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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934

Date of report (Date of earliest event reported): December 29, 2023

FUBOTV INC.
(Exact name of registrant as specified in its charter)

Florida
(State or other jurisdiction
of incorporation)

001-39590
(Commission
File Number)

26-4330545
(IRS Employer
Identification Number)

1290 Avenue of the Americas
New York, NY 10104
(Address of principal executive offices) (Zip Code)

(212) 672-0055
(Registrant's telephone number, including area code)

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

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

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share	FUBO	New York Stock Exchange

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

Emerging growth company ☐

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

Item 1.01. Entry Into or Amendment of a Material Definitive Agreement.

Indenture and 2029 Notes

On December 29, 2023, fuboTV Inc. (the “Company”) entered into a privately negotiated exchange agreement (the “Exchange Agreement”) with certain affiliates and related funds of Mudrick Capital Management, L.P. (collectively, “Mudrick”), which were holders of the Company’s existing 3.25% Convertible Senior Notes due 2026 (the “2026 Notes”), to exchange (the “Exchange”) \$205,835,000 principal amount of the 2026 Notes for \$177,506,000 in aggregate principal amount of the Company’s new convertible senior secured notes due 2029 (the “2029 Notes”). The 2029 Notes were issued pursuant to, and are governed by, an indenture (the “Indenture”), dated as of January 2, 2024, among the Company, the guarantors identified therein (the “Guarantors”) and U.S. Bank Trust Company, National Association, as trustee (the “Trustee”) and collateral agent (the “Collateral Agent”).

At the Company’s election for any interest period, the 2029 Notes will bear interest at a rate of (i) 7.500% per annum on the principal amount thereof if interest is paid in cash and (ii) 10.000% per annum on the principal amount thereof if interest is paid in kind, in each case payable semi-annually in arrears on February 15 and August 15 of each year, beginning on February 15, 2024, to the noteholders of record of the 2029 Notes as of the close of business on the immediately preceding February 1 and August 1, respectively. The 2029 Notes will mature on February 15, 2029 (the “Maturity Date”), unless earlier converted or repurchased.

Holders may convert their 2029 Notes at their option in the following circumstances:

- during any calendar quarter commencing after the calendar quarter ending on March 31, 2024 (and only during such calendar quarter), if the last reported sale price per share of common stock is greater than or equal to 130% of the conversion price for each of at least 20 trading days, whether or not consecutive, during the 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter;
- during the five consecutive business days immediately after any five consecutive trading day period (such five consecutive trading day period, the “measurement period”) in which the trading price per \$1,000 principal amount of 2029 Notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price per share of common stock on such trading day and the conversion rate on such trading day;
- upon the occurrence of certain corporate events or distributions on the Company’s common stock, as provided in the Indenture; and
- on or after November 15, 2028 until the close of business on the second scheduled trading day immediately before the Maturity Date.

The Company may cause all outstanding 2029 Notes to be automatically converted, subject to certain conditions, if, at any time on or after January 2, 2025, the last reported sale price of the Company’s common stock has been at least 200% of the conversion price then in effect for at least 20 trading days (whether or not consecutive) during any 30 consecutive trading day period, the last of which 20 trading days is no more than 10 trading days before the date that the Company provides the notice of forced conversion. The Company may only force conversion of the 2029 Notes prior to, in the case of a settlement only in shares of the Company’s common stock, the third scheduled trading day immediately preceding the Maturity Date, and in the case of a settlement in cash or in a combination of cash and shares of the Company’s common stock, the 41st scheduled trading day immediately preceding the Maturity Date.

The initial conversion rate of the 2029 Notes is 260.6474 shares of common stock per \$1,000 principal amount of 2029 Notes, which represents an initial conversion price of approximately \$3.8366 per share of common stock. The conversion rate is subject to adjustment upon the occurrence of certain specified events as set forth in the Indenture. The Company will have the right to elect to settle conversions by paying or delivering, as applicable, cash, shares of its common stock or a combination of cash and shares of its common stock, provided the Company will not be permitted to settle conversions with shares of its common stock in excess of applicable rules of the New York Stock Exchange. Upon the occurrence of a “make-whole fundamental change” (as defined in the Indenture), the Company will, in certain circumstances, increase the conversion rate for a specified period of time.

