2.7(d) |
| Releasors | Section 4.20 |
| Releasees | Section 4.20 |
| Stock Purchase Agreement | Section 2.5(d) |
| Takeover Laws | Section 2.15 |

**EXHIBIT A**

**NOTE**

**EXHIBIT B**

**A&R OME PLEDGE AGREEMENT**

**EXHIBIT C**

**A&R MEH-PARENT PLEDGE AGREEMENT**

**EXHIBIT D**

**A&R REGISTRATION RIGHTS AGREEMENT**

**Exhibit 10.2**

**ODYSSEY MARINE ENTERPRISES, LTD.**

**AMENDED AND RESTATED CONVERTIBLE PROMISSORY NOTE**

**October 1, 2016**

Subject to the terms and conditions of this Amended and Restated Convertible Promissory Note, dated as of March 18, 2016 and amended and restated as of the date hereof (this " Note "), for good and valuable consideration received, Odyssey Marine Enterprises, Ltd., a Bahamas company (the " Company "), whose address is Lyford Financial Centre, Lyford Cay, P.O. Box N-7776, Nassau, Bahamas, promises to pay to Epsilon Acquisitions LLC (the " Lender "), the principal amount of six million dollars ($6,000,000), or so much thereof as shall have been advanced to the Company by the Lender and be outstanding hereunder, together with interest accrued on the unpaid principal amount outstanding under this Note from time to time from the date hereof until paid in full at the rate of ten percent (10%) per annum (the " Interest Rate "), payable on the terms set forth in Section 2 herein.

The obligations of the Company under this Note are secured by (a) that certain Amended and Restated Pledge Agreement, dated as of the date hereof, between the Company and Lender (as amended or restated from time to time, the " A&R OME Pledge Agreement "), and (b) that certain Amended and Restated Pledge Agreement, dated as of the date hereof, between Marine Exploration Holdings, LLC, a Nevada limited liability company (" MEH "), Guarantor (as defined below) and Lender (as amended or restated from time to time, the " A&R MEH-Parent Pledge Agreement ", and together with the OME Pledge Agreement, the " Pledge Agreements "). Odyssey Marine Exploration, Inc., a Nevada corporation (the " Guarantor ") shall be a party to this Note for the purposes of Section 8 hereof.

The following is a statement of the rights of the Holder and the terms and conditions to which this Note is subject, and to which the Holder, by the acceptance of this Note agrees:

1. Certain Definitions . Unless the context otherwise requires, as used in this Note, the following terms will have the following meanings:

(a) " Adjusted Principal Balance " means the entire outstanding principal balance under this Note at the time in question plus accrued interest and fees.

(b) " Applicable Conversion Price " means, with respect to Tranche 1, the Tranche 1 Conversion Price, and with respect to any other Tranche, the Borrowing Date Conversion Price.

(c) " Bankruptcy Code " means the United States Federal Bankruptcy Code of 1978, as amended or supplemented (as now or hereafter in effect).

(d) " Borrowing Date Conversion Price " means, with respect to a particular Tranche of the Loan (other than Tranche 1), the VWAP of the Common Stock for each day in the five (5) consecutive Trading Day period ending and including the Trading Day immediately preceding the date of the Borrowing Notice for such Tranche (as adjusted for stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions).

(e) " Business Day " means any day except (a) a Saturday or Sunday or (b) a day on which the New York Stock Exchange or the NASDAQ Stock Market is closed for trading.

(f) " Change in Control " means the earlier of the entry into a definitive agreement providing for, or the effective date of: (i) a sale, lease, transfer or other disposition in one or a series of related transactions of any of the Company's equity interests in Oceanica, (ii) MEH ceasing to own beneficially and of record 100% of the equity interests in the Company, (iii) Guarantor ceasing to own beneficially and of record 100% of the equity interests in MEH, or (iv) any Person or group (other than Lender, Minosa and their respective affiliates) becoming the holder of in excess of 20% of the voting stock or outstanding equity interests of Guarantor.

(g) " Common Stock " means the Guarantor's common stock, par value $0.0001 per share.

(h) " Debt " means as to any person, without duplication (a) all indebtedness of such person for borrowed money or for the deferred purchase price of property or services as of such date (other than operating leases, trade liabilities and other liabilities incurred in the ordinary course of business and payable in accordance with customary practices) or which is evidenced by a note, bond, debenture or similar instrument, (b) the principal component of all obligations of such person under capitalized leases, (c) all obligations of such person in respect of letters of credit, acceptances or similar obligations issued or created for the account of such person, (d) all liabilities secured by any lien on any property owned by such person even though such person has not assumed or otherwise become liable for the payment thereof, (e) all guarantee obligations of such person, (f) all obligation of such person under conditional sale or other title retention agreements relating to property or assets purchased by such person and (g) interest rate swap transaction, basis swap transaction, forward rate swap transaction, commodity swap transaction, equity transaction, equity index transaction, foreign exchange transaction, cap transaction, floor transaction (including any option with respect to any of these transactions and any combination of any of the foregoing) entered into by such person.

(i) " Debtor Relief Laws " means the Bankruptcy Code and all other applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization, fraudulent transfer or conveyance, suspension of payments, or similar laws from time to time in effect affecting the rights of creditors generally.

(j) " Encumbrance " means any charge, claim, community property interest, condition, equitable interest, lien, option, pledge, security interest, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income, or exercise of any other attribute of ownership.

(k) " Event of Default " shall have the meaning set forth in Section 3 hereof.

(l) " Existing Loan " means that certain loan made to the Company by Minosa in separate advances in the aggregate amount of $14,750,000, as evidenced by a Promissory Note dated as of March 11, 2015, by and among the Company, Minosa and the Guarantor.

(m) " Financing " means a transaction or series of transactions pursuant to which the Company, Guarantor or any of the Subsidiaries of either, as applicable, issues or sells any (i) debt securities or other debt instruments of the Company, Guarantor or any of the Subsidiaries of either; (ii) equity securities of the Company, Guarantor or any of the Subsidiaries of either; (iii) debt instruments which have the right to convert into any class of capital stock of the Company, Guarantor or any of the Subsidiaries of either; or (iv) other convertible securities that have the right to convert into any class of capital stock of the Company, Guarantor or any of the Subsidiaries of either.

(n) " GAAP " means, collectively the (a) generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, that are applicable and (b) such other accounting methods consistently applied and maintained throughout the period indicated and consistent with the prior financial practices of the Company.

(o) " Governmental Agency " means any: (x) multinational, United States, non-United States, federal, state, regional, municipal, local or other government, governmental or public department, central bank, court, tribunal, arbitral body, commission, board, bureau or agency, domestic or foreign; (y) subdivision, agent, commission, board or authority of any of the foregoing; or (z) quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the foregoing.

(p) " Holder " when the context refers to a holder of this Note, will mean any person who at the time in question is the registered holder of this Note.

(q) " Law " means: (i) laws (including common law), statutes, by-laws, rules, regulations, orders, ordinances, codes, treaties, decrees, judgments, awards or requirements, in each case of any Governmental Agency, and terms and conditions of any grant of approval, permission, authority or license of any Governmental Agency; and (ii) all policies, notices, guidelines, protocols or directions of any Governmental Agency which are binding on the Person referred to in the context in which it is used.

(r) " Loan Documents " means this Note, the Pledge Agreements, the Purchase Agreement, and all other documents, agreements and instruments delivered in connection therewith.

(s) " Loans " means, collectively, the Tranche 1 loan and any other Tranche of loan made pursuant to this Note.

(t) " Material Adverse Effect " means a material adverse effect on (a) the business, prospects, condition (financial or otherwise), affairs, properties, assets or liabilities of (i) the Company alone or (ii) the Company and its Subsidiaries, taken as a whole, (b) the ability of the Company to perform its obligations under this Note or any of the other Loan Documents.

(u) " Maturity Date " shall have the meaning set forth in Section 2(a) .

(v) " Minosa " means Minera del Norte S.A. de C.V.

(w) " Obligations " means, collectively, (a) all present and future liabilities and other obligations of the Company to Lender under the Loan Documents, whether those obligations are direct, indirect, fixed, contingent, liquidated, unliquidated, joint, several, or joint and several, due or to become due, created directly or acquired by assignment or otherwise, and (b) all present and future costs, attorneys' fees, and expenses reasonably incurred by Lender and relating to the Company's payment of any of the Obligations, including, without limitation (to the extent lawful), all present and future amounts that would become due but for the operation of §§502 or 506 or any other provision of Title 11 of the United States Code and all present and future accrued and unpaid interest, including, without limitation, all post-maturity interest and any post-petition interest in any proceeding under Debtor Relief Laws to which the Company becomes subject.

(x) " Oceanica " means Oceanica Resources S. de R.L., a Panamanian limitada.

(y) " Order " means any judgment, writ, decree, injunction, order, compliance agreement or settlement agreement of or with any Governmental Agency.

(z) " Original Note " means that certain Convertible Promissory Note dated as of March 18, 2016, by and among the Company, the Lender, and the Guarantor.

(aa) " Permitted Encumbrance " means (a) any Encumbrance securing the Existing Loan, (b) any Encumbrance arising under this Note or the other Loan Documents; and (iii) liens for Taxes not yet delinquent.

(bb) " Person " means any natural person, corporation, limited liability company, partnership, joint venture, trust or other organization, whether or not a legal entity, and any Governmental Agency.

(cc) " Principal Market " means the Nasdaq Capital Market.

(dd) " Purchase Agreement " means the Amended and Restated Note Purchase Agreement, dated as of the date hereof, by and among the Lender, the Company and the Guarantor.

(ee) " Securities Act " means the Securities Act of 1933, as amended.

(ff) " Stock Purchase Agreement " means that certain Stock Purchase Agreement, dated as of March 11, 2015, by and among Guarantor, Lender and Minosa, as amended from time to time.

(gg) " Subsidiaries " means, with respect to any Person (the " parent "), at any date, any other Person the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such statements were prepared in accordance with GAAP and including, without limitation, each Person as to which the parent owns more than 50% of the equity interests or otherwise controls.

(hh) " Trading Day " means any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded, provided that "Trading Day" shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) unless such day is otherwise designated as a Trading Day in writing by the Holder.

(ii) " Tranche 1 " means the loan made to the Company by the Lender in separate advances in the aggregate amount of $3,000,000, as evidenced by the Original Note.

(jj) " Tranche 1 Conversion Price " means a conversion price equal to $5.00 per share (as adjusted for stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions).

(kk) " Tranche " means a separate extension of the Loan under the Terms of the Purchase Agreement.

(ll) " VWAP " means, for any security as of any date, the dollar volume-weighted average price for such security on the Principal Market (or, if the Principal Market is not the principal trading market for such security, then on the principal securities exchange or securities market on which such security is then traded) during the period beginning at 9:30:01 a.m., New York time, and ending at 4:00:00 p.m., New York time, as calculated from trading data reported by The NASDAQ Stock Market. If the VWAP cannot be calculated for such security on such date on any of the foregoing basis, the VWAP of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, recapitalization or other similar transaction during such period.

2. Maturity, Payment of Interest and Prepayment .

(a) Unless otherwise converted as provided herein, the Adjusted Principal Balance will be due and payable in full on March 18, 2017 (the " Maturity Date ").

(b) If the Stock Purchase Agreement is terminated for any reason, then from and after the date of such termination each of the Company and Guarantor, as applicable, shall, and shall cause their respective Subsidiaries to, use any and all proceeds from a Financing to repay the outstanding Adjusted Principal Balance of this Note.

(c) The unpaid principal balance of this Note at any time shall be the aggregate amount of all Loans made by Lender to the Company from time to time less the total amount of principal payments made hereon by the Company. The date and amount of each such Loan and each payment on account of principal thereof may be endorsed by Lender on the grid attached to and made a part of this Note, and when so endorsed shall represent evidence thereof binding upon the Company in the absence of manifest error. Any failure by Lender to so endorse shall in no way mitigate or discharge the obligation of the Company to repay any Loans actually made.

(d) The outstanding principal balance of this Note shall bear interest (computed on the basis of a 365/366 day year) at the Interest Rate stated above from the date hereof until the payment in full of the Adjusted Principal Balance. From and after the earlier of the Maturity Date and the occurrence of an Event of Default, all obligations due and payable hereunder (whether interest, principal or otherwise) shall bear interest at a rate per annum equal to the Interest Rate plus 2% per annum, payable on demand and compounding monthly.

(e) Interest shall be payable in arrears to the Lender on the Maturity Date.

(f) The Company may prepay this Note in whole or in part at any time so long as the Company provides written notice to the Lender of such prepayment at least 10 days prior to the proposed prepayment date. Any such prepayment shall be applied first against the Tranche with the highest Applicable Conversion Price. For the avoidance of doubt, Holder may exercise its right to voluntarily convert this Note pursuant to Section 3 subsequent to the receipt of the notice of prepayment.

3. Voluntary Conversion; Limitations on Conversion .

(a) Each Tranche outstanding under this Note and any amounts due hereunder with respect to such Tranche (and to the extent not directly related to a Tranche, allocated based on the outstanding principal amount of each Tranche) shall be convertible at the election of the Holder: (a) upon a merger consolidation, third party tender offer or similar transaction relating to the Guarantor or (b) at any time or from time to time, upon seventy-five (75) days' notice to the Company, in each case, into shares of Common Stock at a conversion price equal to the Applicable Conversion Price. In addition to the foregoing, upon the occurrence and during the continuance of an Event of Default, this Note and any amounts due hereunder shall be convertible at the election of the Holder, into shares of Common Stock at a conversion price equal to one-half of the Applicable Conversion Price.

(b) Notwithstanding anything herein to the contrary, the Company shall not issue any shares of Common Stock upon conversion of any outstanding Tranche (other than Tranche 1) under this Note in excess of 1,388,769 shares of Common Stock.

4. Mechanics and Effect of Conversion . No fractional shares of the Guarantor Common Stock will be issued upon conversion of this Note. In lieu of any fractional share to which the Holder would otherwise be entitled, the Company will pay to the Holder in cash the amount of the unconverted principal and interest balance of this Note that would otherwise be converted into such fractional share. Upon conversion of this Note pursuant to Section 3 , the Holder shall surrender this Note, duly endorsed, at the principal offices of the Company or any transfer agent of the Company. At its expense, the Company will, as soon as practicable thereafter, issue and deliver to such Holder, at such principal office, a notice of issuance for the number of shares to which such Holder is entitled upon such conversion, together with any other securities and property to which the Holder is entitled upon such conversion under the terms of this Note, including a check payable to the Holder for any cash amounts payable as described herein. Upon conversion of this Note, the Company will be forever released from all of its obligations and liabilities under this Note with regard to that portion of the principal amount and accrued interest being converted, including, without limitation, the obligation to pay such portion of the principal amount and accrued interest.

5. Events of Default . If there shall be any Event of Default (as defined below), this Note shall accelerate and the Adjusted Principal Balance, (x) in the case of clauses (d), (f), (g), (h), (k) and (m), shall become immediately due and payable, and (y) in all other cases, upon written notice from Holder shall become immediately due and payable. It shall be an " Event of Default " under this Note if:

(a) the Company fails to pay any amount payable hereunder on the date due and payable;

(b) the Company or Guarantor shall fail to perform or observe any term, covenant or agreement herein contained, or shall fail to perform or observe any other covenant contained herein or in any other Loan Document and such failure shall not be remedied within five (5) Business Days after written notice is sent to the Company;

(c) an event of default or material breach by the Company, Guarantor or any of their affiliates under any of the other Loan Documents shall have occurred and all grace periods, if any, applicable thereto shall have expired;

(d) the Stock Purchase Agreement shall have been terminated.

(e) any representation, warranty, statement, certificate, schedule or report made herein or in any other Loan Document by or on behalf of the Company or any of its Subsidiaries or furnished by or on behalf of the Company or any of its Subsidiaries hereunder or thereunder shall prove to have been false or misleading in any material respect as of the time made or deemed to have been made or furnished and if capable of being remedied, the same shall not be remedied within five (5) Business Days after written notice is sent to the Company, or, if earlier, the date an officer of the Company obtains actual knowledge thereof;

(f) there shall have occurred the dissolution, termination of existence of, or the insolvency of, or the making of an assignment or trust mortgage for the benefit of creditors by, the Company or any of its Subsidiaries;

(g) the Company or any of its Subsidiaries shall (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or similar official of itself or of all or a substantial part of its property, (ii) make a general assignment for the benefit of its creditors, (iii) commence a voluntary case under the Bankruptcy Code, (iv) take any action or commence any case or proceeding under any Debtor Relief Law, (v) fail to contest in a timely or appropriate manner, or acquiesce in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code or other Debtor Relief Law, (vi) take any action under the laws of its jurisdiction of incorporation or organization similar to any of the foregoing, or (vii) take any corporate action for the purpose of effecting any of the foregoing;

(h) a proceeding or case shall be commenced, without the application or consent of the Company or any of its Subsidiaries, in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution, winding up, or composition or readjustment of its debts, (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of it or of all or any substantial part of its assets, or (iii) similar relief in respect of it, under any Debtor Relief Law, and such proceeding or case shall continue undismissed, or unstayed and in effect, for a period of sixty (60) days; or an order for relief shall be entered in an involuntary case under such Debtor Relief Law, against the Company or any of its Subsidiaries or action under the laws of the jurisdiction of incorporation or organization of the Company or any of its Subsidiaries, similar to any of the foregoing shall be taken with respect to the Company or any of its Subsidiaries;