Upon the occurrence of a “fundamental change” (as defined in the Indenture), holders of the 2029 Notes may require the Company to repurchase their 2029 Notes at a cash repurchase price equal to the principal amount of the 2029 Notes to be repurchased, plus accrued and unpaid interest, if any, to, but excluding, the fundamental change repurchase date. The definition of fundamental change includes certain business combination transactions involving the Company and certain de-listing events with respect to the Company’s common stock.

The Indenture includes customary terms and covenants, including certain events of default. The events of default, as set forth in the Indenture, include: (i) default by the Company in the payment when due (whether at maturity or repurchase upon fundamental change or otherwise) of the principal of, or fundamental change repurchase price for, any 2029 Notes, (ii) default by the Company for 30 consecutive days in the payment when due of interest on any Note, (iii) failure by the Company to deliver, when required by the Indenture, a fundamental change notice, a make-whole fundamental change notice or a notice of certain corporate events as provided in the Indenture, in each case if such failure is not cured within three business days after its occurrence, (iv) default by the Company in its obligations to convert a 2029 Note in accordance with the Indenture upon the exercise of the conversion right with respect thereto, if such default is not cured within five business days after its occurrence, (v) default by the Company in its obligations under the Indenture in respect of certain consolidation, merger and asset sale transactions and by the Guarantors in respect of the guarantees provided therein, (vi) default by the Company in its other obligations or agreements under the Indenture or the 2029 Notes if such default is not cured or waived within 60 days after notice is given in accordance with the Indenture, (vii) certain defaults by the Company or certain of its subsidiaries with respect to indebtedness for borrowed money of at least \$40,000,000 (or its foreign currency equivalent), (viii) subject to certain cure periods provided for in the Indenture, certain events of bankruptcy, insolvency and reorganization involving the Company or any of its significant subsidiaries, as defined in the Indenture, and (ix) subject to certain exceptions in the Indenture, the failure to create a valid and perfected and, except as otherwise permitted by the Indenture, first priority lien on the collateral securing the 2029 Notes.

If an event of default involving bankruptcy, insolvency or reorganization events with respect to the Company occurs, then the principal amount of, and all accrued and unpaid interest on, all of the 2029 Notes then outstanding will immediately become due and payable without any notice or notice by any person. If any other event of default occurs and is continuing, either the Trustee, by notice to the Company, or the holders of at least 25% of the aggregate principal amount of the 2029 Notes then outstanding, by notice to the Company and the Trustee, may declare the principal amount of, and all accrued and unpaid interest on, all of the 2029 Notes then outstanding to become due and payable immediately.

The 2029 Notes are senior, secured obligations of the Company and the Guarantors, secured by substantially all assets of the Company and the Guarantors and senior in right of payment to the Company's existing and future indebtedness that is expressly subordinated to the 2029 Notes. Subject to certain exceptions, future material wholly-owned domestic subsidiaries of the Company are required to become Guarantors of the 2029 Notes and grant security interests in their assets securing the obligations in respect of the 2029 Notes. The 2029 Notes are structurally subordinated to all existing and future indebtedness and other liabilities, including trade payables, and (to the extent the Company is not a holder thereof) preferred equity, if any, of the Company's subsidiaries that are not (and do not become) Guarantors under the Indenture. In connection with the Exchange and entrance into the Indenture governing the 2029 Notes, the Company entered into a customary pledge and security agreement with the Collateral Agent with respect to the collateral securing the obligations under the 2029 Notes.