(i) an entry of judgment or award against the Company or any of its Subsidiaries shall be made (i) which exceeds $100,000 in the aggregate outstanding at any time, (ii) which has been in force more than sixty (60) days (or, if the applicable appeal period is shorter, for such shorter period) or on which execution has been levied, (iii) in respect of which the Company or such Subsidiary shall not at the time in good faith be prosecuting an appeal or proceedings for review and in respect of which no stay of execution shall have been obtained pending such appeal or review, and (iv) the judgment or award shall have arisen out of liabilities not fully covered by insurance unless the insurer shall have acknowledged in writing that full coverage (subject to any deductibles applicable thereto) exists with respect to such judgment or award;

(j) the Company or any of its Subsidiaries is enjoined, restrained, or in any way prevented from conducting all or any material part of its business affairs;

(k) a Change in Control shall occur;

(l) there shall be instituted in any court criminal proceedings against the Company, any of its Subsidiaries or any officer, director, manager or principal thereof, or the Company, any of its Subsidiaries or any officer, director, manager or principal thereof shall be indicted for any crime, in either case for which a forfeiture of a material portion of the Company's or any Subsidiary's property is a potential penalty or if adversely determined would reasonably be expected to have a Material Adverse Effect; or

(m)(i) there shall exist an event of default under any other agreement relating to Debt of the Company or any of its Subsidiaries where the outstanding principal amount of such Debt is greater than $100,000, and all grace periods, if any, applicable thereto shall have expired; (ii) the maturity of any such Debt shall have been accelerated; (iii) without the prior, written approval of Holder, the Company shall have made any payment with respect to any such Debt (other than the Existing Loan) more than five (5) Business Days in advance of its scheduled payment date; or (iv) any "Event of Default" shall have occurred and be continuing under the Existing Loan.

6. Representations and Warranties of the Company

The Company hereby represents and warrants to the Lender as follows:

(a) Organization and Standing . The Company is duly organized and existing under the laws of the Bahamas and is in good standing under such laws. The Company has the requisite power and authority to own and operate its properties and assets, and to carry on its business as presently conducted and as proposed to be conducted. The Company is duly qualified to do business as a foreign corporation in each jurisdiction in which the conduct of its business requires such qualification, except where the failure to so qualify would not have a Material Adverse Effect.

(b) Corporate Power . Each of the Company and the Guarantor have all requisite corporate power to execute and deliver the Loan Documents and to carry out and perform their obligations under the terms of the Loan Documents. The Company has all requisite corporate power to sell and issue this Note. Each of the Loan Documents constitutes a valid and legally binding obligation of the Company and the Guarantor, enforceable in accordance with its terms, subject, as to enforcement of remedies, to applicable bankruptcy, insolvency, moratorium, reorganization and similar laws affecting creditors' rights generally and to general equitable principles of law.

(c) No Conflicts . Neither the Company, the Guarantor nor any of their Subsidiaries is in violation of or default on any term of its certificate of incorporation or bylaws, or other charter documents, as each is in effect as of the date hereof (collectively, the " Charter Documents "), or any provision of any material mortgage, indenture, contract, agreement, instrument, judgment, decree, order, rule or regulation or other restriction to which the Company, the Guarantor or such Subsidiary is a party or by which it is bound or of any material provision of any Law applicable to the Company, the Guarantor or any such Subsidiary. Each of (A) the execution, delivery and performance by the Company and the Guarantor of the Loan Documents, (B) the compliance herewith and therewith, (C) the issuance by the Company of this Note, and (D) the consummation of the transactions contemplated hereby, in the case of each of the foregoing clauses (A) through (D), will not result in any violation of or result in a breach of any of the terms of, or constitute a default under, (i) any provision of any material Law applicable to the Company, the Guarantor or any of its Subsidiaries, (ii) the Charter Documents, or (iii) any provision of any material mortgage, indenture, contract, agreement, instrument, or other restriction to which the Company, the Guarantor or any of their Subsidiaries is a party or by which they are bound.

(d) Litigation . There are no actions, suits, investigations or proceedings pending or actually known to be threatened in writing against or to the knowledge of the Company affecting the Company or any of its Subsidiaries, or any properties or rights of the Company or any of its Subsidiaries, by or before any Governmental Agency which if adversely determined would reasonably be expected to have a Material Adverse Effect.

(e) Compliance With Laws . The Company and each of its Subsidiaries has conducted and continues to conduct its business in all material respects in accordance with all Laws and Orders applicable to the Company and each of its Subsidiaries or any of their respective properties or assets, and neither the Company nor any of its Subsidiaries is in violation of any such Law or Order in any material respect.

(f) Conduct of Business; Absence of Undisclosed Liabilities . The Company and its Subsidiaries (excluding Oceanica and its Subsidiaries): (x) conduct no business other than holding equity interests in Oceanica, and (y) have no liabilities or obligations, contingent or otherwise, other than (i) liabilities set forth on Schedule 7(a) , (ii) obligations under contracts and commitments incurred in the ordinary course of business, not required by GAAP to be set forth on a consolidated Balance Sheet, (iii) immaterial fees, costs, and expenses associated with the maintenance of the existence of such Persons, and (iv) liabilities under the Loan Documents.

(g) No Encumbrances . The Company and each of its Subsidiaries (other than Oceanica and its Subsidiaries) have good and valid title to its properties and assets, free and clear of any Encumbrance, except for Permitted Encumbrances.

(h) Tax Returns and Taxes . All federal, state and other taxes, assessments and other governmental charges upon the Company, any of its Subsidiaries or any of their respective properties which are due and payable or claimed to be due have been paid to federal, state or local taxing authorities (including, without limitation, taxes on properties, franchises, licenses, sales and payrolls), other than any such tax, assessment or charge that is subject to an ongoing bona fide dispute. All charges, accruals and reserves for taxes reflected in the Balance Sheet are adequate to cover the tax liabilities of the Company and its Subsidiaries as of the date(s) thereof. There are no tax liens upon any of the properties of the Company or any of its Subsidiaries. There are no pending tax examinations nor have any tax claims been asserted by any taxing authority against the Company or any of its Subsidiaries, nor is there any basis for any such claim.

(i) Compliance with OFAC Rules and Regulations . Neither the Company nor any of its Subsidiaries is (i) an "enemy" or an "ally of the enemy" within the meaning of Section 2 of the Trading with the Enemy Act, (ii) in violation of the U.S. Department of the Treasury, Office of Foreign Assets Control (" OFAC ") regulations, or (iii) a "Sanctioned Person" or a "Sanctioned Entity" as defined in applicable OFAC regulations.

(j) Use of Proceeds; Solvency . The Company hereby agrees that the money loaned to the Company hereunder shall be used in compliance with applicable Law. After giving effect to the loan provided for in this Note and the intended use of proceeds, the Company will be "solvent" within the meaning of the Bankruptcy Code.

7. Additional Covenants .

(a) Debt . Neither the Company nor any of its Subsidiaries shall incur, assume or suffer to exist any Debt other than (i) Debt existing on the date hereof and set forth on Schedule 7(a) , (ii) Debt under this Note, and (iii) other debt owed to the Lender.

(b) Transactions Outside of the Ordinary Course of Business . Neither the Company nor any of its Subsidiaries shall (i) permit or suffer any merger, reorganization, change in senior management or other similar transaction, (ii) make or agree to make any asset sale or disposition, (iii) acquire all or any portion of the equity interests or Debt of any Person, (iv) make any advance or loan to any Person (other than an advance to Guarantor), (v) acquire any portion of the assets of any Person, and (vi) in the case of the Company and its Subsidiaries (other than Oceanica and its Subsidiaries) conduct any business other than holding equity interests in Oceanica and performing their obligations under the contracts listed on Schedule 7(a) and under the Loan Documents.

(c) Encumbrances . Except for Encumbrances created in accordance with the Debt existing on the date hereof and set forth on Schedule 7(a) , neither the Company nor any of its Subsidiaries shall permit or suffer to exist any Encumbrance on any of its properties other than Permitted Encumbrances.

(d) Restricted Payments .

(i) The Company shall not declare or pay any distribution or make any other payment on account of its equity interests, purchase, redeem, or otherwise acquire or retire for value any of its equity interests; and

(ii) neither the Company nor any of its Subsidiaries shall make any payment on or with respect to, or purchase, redeem, defease or otherwise acquire or retire for value (including, without limitation, in connection with any merger or consolidation involving the Company or any of its Subsidiaries) any other Debt, other than scheduled payments of principal and interest on the Debt listed on Schedule 7(a) .

(e) Notice Requirements . The Company shall notify the Lender in writing, promptly after any officer of the Company obtains actual knowledge thereof and with full details, of:

(i) any contingent liability(ies) involving liability in excess of $100,000 with respect to the Company (a " Material Amount "), which is not covered by insurance;

(ii) any litigation or arbitration or other proceeding pending or commenced before any Governmental Agency relating to the Company, Oceanica or any of their respective Subsidiaries;

(iii) the acceleration of the maturity of any Debt of the Company or any of its Subsidiaries (whether or not disputed);

(iv) the occurrence of a default under any agreement or instrument to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries;

(v) any Encumbrance asserted, and any attachment, levy, execution or other legal process levied against the Collateral or any other material property of the Company or any of its Subsidiaries; and

(vi) any change in (i) the legal name of the Company or any of its Subsidiaries, (ii) the address of the chief executive office of the Company or any of its Subsidiaries, (iii) the jurisdiction of formation of the Company or any of its Subsidiaries, or (iv) the location of any Collateral or the records of the Company or any of its Subsidiaries with respect to accounts.

(f) Payment of Taxes and Claims. The Company and each of its Subsidiaries shall pay each tax or other assessment or governmental charge or levy imposed upon the Company or any of its Subsidiaries or their respective property prior to the time when any material penalties or interest (except interest during extensions of time for filing of tax returns) accrue with respect thereto, as well as any lawful claim for labor, materials or supplies which if unpaid might become a lien or charge upon the properties of the Company or any of its Subsidiaries or any part thereof.

(g) Compliance With Law. The Company and each of its Subsidiaries shall comply in all material respects with the requirements of all present and future applicable Laws

(h) Access to Records . The Lender shall, upon reasonable notice to the Company and at reasonable times, be provided with access to all tax, financial and other books and records of, and senior officers of, the Company and each of its Subsidiaries.

8. Guaranty .

(a) For value received, the Guarantor hereby unconditionally and irrevocably guarantees to the Lender all Obligations. The Lender may bring a separate action against the Guarantor for any accrued but unpaid Obligations without making any demand upon the Company, and without separately proceeding against the Company, and without pursuing any other remedy.

(b) The Lender shall have the right, without notice to the Guarantor, to: (i) renew, extend, accelerate, waive, compromise, release, restructure and otherwise modify, or refuse to modify, the Obligations, the liability of any Person therefor as principal, guarantor, surety or otherwise, and/or any security therefor; and (ii) pursue or not pursue, or make elections among, the Lender's remedies against any such Persons, even if any rights that the Guarantor may have, including subrogation, reimbursement, indemnity, contribution and/or participation in security, are impaired or extinguished. The Guarantor waives any right or defense that might arise by reason of the Lender's exercise of any such rights.

(c) The Guarantor's liability shall not be affected by any circumstance constituting legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. The Guarantor hereby waives, and agrees not to exercise, any rights it may have arising from or based on: (i) any right to require the Lender to proceed against the Company or any other guarantor or other person, or to pursue any other remedy whatsoever; (ii) any defense based upon any legal disability of, any discharge or limitation of the liability of, any restraint or stay applicable to actions against, or the lack of authority or termination of existence of, the Company or any guarantor or other Person; (iii) any right of setoff, recoupment or counterclaim; (iv) presentment, protest, notice of acceptance, notice of protest, notice of dishonor and notice of any action or inaction; (v) any defense based upon negligence of the Lender, including any failure to file a claim in any bankruptcy; (vi) all rights of subrogation, reimbursement, indemnity and/or contribution, and all rights to enforce any remedy that the Lender may have against the Company or another Person; and (vii) any defense related to any change in the Person(s) primarily liable for the Obligations, whether by reason of a change in the structure of the Company, assumption of the Obligations by another Person, or otherwise. The Guarantor will not institute, and will cause its affiliates not to institute, any Proceedings asserting that the guaranty contained in this Section 8 or any term or condition set forth herein is illegal, invalid or unenforceable in accordance with its terms.

(d) The Guarantor's liability shall continue in effect notwithstanding payment or performance by the Company such that, if any such payment or performance is avoided or recovered from or returned by the Lender in connection with the bankruptcy, insolvency or reorganization of the Company or otherwise, the Guarantor shall remain liable as though such payment or performance had not occurred. The Lender may elect in its sole discretion whether to contest a demand or claim that payment or performance should be avoided, recovered or returned.

(e) The Guarantor's obligations under this Section 8 shall not be altered, limited, stayed or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation, or arrangement of the Company, or by any defense the Company may have to the Obligations by reason of any order, decree, or decision of any court or administrative body resulting from any such proceeding. Any stay of enforcement or stay of acceleration of the time for payment of any of the Obligations as against the Company or any other Person, in bankruptcy or otherwise, shall not affect the Guarantor's liability under this Note or the time for performance by the Guarantor hereunder.

9. Assignment . The rights and obligations of the Company and the Holder of this Note will be binding upon and inure to the benefit of the successors, assigns, heirs, administrators and transferees of the parties. Notwithstanding the foregoing, the Company may not assign, pledge or otherwise transfer this Note without the prior written consent of the Holder.

10. Waivers . Other than as set forth herein, the Company hereby irrevocably waives notice of intent to demand, presentment for payment, notice of nonpayment, protest, notice of set off, notice of protest, notice of dishonor, notice of intent to accelerate, notice of acceleration, and all other notices in connection with the delivery, acceptance, collection and/or enforcement of this Note.

11. Waiver and Amendment . No provision of this outstanding Note shall be waived or modified without the written consent of the Company and the Holder.

12. Exculpation . Notwithstanding anything to the contrary contained in this Note, neither Lender nor any present or future shareholder, director, officer or partner of Lender or of any entity which is now or hereafter a shareholder, director, officer or partner of Lender, shall have any personal liability, directly or indirectly, under or in connection with this Note or any agreement made or entered into under or in connection with the provisions of this Note, or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter, and the Company hereby forever and irrevocably waives and releases any and all such personal liability. The limitation of liability provided in this paragraph is in addition to, and not in limitation of, any limitation on liability applicable to Lender provided by law or by any other contract, agreement or instrument.

13. Lost Documents . Upon receipt by the Company of evidence and indemnity satisfactory to it of the loss, theft, destruction or mutilation of, and upon surrender and cancellation of this Note, if mutilated, the Company will make and deliver in lieu of this Note a new note of the same series and of like tenor and unpaid principal amount and dated as of the date to which interest, if any, has been paid on the unpaid principal amount of this Note.

14. Severability . If any provision of this Note becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, portions of such provision, or such provision in its entirety, to the extent necessary, shall be severed from this Note, and such court will replace such illegal, void or unenforceable provision of this Note with a valid and enforceable provision that will achieve, to the extent possible, the same economic, business and other purposes of the illegal, void or unenforceable provision. The balance of this Note shall be enforceable in accordance with its terms.

15. Counterparts . This Note may be executed in any number of counterparts, each of which shall be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one instrument.

16. Costs . If, and as often as, this Note is referred to an attorney for the collection of any sum payable hereunder, or to defend or enforce any of Lender's rights hereunder, or to commence an action, cross-claim, third-party claim or counterclaim by Lender against the Company relating to this Note, the Company agrees to pay to Lender all reasonable out-of-pocket third-party costs incurred in connection therewith including reasonable and documented attorneys' fees (including such fees incurred in appellate, bankruptcy or insolvency proceedings), with or without the institution of any action or proceeding, and in addition all documented costs, disbursements and allowances provided by law.

17. Sole and Absolute Discretion . Any option, consent, approval, discretion or similar right of Lender set forth in this Note may be exercised by Lender in its sole discretion, unless the provisions of this Note or the other Loan Documents specifically require such option, consent, approval, discretion or similar right to be exercised in Lender's reasonable discretion.

18. Loan Documents . The parties hereto are entitled to all of the benefits, and subject to all of the limitations, provided in the Loan Documents, which are hereby incorporated herein by reference as though set forth herein in their entirety.

19. Marshaling . Lender shall not be required to marshal any present or future security for the Obligations, or to resort to such security or guarantees in any particular order. To the extent that it lawfully may, the Company hereby agrees that it will not invoke any law that might cause delay in or impede the enforcement of the rights of Lender under this Note or under any other instrument evidencing any of the Obligations or pursuant to which any of the Obligations were issued or by which any of the Obligations are secured or guaranteed, and to the fullest extent it lawfully may, the Company irrevocably waives the benefits of all such laws.

20. Governing Law; Submission to Jurisdiction; Waiver of Jury Trial, Etc.

(a) Governing Law. This Note, and all claims arising out of or relating to it, shall be governed by and construed in accordance with the laws of the State of New York, excluding that body of law relating to conflict of laws.