A copy of the Indenture and form of 2029 Note are filed as Exhibit 4.1 and Exhibit 4.2, respectively, to this Current Report on Form 8-K and are incorporated by reference herein. The foregoing descriptions of the Indenture and the 2029 Notes do not purport to be complete and are qualified in their entirety by reference to such exhibits.

Exchange Agreement

Pursuant to the terms of the Exchange Agreement, the Company agreed, among other things, to grant Mudrick certain rights with respect to the Company and certain of its subsidiaries, including a right of first refusal with respect to the incurrence of additional secured indebtedness, participation rights with respect to the incurrence of unsecured indebtedness, and preemptive rights with respect to the issuance of equity securities, in each case subject to the terms set forth in the Exchange Agreement.

A copy of the Exchange Agreement is filed as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated by reference herein. The foregoing description of the Exchange and the Exchange Agreement does not purport to be complete and is qualified in its entirety by reference to such exhibit.

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

The disclosure set forth in Item 1.01 above is incorporated by reference into this Item 2.03.

Item 3.02. Unregistered Sales of Equity Securities.

The disclosure set forth in Item 1.01 above is incorporated by reference into this Item 3.02. The 2029 Notes were issued in reliance upon the exemption from the registration requirements provided by Section 4(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”). Any shares of common stock that may be issued upon conversion of the 2029 Notes will be issued in reliance upon Section 3(a)(9) of the Securities Act as involving an exchange by the Company exclusively with its security holders. Initially, a maximum of 53,206,038 shares of the Company’s common stock may be issued upon conversion of the 2029 Notes issued on the date hereof, based on the initial maximum conversion rate of 299.7422 shares of common stock per \$1,000 principal amount of 2029 Notes, which is subject to customary anti-dilution adjustment provisions, provided that the Company will not be permitted to settle conversions with shares of its common stock in excess of applicable rules of the New York Stock Exchange.

Item 7.01. Regulation FD Disclosure.

On January 2, 2024, the Company issued a press release announcing the closing of the Exchange, a copy of which is attached as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference. The information furnished pursuant to Item 7.01 on this Current Report on Form 8-K, including Exhibit 99.1 attached hereto, shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act of 1933 or the Exchange Act, except as expressly provided by specific reference in such a filing.

Item 8.01. Other Events.

Registration Rights Agreement

In connection with the consummation of Exchange, on January 2, 2024, the Company entered into a registration rights agreement (the “Registration Rights Agreement”) with Mudrick. Pursuant to the Registration Rights Agreement, the Company agreed to prepare and file with the Securities and Exchange Commission (the “SEC”) a resale registration statement under the Securities Act, covering the resale of the 2029 Notes, the shares of common stock issuable upon conversion of the 2029 Notes and shares of common stock otherwise acquired by the Holders (as defined therein) who satisfy certain conditions and timely provide certain information to the Company. Subject to certain exceptions and limitations, the Registration Rights Agreement requires the Company to use commercially reasonable efforts to cause the resale registration statement to become effective under the Securities Act by the date that is 180 days after the date the 2029 Notes are issued and remain continuously effective and usable for a specified period of time.

The Registration Rights Agreement requires the Company to indemnify certain holders and their affiliated parties for certain losses arising in connection with material misstatements or omissions (or alleged material statements or omissions) in the resale registration statement or related documents.

A copy of the Registration Rights Agreement is filed as Exhibit 99.2 to this Current Report on Form 8-K and is incorporated by reference herein. The foregoing description of the Registration Rights Agreement does not purport to be complete and is qualified in its entirety by reference to such exhibit.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
4.1	Indenture, dated as of January 2, 2024, among fuboTV Inc., the Guarantors and U.S. Bank Trust Company, National Association, as trustee and collateral agent.
4.2	Form of certificate representing the Convertible Senior Secured Notes due 2029 (included as Exhibit A to Exhibit 4.1).
10.1	Exchange Agreement, dated as of December 29, 2023, between fuboTV Inc. and certain affiliates and related funds of Mudrick Capital Management, L.P.
99.1*	Press Release of fuboTV Inc., dated January 2, 2024.
99.2	Registration Rights Agreement, dated as of January 2, 2024, between fuboTV Inc. and certain affiliates and related funds of Mudrick Capital Management, L.P.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

*Exhibit 99.1 shall be deemed to be furnished, and not filed.

SIGNATURES

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

FUBOTV INC.

Date: January 2, 2024

By: /s/ David Gandler

David Gandler
Chief Executive Officer

FUBOTV INC.,
THE GUARANTORS PARTY HERETO FROM TIME TO TIME,
U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
as Trustee
AND
U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
as Collateral Agent

INDENTURE

Dated as of January 2, 2024

Convertible Senior Secured Notes due 2029

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INDENTURE, dated as of January 2, 2024 (the “**Issue Date**”), among FUBOTV INC., a Florida corporation, as issuer (the “**Company**”, as more fully set forth in Section 1.01), Edisn Inc., a Delaware corporation, fuboTV Media Inc., a Delaware corporation, Fubo Studios Inc., a Delaware corporation, and Sports Rights Management, LLC, a Delaware limited liability company, as guarantors (collectively, the “**Guarantors**”, as more fully set forth in Section 1.01), and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association, as trustee (the “**Trustee**”, as more fully set forth in Section 1.01) and as collateral agent (the “**Collateral Agent**”, as more fully set forth in Section 1.01).

WITNESSETH:

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the issuance of its Convertible Senior Secured Notes due 2029 (including, without limitation, any PIK Notes (as defined below), the “**Notes**”), initially in an aggregate principal amount equal to \$177,506,000, and in order to provide the terms and conditions upon which the Notes are to be authenticated, issued and delivered, the Company has duly authorized the execution and delivery of this Indenture; and

WHEREAS, for their respective lawful corporate purposes, the Guarantors have duly authorized the Guarantees, and in order to provide the terms and conditions upon which the Guarantees are to be authenticated, issued and delivered, the Guarantors have duly authorized the execution and delivery of this Indenture; and

WHEREAS, the Form of Note, the certificate of authentication to be borne by each Note, the Form of Notice of Conversion, the Form of Fundamental Change Repurchase Notice and the Form of Assignment and Transfer to be borne by the Notes are to be substantially in the forms hereinafter provided; and

WHEREAS, all acts and things necessary to make the Notes and Guarantees, when executed by the Company and Guarantors authenticated and delivered by the Trustee or a duly authorized authenticating agent, as in this Indenture provided, the valid, binding and legal obligations of the Company and the Guarantors, and this Indenture a valid agreement according to its terms, have been done and performed, and the execution of this Indenture and the issuance hereunder of the Notes have in all respects been duly authorized.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That in order to declare the terms and conditions upon which the Notes and Guarantees are, and are to be, authenticated, issued and delivered, and in consideration of the premises and of the purchase and acceptance of the Notes and Guarantees by the Holders thereof, the Company and Guarantors covenant and agree with the Trustee for the equal and proportionate benefit of the respective Holders from time to time of the Notes and Guarantees (except as otherwise provided below), as follows:

ARTICLE 1
DEFINITIONS

Section 1.01. *Definitions.* The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. The words “herein,” “hereof,” “hereunder,” and words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision. The terms defined in this Article include the plural as well as the singular.

“**Additional Interest**” means all amounts, if any, payable pursuant to Section 6.03, as applicable.

“**Additional Shares**” shall have the meaning specified in Section 14.03(a).

“**Affiliate**” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control,” when used with respect to any specified Person means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing. Notwithstanding anything to the contrary herein, the determination of whether one Person is an “Affiliate” of another Person for purposes of this Indenture shall be made based on the facts at the time such determination is made or required to be made, as the case may be, hereunder.

“**Applicable Conversion Multiplier**” means the quotient obtained by dividing (A) the aggregate principal amount of the Notes subject to such conversion by (B) 1,000.