(b) SUBMISSION TO JURISDICTION/SERVICE OF PROCESS . THE COMPANY HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN NEW YORK, NEW YORK, FOR THE PURPOSES OF ANY SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF OR BASED UPON THIS NOTE, THE SUBJECT MATTER HEREOF, ANY OTHER LOAN DOCUMENT AND THE SUBJECT MATTER THEREOF. THE COMPANY TO THE EXTENT PERMITTED BY APPLICABLE LAW (A) HEREBY WAIVES, AND AGREES NOT TO ASSERT, BY WAY OF MOTION, AS A DEFENSE, OR OTHERWISE, IN ANY SUCH SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN THE ABOVE-NAMED COURTS ANY CLAIM THAT IT IS NOT SUBJECT PERSONALLY TO THE JURISDICTION OF SUCH COURTS, THAT ITS PROPERTY IS EXEMPT OR IMMUNE FROM ATTACHMENT OR EXECUTION, THAT THE SUIT, ACTION OR PROCEEDING IS BROUGHT IN AN INCONVENIENT FORUM, THAT THE VENUE OF THE SUIT, ACTION OR PROCEEDING IS IMPROPER OR THAT THIS NOTE, THE SUBJECT MATTER HEREOF, THE OTHER LOAN DOCUMENTS OR THE SUBJECT MATTER THEREOF (AS APPLICABLE) MAY NOT BE ENFORCED IN OR BY SUCH COURT, (B) HEREBY WAIVES THE RIGHT TO REMOVE ANY SUCH ACTION, SUIT OR PROCEEDING INSTITUTED BY A LENDER IN STATE COURT TO FEDERAL COURT, OR TO REMAND AN ACTION INSTITUTED IN FEDERAL COURT TO STATE COURT AND (C) HEREBY WAIVES THE RIGHT TO ASSERT IN ANY SUCH ACTION, SUIT OR PROCEEDING ANY OFFSETS OR COUNTERCLAIMS EXCEPT COUNTERCLAIMS THAT ARE COMPULSORY OR OTHERWISE ARISE FROM THE SAME SUBJECT MATTER. THE COMPANY AGREES THAT ITS SUBMISSION TO JURISDICTION IS MADE FOR THE EXPRESS BENEFIT OF LENDER. FINAL JUDGMENT AGAINST THE COMPANY IN ANY SUCH ACTION, SUIT OR PROCEEDING SHALL BE CONCLUSIVE, AND MAY BE ENFORCED IN ANY OTHER JURISDICTION (X) BY SUIT, ACTION OR PROCEEDING ON THE JUDGMENT, A CERTIFIED OR TRUE COPY OF WHICH SHALL BE CONCLUSIVE EVIDENCE OF THE FACT AND OF THE AMOUNT OF INDEBTEDNESS OR LIABILITY OF THE COMPANY THEREIN DESCRIBED, OR (Y) IN ANY OTHER MANNER PROVIDED BY OR PURSUANT TO THE LAWS OF SUCH OTHER JURISDICTION.

(c) WAIVER WITH RESPECT TO DAMAGES . THE COMPANY ACKNOWLEDGES THAT LENDER DOES NOT HAVE ANY FIDUCIARY RELATIONSHIP WITH, OR FIDUCIARY DUTY TO, THE COMPANY ARISING OUT OF OR IN CONNECTION WITH THIS NOTE OR THE OTHER LOAN DOCUMENTS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE COMPANY SHALL NOT ASSERT, AND THE COMPANY HEREBY WAIVES, ANY CLAIMS AGAINST LENDER, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS NOTE, ANY OTHER LOAN DOCUMENT, ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY OR THEREBY, OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

(d) WAIVER OF JURY TRIAL . THE COMPANY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THAT THE COMPANY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS NOTE OR ANY OF THE OTHER LOAN DOCUMENTS, OR ANY OTHER STATEMENTS OR ACTIONS OF THE LENDER. THE COMPANY ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE LENDER TO DISBURSE THE MONEY EVIDENCED BY THIS NOTE AND TO ENTER INTO THE OTHER LOAN DOCUMENTS.

21. Release . In consideration of, among other things, Lender's execution and delivery of this Note, concurrently with the advancement of any Loan by Lender, the Company, the Company's equityholders and residual claimants and the Guarantor, on behalf of itself and the respective successors and assigns of each (collectively, the " Releasors "), hereby forever agrees and covenants not to sue or prosecute against the Releasees (defined below) and hereby forever waives, releases and discharges each Releasee from, any and all claims (including, without limitation, cross-claims, counterclaims, rights of set-off and recoupment), actions, causes of action, suits, debts, accounts, interests, liens, promises, warranties, damages and consequential and punitive damages, demands, agreements, bonds, bills, specialties, covenants, controversies, torts, variances, trespasses, judgments, executions, costs, expenses or claims whatsoever (collectively, the " Claims "), that such Releasor now has or hereafter may have, of whatsoever nature and kind, whether known or unknown, whether arising at law or in equity, against Lender in any capacity and its shareholders and "controlling persons" (within the meaning of the federal securities laws), and their respective successors and assigns and each and all of the officers, directors, employees, agents, attorneys, advisors, auditors, affiliates, consultants and other representatives of each of the foregoing (collectively, the " Releasees "), based in whole or in part on facts whether or not now known, existing on or before the date of the most recent advance of Loans hereunder, that relate to, arise out of or otherwise are in connection with this Note or any transactions contemplated hereby or any acts or omissions in connection therewith or the negotiation thereof, provided, however, that the foregoing shall not release Lender from the express obligations under this Note. The provisions of this Section 21 shall survive the repayment of this Note.

[Remainder of Page Intentionally Blank]

**IN WITNESS WHEREOF** , the Company has caused this Note to be issued as of the day and year as first written above.

**ODYSSEY MARINE ENTERPRISES, LTD.**

By: /s/ Mark D. Gordon
Name: Mark D. Gordon
Title: Vice President and Director

Address: c/o Odyssey Marine Exploration, Inc.
5215 W. Laurel St., Suite 210
Tampa, FL 33607

**ODYSSEY MARINE EXPLORATION, INC.**

By: /s/ Mark D. Gordon
Name: Mark D. Gordon
Title: Vice President and Chief Executive Officer

Address: 5215 W. Laurel St., Suite 210
Tampa, FL 33607

**ACCEPTED AND AGREED TO:**

**EPSILON ACQUISITIONS LLC**

By: /s/ Alonso Ancira
Name: Alonso Ancira
Title: Managing Member

Address: c/o Altos Hornos de Mexico S.A.B. de C.V.
Campos Eliseos No. 29
11580 Mexico D.F.
Mexico

## LOANS AND PAYMENTS OF PRINCIPAL

| Date | Loan No. | Amount of Loan | Amount of Principal Paid | Unpaid Principal Balance | Notation Made By |
|---|---|---|---|---|---|
| March 31, 2016 | 1 | $1,500,000 | $0 | $1,500,000 | |
| March 31, 2016 | 2 (expenses) | $50,000 | $0 | $1,550,000 | |
| April 29, 2016 | 3 | $1,500,000 | $0 | $3,050,000 | |
| September , 2016 | 4 | | $0 | $6,050,000 | |

**Schedule 7(a)**

**Existing Debt**

1. Promissory Note, dated as of March 11, 2015, by and among Minera del Norte S.A de C.V., Odyssey Marine Enterprises, Ltd. and Odyssey Marine Exploration, Inc.

2. Pledge Agreement, dated as of March 11, 2015, by and among Minera del Norte S.A de C.V., Odyssey Marine Enterprises, Ltd. and Oceanica Resources S. de R.L.

3. Convertible Promissory Note, dated as of April 15, 2016, by and between Odyssey Marine Exploration, Inc. and Monaco Financial LLC.

4. Loan and Security Agreement, dated as of April 15, 2016, by and between Odyssey Marine Exploration, Inc. and Monaco Financial LLC.

[Signature Page to A&R Convertible Promissory Note]

**Exhibit 10.3**

**AMENDED AND RESTATED WAIVER AND CONSENT**

This **AMENDED AND RESTATED WAIVER AND CONSENT** (this " Waiver "), is made and entered into as of October 1, 2016, by and among Odyssey Marine Exploration, Inc., a Nevada corporation (the " Company "), Odyssey Marine Enterprises, Ltd., a Bahamas company and wholly-owned subsidiary of the Company (" OME "), Penelope Mining LLC, a Delaware limited liability company (" Penelope "), and Minera del Norte S.A. de C.V., a Mexican societe anonime (" Minosa " and together with Penelope, the " Minosa Entities "). Reference is hereby made to that certain Stock Purchase Agreement dated as of March 11, 2015, as amended April 10, 2015 (the " SPA "), by and among the Company and the Minosa Entities. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the SPA.

**WHEREAS** , the Company entered into that certain Note Purchase Agreement, dated as of March 18, 2016 (the " Original Purchase Agreement ") by and among the Company, Epsilon Acquisitions LLC, a Delaware limited liability company (" Epsilon ") and OME, pursuant to which Epsilon loaned the Company an aggregate amount of approximately $3,000,000;

**WHEREAS** , the Company proposes to enter into an Amended and Restated Note Purchase Agreement of even date herewith (the " A&R Purchase Agreement " and together with the Original Purchase Agreement, the " Purchase Agreement ") by and among the Company, Epsilon and OME, pursuant to which Epsilon will lend to the Company an additional aggregate amount of approximately $3,000,000, and the Company will issue a warrant to Epsilon to purchase up to 120,000 shares of the Company's common stock (the " Transaction ");

**WHEREAS** , in exchange for the loan, the Company will issue to Epsilon an amended and restated secured convertible promissory note of even date herewith (the " Convertible Promissory Note ");

**WHEREAS** , the Company's consummation of the Transaction would breach or violate certain representations, warranties, and covenants of the Company set forth in the SPA and certain related Transaction Documents; and

**WHEREAS** , the Minosa Entities are willing to consent to the Company's execution and delivery of the Purchase Agreement and the consummation of the Transaction upon the terms and subject to the conditions set forth in this Waiver.