“**Bid Solicitation Agent**” means the Company or the Person appointed by the Company to solicit bids for the Trading Price of the Notes in accordance with Section 14.01(b)(i). The Company shall initially act as the Bid Solicitation Agent.

“**Board of Directors**” means the board of directors of the Company or a committee of such board duly authorized to act for it hereunder.

“**Board Resolution**” means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors, and to be in full force and effect on the date of such certification, and delivered to the Trustee.

“**Business Day**” means, with respect to any Note, any day other than a Saturday, a Sunday or a day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.

“**Capital Stock**” means, for any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that entity, but shall not include any debt securities convertible into or exchangeable for any securities otherwise constituting Capital Stock pursuant to this definition.

“**Cash Settlement**” shall have the meaning specified in Section 14.02(a).

“**Clause A Distribution**” shall have the meaning specified in Section 14.04(c).

“**Clause B Distribution**” shall have the meaning specified in Section 14.04(c).

“**Clause C Distribution**” shall have the meaning specified in Section 14.04(c).

“**close of business**” means 5:00 p.m. (New York City time).

“**Collateral**” means (i) all the “Collateral” (or similar term) as defined in any of the Collateral Documents, (ii) the Material Real Property and (iii) all other property that is subject to any Lien in favor of the Collateral Agent, for the benefit of the Secured Parties, pursuant to any Collateral Document.

“**Collateral Agent**” means U.S. Bank Trust Company, National Association in its capacity as collateral agent under the Collateral Documents, together with its successors in such capacity.

“**Collateral Documents**” means the Security Agreement, the Mortgages and all other security agreements, pledge agreements, control agreements, collateral assignments, mortgages, deeds of trust or other instruments or other pledges, grants or transfers for security or agreements related thereto executed and delivered by the Company or any Guarantor creating or perfecting (or purporting to create or perfect) a lien upon Collateral (including, without limitation, financing statements under the UCC) in favor of the Collateral Agent, for the benefit of the Secured Parties, in each case, as amended, supplemented, modified or replaced in accordance with this Indenture and its terms.

“**Combination Settlement**” shall have the meaning specified in Section 14.02(a).

“**Commission**” means the U.S. Securities and Exchange Commission.

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

“**Common Stock**” means the common stock of the Company, par value \$0.0001 per share, at the date of this Indenture, subject to Section 14.07.

“**Company**” shall have the meaning specified in the first paragraph of this Indenture, and subject to the provisions of Article 11, shall include its successors and assigns.

“**Company Order**” means a written order of the Company, signed by any of its Officers, and delivered to the Trustee.

“**Conversion Agent**” shall have the meaning specified in Section 4.02.

“**Conversion Consideration**” shall have the meaning specified in Section 14.12(a).

“**Conversion Date**” shall have the meaning specified in Section 14.02(c).

“**Conversion Obligation**” shall have the meaning specified in Section 14.01(a).

“**Conversion Price**” means as of any time, \$1,000, *divided by* the Conversion Rate per \$1,000 principal amount of notes as of such time.

“**Conversion Rate**” shall have the meaning specified in Section 14.01(a).

“**Corporate Event**” shall have the meaning specified in Section 14.01(b)(iii).

“**Corporate Trust Office**” means the designated office of the Trustee at which at any time this Indenture shall be administered, which office at the date hereof is located at 1 California Street, Suite 1000, San Francisco, CA 94111, Attention: D. Jason (fuboTV Inc. Convertible Senior Secured Notes due 2029), or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the designated corporate trust office of any successor trustee (or such other address as such successor trustee may designate from time to time by notice to the Holders and the Company).

“**Custodian**” means the Trustee, as custodian for The Depository Trust Company, with respect to the Global Notes, or any successor entity thereto.

“**Daily Conversion Value**” means, for each of the 40 consecutive Trading Days during the relevant Observation Period, 2.5% of the product of (a) the Conversion Rate on such Trading Day and (b) the Daily VWAP on such Trading Day.

“**Daily Measurement Value**” means the Specified Dollar Amount (if any), *divided by* 40.

“**Daily Settlement Amount,**” for each of the 40 consecutive Trading Days during the relevant Observation Period, shall consist of:

(a) cash in an amount equal to the lesser of (i) the Daily Measurement Value and (ii) the Daily Conversion Value on such Trading Day; and

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

“**Daily VWAP**” means the per share volume-weighted average price as displayed under the heading “Bloomberg VWAP” on Bloomberg page “FUBO <equity> AQR” (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of the Common Stock on such Trading Day reasonably determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained for this purpose by the Company). The “**Daily VWAP**” shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

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

“**Defaulted Amounts**” means any amounts on any Note (including, without limitation, the Fundamental Change Repurchase Price, principal and interest) that are payable but are not punctually paid or duly provided for.

“**delivered**” with respect to any notice to be delivered, given or mailed to a Holder pursuant to this Indenture, shall mean notice (x) given to the Depositary (or its designee) pursuant to the standing instructions from the Depositary or its designee, including by electronic mail in accordance with accepted practices or procedures at the Depositary (in the case of a Global Note) or (y) mailed to such Holder by first class mail, postage prepaid, at its address as it appears on the Note Register, in each case in accordance with Section 17.03. Notice so “delivered” shall be deemed to include any notice to be “mailed” or “given,” as applicable, under this Indenture.

“**Depositary**” means, with respect to each Global Note, the Person specified in Section 2.05(c) as the Depositary with respect to such Notes, until a successor shall have been appointed and become such pursuant to the applicable provisions of this Indenture, and thereafter, “**Depositary**” shall mean or include such successor.

“**Designated Institution**” shall have the meaning specified in Section 14.12(a).

“**Distributed Property**” shall have the meaning specified in Section 14.04(c).

“**Effective Date**” shall have the meaning specified in Section 14.03(c), except that, as used in Section 14.04 and Section 14.05, “**Effective Date**” means the first date on which shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable (*provided* that, for the avoidance of doubt, any alternative trading convention on the applicable exchange or market in respect of shares of the Common Stock under a separate ticker symbol or CUSIP number will not be considered “regular way” for purposes of this definition).

“**Effective Discharge**” means, with respect to the Notes, that (i) the Company shall have irrevocably deposited with the Trustee, for the benefit of the Holders of the Notes, cash in an amount equal to the sum of all remaining interest (assuming interest will be paid via Cash Interest) and principal payments due on the Notes and shall have irrevocably directed the Trustee and Paying Agent to make such payments to the Holders of the Notes as the same becomes due in accordance with this Indenture; (ii) the Company shall have paid all other amounts due under this Indenture; (iii) the Company shall have irrevocably elected that the Settlement Method applicable to all subsequent conversions of the Notes shall be either Physical Settlement or Combination Settlement with a Specified Dollar Amount of no more than \$1,000 per \$1,000 principal amount of Notes; and (iv) the Company shall have obtained the Requisite Stockholder Approval (if applicable) and shall not otherwise be restricted ((A) whether by the terms of the Notes, the Company’s organizational documents, any applicable law, rule or regulation or otherwise and (B) at the time of such Effective Discharge and at all times thereafter) from settling any conversion obligation in accordance with the Settlement Method described in clause (iii) above.

“Event of Default” shall have the meaning specified in Section 6.01.

“Ex-Dividend Date” means the first date on which shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Company or, if applicable, from the seller of Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market. For the avoidance of doubt, any alternative trading convention on the applicable exchange or market in respect of shares of Common Stock under a separate ticker symbol or CUSIP number will not be considered “regular way” for this purpose.

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

“Exchange Election” shall have the meaning specified in Section 14.12(a).

“Excluded Asset” shall have the meaning assigned to such term in the Security Agreement.