**NOW, THEREFORE** , in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

**1. Waiver and Consent.** In consideration of the representations, warranties, covenants and agreements set forth herein, Minosa and Investor hereby consent to the Transaction and waive any breach of any representation or warranty and violation of any covenant in the SPA arising out of the Company's execution and delivery of the Purchase Agreement and the consummation of the Transaction.

**2. Pledge** . Concurrent with the execution of this Waiver, the Company is delivering to the Minosa Entities, an amended and restated pledge of all amounts due and payable to the Company and its Subsidiaries from Oceanica and its Subsidiaries and all direct and indirect equity interests in OME.

**3. Waiver of Termination Rights** . The Company waives, and agrees not to exercise, on or prior to March 31, 2017, its right to terminate the SPA pursuant to Section 8.1(c)(ii) thereto.

**4. Reduction of Commitment** . To the extent that all or any portion of the Convertible Promissory Note is converted into Common Stock, Investor may elect to reduce its obligation to purchase Common Stock on the next subsequent date set forth in Annex C to the SPA by the dollar amount so converted.

**5.** [Removed and Reserved]

**6. Release of Claims** . In consideration of, among other things, the Minosa Entities' execution and delivery of this Waiver, each of the Company and OME, on behalf of itself, its equityholders and residual claimants and the respective successors and assigns of each (collectively, the " Releasors "), hereby forever agrees and covenants not to sue or prosecute against the Releasees (defined below) and hereby forever waives, releases and discharges each Releasee from, any and all claims (including, without limitation, cross-claims, counterclaims, rights of set-off and recoupment), actions, causes of action, suits, debts, accounts, interests, liens, promises, warranties, damages and consequential and punitive damages, demands, agreements, bonds, bills, specialties, covenants, controversies, torts, variances, trespasses, judgments, executions, costs, expenses or claims whatsoever (collectively, " Claims "), that such Releasor now has or hereafter may have, of whatsoever nature and kind, whether known or unknown, whether arising at law or in equity, against Penelope or Minosa in any capacity and the shareholders and "controlling persons" (within the meaning of the federal securities laws) of each, and their respective successors and assigns and each and all of the officers, directors, employees, agents, attorneys, advisors, auditors, affiliates, consultants and other representatives of each of the foregoing (collectively, the " Releasees "), based in whole or in part on facts whether or not now known, existing on or before the date hereof. The provisions of this Section 6 shall survive the expiration or termination of this Waiver.

**7. Fees and Expenses.** The Company agrees to pay all reasonable fees, costs and expenses of the Minosa Entities in an amount not to exceed $50,000 in connection with the preparation, negotiation, execution and delivery of this Waiver and in connection with the Transaction as provided for in Amendment No. 4 to the Promissory Note.

**8. Representation and Warranties** . Each of the Company and OME hereby represents and warrants to the Minosa Entities that this Amendment (a) has been duly authorized each of the Company and OME, including by the board of directors, or similar governing body, of the Company and OME, including by the approval of a majority of the directors of the Company that are not affiliated with the Minosa Entities, (b) was duly executed by the Company and OME, and (c) constitutes a legal, valid and binding obligation of the Company and OME enforceable in accordance with its terms.

**9. No Further Waiver** . Except as expressly set forth in Section 1 of this Waiver, the SPA is in all respects ratified and confirmed and all the terms, conditions, and provisions thereof shall remain in full force and effect. This Waiver is limited to the matters expressly set forth herein and shall not be deemed to be a waiver of any other term or condition of the SPA. Nothing contained herein shall constitute a waiver, amendment or modification of the Promissory Note or the Pledge Agreement.

**10. Miscellaneous**

(a) Governing Law, Jurisdiction . This Waiver and the legal relations between the parties hereto shall be governed by and construed in accordance with the substantive Laws of the State of Delaware, without regard to conflict of law principles thereof or of any other jurisdiction that would cause the application of laws of any jurisdiction other than those of the State of Delaware.

(b) Execution in Counterparts . This Waiver may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same certification. Delivery of a copy of a manually executed counterpart of a signature page to this Waiver by email shall be effective as delivery of an original, manually executed counterpart of this Waiver.

(c) Incorporation of Article XII . Article XII of the SPA is incorporated herein by reference.

[ *Remainder of page intentionally left blank.* ]

**IN WITNESS WHEREOF** , the parties have executed this Waiver as of the date first above written.

**COMPANY :**

**ODYSSEY MARINE EXPLORATION, INC.**

By: /s/ Mark D. Gordon
Name: Mark D. Gordon
Title: President and Chief Executive Officer

**OME :**

**ODYSSEY MARINE ENTERPRISES, LTD.**

By: /s/ Mark D. Gordon
Name: Mark D. Gordon
Title: Vice President and Director

**INVESTOR :**

**PENELOPE MINING LLC**

By: /s/ Andres Gonzalez Saravia
Name: Andres Gonzalez Saravia
Title: Attorney in Fact

**MINOSA :**

**MINERA DEL NORTE S.A. DE C.V.**

By: /s/ Andres Gonzalez Saravia
Name: Andres Gonzalez Saravia
Title: Authorized Person

**Exhibit 10.4**

**ODYSSEY MARINE EXPLORATION, INC.**

**Common Stock Purchase Warrant**

Warrant No.: 2016-01 120,000 Shares of Common Stock

Issued as of October 1, 2016 (the " ***Issue Date*** ")

NEITHER THIS WARRANT NOR THE SHARES OF COMMON STOCK ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR UNDER THE SECURITIES OR BLUE SKY LAWS OF ANY STATE, AND NEITHER THIS WARRANT NOR SUCH SHARES OF COMMON STOCK MAY BE SOLD, ENCUMBERED OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, OR AN EXEMPTION THEREFROM, AND, IF AN EXEMPTION SHALL BE APPLICABLE, THE HOLDER SHALL HAVE DELIVERED AN OPINION OF COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY THAT SUCH EXEMPTION APPLIES AND THAT REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT.

Expires and is void after 5:00 p.m. E.S.T. October 1, 2021 (the " ***Expiration Date*** ").

Warrant for the Purchase of Common Stock, Par Value $.0001 Per Share

**ODYSSEY MARINE EXPLORATION, INC.**

FOR VALUE RECEIVED, ODYSSEY MARINE EXPLORATION, INC., a Nevada corporation with its principal executive offices at 5215 W. Laurel Street, Tampa, Florida 33607 (the " ***Company*** "), hereby certifies that Epsilon Acquisitions LLC a Delaware limited liability company (" ***Epsilon*** "), or its assigns (Epsilon, together with any such assigns, the " ***Holder*** "), is entitled to purchase upon exercise of this warrant (the " ***Warrant*** "), subject to the provisions hereof, from the Company, at a price per share set forth in the Section 1 hereof (the " ***Exercise Price*** "), the number of fully paid and non-assessable shares of common stock, par value $0.0001 per share, of the Company (the " ***Common Stock*** ") set forth above (the " ***Warrant Shares*** "), subject to adjustment as provided in Section 9 hereof. Capitalized terms used herein but not defined shall have the meanings assigned them in that certain Note Purchase Agreement, dated as of March 18, 2016, amended and restated as of the date hereof (the " ***Purchase Agreement*** "), by and between the Company, Odyssey Marine Enterprises, Ltd., a Bahamas company, and Holder.

**1.** **EXERCISE PRICE** . The Exercise Price for any shares of Common Stock purchased upon exercise of this Warrant shall be $3.52 per share, subject to adjustment as provided herein.

**2.** **EXERCISE OF WARRANT** .

**2.1** Subject to the terms and conditions set forth herein, including the limitations set forth in Section 2.2 and Section 3 hereof, this Warrant shall be exercisable (in whole or in part) during the term commencing on the Closing Date and ending at 5:00 p.m., Eastern Standard Time, on the Expiration Date set forth above (the " ***Exercise Period*** "). At any time during the Exercise Period, this Warrant shall be exercisable (in whole or in part) by presentation and surrender hereof to the Company at its principal office at the address set forth in the initial paragraph hereof (or at such other address as the Company may hereafter notify Holder of in writing), with the Purchase Form annexed hereto duly executed and accompanied by proper payment of the applicable Exercise Price in lawful money of the United States of

America in the form of cash or its equivalent, subject to adjustment as set forth herein, or any lesser number set forth in the Purchase Form. Upon receipt by the Company of this Warrant at its principal office, in proper form for exercise, Holder shall be deemed to be the holder of record of the shares of Common Stock issuable upon such exercise, notwithstanding that the stock transfer books of the Company shall then be closed or that certificates representing such shares of Common Stock shall not be actually delivered to Holder at the time of such exercise.