“Excluded Subsidiary” means any of the following: (a) any Subsidiary that is prohibited by (i) applicable requirements of law or (ii) any contractual obligation existing on the Issue Date or on the date any such Subsidiary is acquired (so long as such prohibition is not incurred in contemplation of such acquisition or for the purpose of circumventing the guaranty or security requirements hereof), in each case so long as such contractual obligation prohibits such subsidiary from guaranteeing the obligations hereunder (after giving effect to any anti-assignment provisions of the UCC), (b) any Subsidiary which would require governmental (including regulatory) consent, approval, license or authorization to provide a Guarantee (unless such governmental consent, approval, license or authorization has been obtained), (c) any Subsidiary for which the provision of a Guarantee would result in a material adverse tax consequence (including as a result of the operation of Section 956 of the Code or any similar law or regulation in any applicable jurisdiction) to the Company and its Subsidiaries taken as a whole, as reasonably determined by the Company, (d) any Subsidiary that is not a Wholly-Owned Subsidiary of the Company, (e) each Immaterial Subsidiary, (f) any Foreign Subsidiary or (g) any not-for-profit Subsidiaries or captive insurance companies reasonably designated by the Company from time to time; provided that any determination or designation pursuant to clause (c) or (g) shall be evidenced by an Officer’s Certificate to the effect that the requirements of such clause are satisfied with respect thereto.

“Forced Conversion” shall have the meaning specified in Section 16.01.

“Forced Conversion Date” shall have the meaning specified in Section 16.02(a).

“Forced Conversion Notice” shall have the meaning specified in Section 16.02(a).

“Forced Conversion Notice Date” means the date on which a Forced Conversion Notice is delivered pursuant to Section 16.02.

“Foreign Subsidiary” means any Subsidiary that is organized under the laws of a jurisdiction other than the United States of America, any state thereof or the District of Columbia.

“Form of Assignment and Transfer” shall mean the “Form of Assignment and Transfer” attached as Attachment 3 to the Form of Note attached hereto as Exhibit A.

“Form of Fundamental Change Repurchase Notice” shall mean the “Form of Fundamental Change Repurchase Notice” attached as Attachment 2 to the Form of Note attached hereto as Exhibit A.

“Form of Note” shall mean the “Form of Note” attached hereto as Exhibit A.

“Form of Notice of Conversion” shall mean the “Form of Notice of Conversion” attached as Attachment 1 to the Form of Note attached hereto as Exhibit A.

“Fundamental Change” shall be deemed to have occurred at the time after the Notes are originally issued if any of the following occurs prior to the Maturity Date:

(a) a “person” or “group” within the meaning of Section 13(d) of the Exchange Act, other than the Company, its Wholly-Owned Subsidiaries and the employee benefit plans of the Company and its Wholly-Owned Subsidiaries, files a Schedule TO (or any successor schedule, form or report) or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of Common Stock representing more than 50% of the voting power of the Common Stock; *provided* that no person or group shall be deemed to be the beneficial owner of any securities tendered pursuant to a tender or exchange offer made by or on behalf of such “person” or “group” until such tendered securities are accepted for purchase or exchange under such offer;

(b) the consummation of (A) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision, a combination or a change in par value) as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets; (B) any share exchange, consolidation or merger of the Company pursuant to which all of the Common Stock will be converted into cash, securities or other property or assets; or (C) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any Person other than one or more of the Company’s Wholly-Owned Subsidiaries; provided, however, that a transaction described in clause (A) or (B) in which the holders of all classes of the Company’s Common Equity immediately prior to such transaction own, directly or indirectly, more than 50% of all classes of Common Equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such transaction in substantially the same proportions (relative to each other) as such ownership immediately prior to such transaction shall not be a Fundamental Change pursuant to this clause (b);