**2.2** Notwithstanding anything to the contrary contained in this Warrant, in the event that, after the date hereof, Epsilon is in default of its obligations to fund any Loan pursuant to and in accordance with the Purchase Agreement, then, thereafter, the maximum aggregate number of shares of Common Stock that may be purchased hereunder shall be the number determined by multiplying 120,000 by a fraction, (a) the numerator of which is the aggregate principal amount of Loans that have been extended to the Company by Epsilon pursuant to the Purchase Agreement on or after the date hereof and prior to the date of such failure and (b) the denominator of which is $3,000,000.

**2.3** Anything elsewhere contained herein to the contrary notwithstanding, in lieu of payment of the Exercise Price, a Holder may exercise this Warrant by presentation and surrender of this Warrant to the Company, together with a Cashless Exercise Form in the form attached hereto as Annex A (or a reasonable facsimile thereof) duly executed (a " ***Cashless Exercise*** "). Such presentation and surrender shall be deemed a waiver of the Holder's obligation to pay all or any portion of the Exercise Price, as the case may be. In the event of a Cashless Exercise, the Holder shall exchange this Warrant for that amount of shares of Common Stock determined by multiplying the amount of shares of Common Stock for which this Warrant is being exercised by a fraction, (a) the numerator of which shall be the difference between (i) the then current market price per share of Common Stock, and (ii) the Exercise Price, and (b) the denominator of which shall be the then current market price per share of Common Stock. For purposes of any computation under this Section 2.3 , the then current market price per share of Common Stock at any date shall be deemed to be the five day VWAP (as defined in the Note) of the Common Stock prior to the Cashless Exercise. If, during such measuring period, there shall occur any event which gives rise to any adjustment of the Warrant Shares, then a corresponding adjustment shall be made with respect to the closing prices of the Common Stock for the days prior to the effective date of such adjustment event.

**3. LIMITATIONS ON EXERCISES .** This Warrant shall be exercisable (in whole or in part) at the election of the Holder: (a) upon a merger consolidation, third party tender offer or similar transaction relating to the Company or (b) at any time or from time to time, upon seventy-five (75) days' notice to the Company given during the Exercise Period, in each case, into shares of Common Stock at the Exercise Price.

**4. ISSUANCE OF CERTIFICATE FOR WARRANT SHARES** . Subject to Section 13 hereof, as soon as practicable after the exercise of this Warrant, and in any event within ten (10) days following such exercise, the Company at its expense will cause to be issued in the name of, and delivered to, Holder a certificate or certificates for the number of full shares of Common Stock to which such Holder shall be entitled upon such exercise. Additionally, upon delivery of the certificate to Holder, the Company shall, in lieu of any fractional shares of Common Stock to which Holder would have otherwise herein been entitled upon the exercise of this Warrant, pay to Holder cash in an amount to be determined by and in accordance with Section 6 hereof. If Holder chooses to exercise this Warrant in part, then, in addition to delivering to Holder a certificate or certificates for the number of full Warrant Shares to which such Holder shall be entitled upon such exercise, the Company shall also deliver to Holder a new Warrant of like tenor and date exercisable for the remaining number of Warrant Shares.

**5. SHARES FULLY PAID; RESERVATION OF SHARES** . The Company represents to Holder that all Warrant Shares that may be issued upon the exercise of this Warrant will, upon issuance in

accordance with the terms of this Warrant and payment of the Exercise Price therefor, be duly authorized, validly issued, fully paid and nonassessable and free from all preemptive rights of any stockholder and free of all taxes, liens and charges with respect to the issue thereof. The Company covenants and agrees that, during the Exercise Period, the Company will at all times have authorized and reserved, for the purpose of issuance upon exercise of this Warrant, a sufficient number of shares of authorized but unissued shares of Common Stock, free from all preemptive rights therein, as shall be required to provide for the exercise of this Warrant. The Warrant Shares are subject to the terms, rights and provisions set forth in the Company's articles of incorporation, as amended and/or restated from time to time.

**6. FRACTIONAL SHARES**. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. With respect to any fraction of a share called for upon any exercise hereof, the Company shall pay to Holder an amount in cash equal to such fraction multiplied by the weighted average closing price of the Common Stock of the Company for the five days prior to the day of exercise.

**7. TRANSFER, ASSIGNMENT OR LOSS OF WARRANT**. This Warrant may be assigned by Holder to another person or entity in accordance with the transfer provisions hereof; *provided* that such assignment shall comply with the provisions of Section 13 of this Warrant. Upon satisfaction of such terms and conditions, and upon surrender of this Warrant to the Company accompanied by a duly executed assignment form, the Company shall, without charge, execute and deliver a new Warrant in the name of the assignee named in such instrument of assignment and this Warrant shall promptly be terminated and canceled. Upon receipt by the Company of evidence satisfactory to it of the loss, theft, destruction or mutilation of this Warrant, and (in the case of loss, theft or destruction) the delivery by the Holder to the Company of a reasonably satisfactory affidavit of loss and indemnity (but without any requirement to provide security or post a bond) by Holder, and upon surrender and cancellation of this Warrant, if mutilated, the Company will execute and deliver a new Warrant of like tenor and date. Any such new Warrant executed and delivered shall constitute an additional contractual obligation on the part of the Company, whether or not this Warrant is lost, stolen, destroyed, or mutilated, and shall be at any time enforceable by anyone.

**8. RIGHTS OF THE HOLDER**. Holder shall not, by virtue of this Warrant, be entitled to any of the rights of a stockholder in the Company, either at law or equity, and the rights of Holder are limited to those expressed in this Warrant, provided that Holder may be entitled to other rights as set forth in other agreements and/or by virtue of being a stockholder in the Company.

**9. ADJUSTMENT PROVISION.**

**9.1** The number of Warrant Shares issuable hereunder shall be proportionately adjusted upon the occurrence of any Adjustment Event (as hereinafter defined) such that the Holder hereof shall have the right to receive upon the basis and upon the terms and conditions specified in this Warrant and in lieu of the Warrant Shares immediately theretofore purchasable and receivable upon the exercise of this Warrant, such securities, money or other property as would have been issued or delivered to Holder if Holder had exercised this Warrant and had received such Warrant Shares immediately prior to such Adjustment Event. Upon any adjustment of the Warrant Shares pursuant to the preceding sentence, the Exercise Price shall be adjusted such that the new Exercise Price is equal to the result obtained by dividing (a) the product of (i) the number of Warrant Shares or other securities issuable under this Warrant immediately prior to such adjustment, and (ii) the Exercise Price in effect immediately prior to such adjustment, by (b) the number of Warrant Shares or other securities issuable under this Warrant immediately after such adjustment. As used herein "Adjustment Event" shall mean (a) any reclassification, capital reorganization, recapitalization, stock dividend, stock split or other capital reorganization or change of securities of the class or series issuable upon the exercise of this Warrant, (b)

any consolidation or merger of the Company with or into another corporation or other entity (other than a merger with a subsidiary in which merger the Company is the continuing corporation and which does not result in any reclassification, capital reorganization or other change of securities of the class or series issuable upon exercise of this Warrant) or (c) any sale, lease or conveyance to another person or entity of all or substantially all the assets of the Company. If any capital reorganization or reclassification of the capital stock of the Company, or consolidation or merger of the Company with or into another corporation, or the sale of all or substantially all of its assets to another corporation shall be effected in such a way that holders of Common Stock shall be entitled to receive stock, securities, cash or other property with respect to or in exchange for Common Stock, then, as a condition of such reorganization, reclassification, consolidation, merger or sale, lawful and adequate provision shall be made whereby Holder shall have the right to acquire and receive, upon exercise of this Warrant, such shares of stock, securities, cash or other property issuable or payable (as part of the reorganization, reclassification, consolidation, merger or sale) with respect to or in exchange for such number of outstanding shares of the Common Stock as would have been received upon exercise of this Warrant at the Exercise Price then in effect. The Company will not effect any such consolidation, merger or sale, unless prior to the consummation thereof the successor corporation (if other than the Company) resulting from such consolidation or merger or the corporation purchasing such assets shall assume by written instrument mailed or delivered to Holder at the last address of Holder appearing on the books of the Company, the obligation to deliver to Holder such shares of stock, securities or assets as, in accordance with the foregoing provisions, Holder may be entitled to purchase. If a purchase, tender or exchange offer is made to and accepted by the holders of more than 50% of the outstanding shares of Common Stock of the Company, the Company shall not effect any consolidation, merger or sale with the person having made such offer or with any Affiliate of such person, unless prior to the consummation of such consolidation, merger or sale Holder shall have been given a reasonable opportunity to then elect to receive upon the exercise of this Warrant either the stock, securities or assets then issuable with respect to the Common Stock or the stock, securities or assets, or the equivalent, issued to previous holders of the Common Stock in accordance with such offer.

**9.2** If the Company, at any time or from time to time after the issuance of this Warrant, makes a distribution to the holders of the shares of Common Stock other than pursuant to an Adjustment Event (" ***Additional Property*** ") then, in each such event, provision shall be made so that the Holder shall receive upon exercise of this Warrant, in addition to the Warrant Shares, the amount of such Additional Property which would have been received if this Warrant had been exercised for Warrant Shares on the record date of such event, subject to adjustments subsequent to the date of such event.

**9.3** If any event shall occur as to which the provisions of this Section 9 are not strictly applicable but with respect to which the failure to make any adjustment would not fairly protect the Holders or the anti-dilution rights represented by this Warrant in accordance with its essential intent and principles, then, in each such case, at the request of the Holder, the Company shall appoint a firm of independent investment bankers of recognized national standing (which shall be completely independent of the Company and shall be reasonably satisfactory to the Holder), which shall give its opinion upon the adjustment, if any, on a basis consistent with the essential intent and principles established in Section 9 , necessary to preserve, without dilution, the purchase rights or rights to the issuance of additional Warrant Shares represented by this Warrant. Upon receipt of such opinion, the Company will promptly mail a copy thereof to the Holder and shall make the adjustments described therein.

**9.4** The foregoing provisions of this Section 9 shall similarly apply to successive Adjustment Events. These provisions are not meant to broaden or lessen any rights Holder has with respect to the underlying securities available for purchase pursuant to the terms of this Warrant.

**10. ANTI-TAKEOVER PROVISIONS .** The Company has taken all actions necessary to render inapplicable to this Warrant, and inapplicable to the Holder and the Common Stock to be issued to the Holder in connection with the exercise of this Warrant, any and all "fair price," "moratorium," "control share acquisition," "business combination" and other similar statutes or regulations of any state or jurisdiction (collectively, " ***Takeover Laws*** "); and without limiting the foregoing, the Board of Directors has taken all actions necessary so that the restrictions on business combinations contained in Sections 78.378-78.3793 and 78.411-78.444 of the Nevada Revised Statutes, and, accordingly, any other section or any other Nevada Takeover Law or similar statute or regulation will not apply with respect to, or as a result of, the execution of this Warrant, without any further action on the part of the Holder or of the Board of Directors.

**11. NO EFFECT ON LENDER RELATIONSHIP.** The Company acknowledges and agrees that, notwithstanding anything in this Warrant or the Purchase Agreement to the contrary, nothing contained in this Warrant shall affect, limit or impair the rights and remedies of any Holder or any of its Affiliates (a) in its or their capacity as a lender or as agent for lenders to the Company or any of its Subsidiaries pursuant to any agreement under which the Company or any of its Subsidiaries has borrowed money, including, without limitation, the Purchase Agreement, or (b) in its or their capacity as a lender or as agent for lenders to any other Person who has borrowed money. Without limiting the generality of the foregoing, any such Person, in exercising its rights as a lender, including making its decision on whether to foreclose on any collateral security, will have no duty to consider (x) its or any of its Affiliates' status as a Holder, (y) the interests of the Company or its Subsidiaries or (z) any duty it may have to any other Holders or any equityholders of the Company, except as may be required under the applicable loan documents or by commercial law applicable to creditors generally. No consent, approval, vote or other action taken or required to be taken by any Holder in such capacity shall in any way impact, affect or alter the rights and remedies of the Holder or any of its Affiliates as a lender or agent for lenders.

**12. NOTICE TO HOLDERS** .

**12.1** Upon any adjustment of this Warrant as provided herein, then and in each such case the Company shall give prompt written notice thereof, by first class mail, postage prepaid, addressed to Holder of this Warrant at its address registered on the books of the Company, which notice shall state (i) the increase or decrease, if any, in the Exercise Price resulting from such adjustment, and (ii) the increase or decrease, if any, in the number of Warrant Shares purchasable at such price upon the exercise of this Warrant, and (iii) any Additional Property and any change in the type of security issuable upon exercise hereof setting forth in reasonable detail the method of calculation and the facts upon which such calculation is based.

**12.2** Subject to the notice provisions of Section 2 hereof, so long as this Warrant shall be outstanding: (a) if the Company shall pay any dividend or make any distribution upon its Common Stock; (b) if the Company shall offer to the holders of its Common Stock for subscription or purchase by them any share of any class or any other rights; or (c) if any capital reorganization of the Company (including, without limitation, any recapitalization, stock dividend, stock split or other capital reorganization), reclassification of the capital stock of the Company, consolidation or merger of the Company with or into another corporation or other entity, sale, lease or transfer of all or substantially all of the property and assets of the Company to another person or entity, or voluntary or involuntary dissolution, liquidation or winding up of the Company shall be effected, then in any such case, the Company shall cause to be mailed by certified mail to Holder, at least ten (10) days prior to the date specified in (A) and (B) below, as the case may be, a notice containing a brief description of the proposed action and stating the date on which (A) a record is to be taken for the purpose of such dividend, distribution or rights, or (B) such reclassification, reorganization, consolidation, merger, conveyance, lease, dissolution, liquidation or winding up is to take place and the date, if any is to be fixed, as of which the holders of Common Stock or other securities shall receive cash or other property deliverable upon such reclassification, reorganization, consolidation, merger, conveyance, dissolution, liquidation or winding up.

**13.** **TRANSFER TO COMPLY WITH THE SECURITIES ACT OF 1933** . Holder acknowledges that this Warrant and the Warrant Shares have not been registered under the Securities Act, and therefore agrees not to sell, pledge, distribute, offer for sale, transfer or otherwise dispose of this Warrant or any Warrant Shares issued upon its exercise in the absence of (a) an effective registration statement under the Securities Act as to this Warrant or such Warrant Shares and registration or qualification of this Warrant or such Warrant Shares under any applicable Blue Sky or state securities law then in effect, or (b) an exemption from any such registration and qualification. Each certificate or other instrument for Warrant Shares issued upon the exercise of this Warrant shall bear a legend substantially to the foregoing effect.

**14.** **NO IMPAIRMENT** . The Company will not, by amendment of its articles of incorporation or bylaws or through reorganization, consolidation, merger, dissolution, sale of assets or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the holder of this Warrant against impairment.

**15.** **MAILING OF NOTICES, ETC** . All notices and other communications from the Company to Holder shall be mailed by first-class certified or registered mail, postage prepaid, to the address furnished to the Company in writing by Holder. All notices and other communications from Holder or in connection herewith to the Company shall be mailed by first-class certified or registered mail, postage prepaid, to the Company at its principal office set forth on the signature page hereof. If the Company should at any time change the location of its principal office to a place other than as set forth in the initial paragraph hereof, it shall give written notice to Holder and thereafter all references in this Warrant to the location of its principal office at the particular time shall be as so specified in such notice.

**16.** **CHANGE OR WAIVER** . Any term of this Warrant may be changed or waived only by an instrument in writing signed by the Company and Holder.

**17.** **HEADINGS** . The headings in this Warrant are for purposes of reference only and shall not limit or otherwise affect the meaning of any provision of this Warrant.

**18.** **GOVERNING LAW** . This Warrant will be governed by and construed in accordance with the laws of the State of Nevada, without giving effect to the conflicts of laws principles of that or any other state.

*[Signatures on following page]*

IN WITNESS WHEREOF, this Common Stock Purchase Warrant is executed and dated as of the Issue Date set forth above.

**ODYSSEY MARINE EXPLORATION, INC.**
5215 W. Laurel Street
Tampa, FL 33607
Attn: Chief Executive Officer

By: /s/ Mark D. Gordon
Name: Mark D. Gordon
Title: President and Chief Executive Officer

**PURCHASE FORM**

Dated: _____, 201 ____.

The undersigned, pursuant to the provisions set forth in the attached Warrant No. [ _____], hereby irrevocably elects to purchase _____shares of the Common Stock covered by such Warrant for the Exercise Price per share as calculated pursuant to the terms of such Warrant and herewith makes payment of $ _____representing the full purchase price for such shares at the Exercise Price per share provided for in such Warrant.

**INSTRUCTIONS FOR REGISTRATION OF STOCK**

Name _____
(Please typewrite or print in block letters)

Address: _____

_____

_____
Signature

**ANNEX A**

**CASHLESS EXERCISE FORM**

(To be executed upon exercise of Warrants pursuant to Section 2.3 of the Warrant)

The undersigned hereby irrevocably elects to surrender _____ shares of Common Stock of Odyssey Marine Exploration, Inc. purchasable under the Warrant for _____ shares of Common Stock issuable in exchange therefor pursuant to the Cashless Exercise provisions of the within Warrant, as provided for in Section 2.3 of such Warrant.

Please issue [ **a certificate or certificates for** ] such Common Stock in the name of, and pay cash for fractional shares in the name of:

(Please print name, address, and social security number/tax identification number:)

and, if said amount of Common Stock shall not be all the Common Stock purchasable thereunder, that a new Warrant for the balance remaining of the shares of Common Stock purchasable under the within Warrant be registered in the name of the undersigned Holder or its transferee as below indicated and delivered to the address stated below.

Dated: _____

Name of Warrant Holder
or transferee: _____
(Please print)

Address: _____

Signature: _____

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