(c) the stockholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company; or

(d) the Common Stock (or other Common Equity underlying the Notes) ceases to be listed or quoted on any of The New York Stock Exchange, The Nasdaq Global Select Market or The Nasdaq Global Market (or any of their respective successors); *provided, however*, that a transaction or transactions described in clauses (a) or (b) above shall not constitute a Fundamental Change if at least 90% of the consideration received or to be received by the common stockholders of the Company, excluding cash payments for fractional shares and cash payments made in respect of dissenters' appraisal rights, in connection with such transaction or transactions consists of shares of common stock or other Common Equity that are listed or quoted on any of The New York Stock Exchange, The Nasdaq Global Select Market or The Nasdaq Global Market (or any of their respective successors) or will be so listed or quoted when issued or exchanged in connection with such transaction or transactions and as a result of such transaction or transactions such consideration becomes Reference Property for the Notes, excluding cash payments for fractional shares and cash payments made in respect of dissenters' appraisal rights (subject to the provisions of Section 14.07). If any Merger Event in which the Common Stock is replaced by the common stock of another entity occurs, following completion of any related Make-Whole Fundamental Change Period (or, in the case of a transaction that would have been a Fundamental Change or a Make-Whole Fundamental Change but for the proviso immediately following clause (d) of the definition thereof, following the effective date of such transaction) references to the Company in this definition shall instead be references to such other entity.

For purposes of this definition of "Fundamental Change," any transaction or series of transactions that constitutes a Fundamental Change pursuant to both clause (a) and clause (b) of this definition (without giving effect to the proviso in clause (b)) shall be deemed a Fundamental Change solely under clause (b) of this definition (subject to the proviso in clause (b)).

“Fundamental Change Company Notice” shall have the meaning specified in Section 15.02(c).

“Fundamental Change Repurchase Date” shall have the meaning specified in Section 15.02(a).

“Fundamental Change Repurchase Notice” shall have the meaning specified in Section 15.02(b)(i).

“Fundamental Change Repurchase Price” shall have the meaning specified in Section 15.02(a).

“Global Note” shall have the meaning specified in Section 2.05(b).

“Guarantee” means the guarantee by each Guarantor of the Company’s obligations under this Indenture and the Notes pursuant to Article 13.

“Guarantor” means the Persons named as such in the first paragraph of this Indenture, each other Person that becomes a Guarantor by executing an amended or supplemental indenture pursuant to Section 13.05 and, subject to Section 13.06, the successors and assigns of the foregoing.

“Holder,” as applied to any Note, or other similar terms (but excluding the term “beneficial holder”), shall mean any Person in whose name at the time a particular Note is registered on the Note Register.

“Immaterial Subsidiary” means any Subsidiary of the Company that is not a Material Subsidiary.

“Indebtedness” means (i) indebtedness for borrowed money (excluding any obligations evidenced by any capital lease financing or purchase money financing, in each case incurred solely to fund capital expenditures (and not any acquisition of any Person or business) of the Person incurring such financing in the ordinary course of business and not secured by any property or asset other than the property or asset acquired with the proceeds of such financing) and (ii) obligations evidenced by notes, bonds, debentures or similar instruments, in each case, excluding any indebtedness or other obligations among the Company and its Subsidiaries.

“Indenture” means this instrument as originally executed or, if amended or supplemented as herein provided, as so amended or supplemented.

“Interest Period” means the period commencing on and including an Interest Payment Date and ending on and including the day immediately preceding the next succeeding Interest Payment Date, with the exception that the first Interest Period shall commence on and include the Issue Date.

“Interest Payment Date” means each February 15 and August 15 of each year, beginning on February 15, 2024.

“Last Reported Sale Price” of the Common Stock (or other security for which a closing sale price must be determined) on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock (or such other security) is traded. If the Common Stock (or such other security) is not listed for trading on a U.S. national or regional securities exchange on the relevant date, the **“Last Reported Sale Price”** shall be the last quoted bid price for the Common Stock (or such other security) in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock (or such other security) is not so quoted, the **“Last Reported Sale Price”** shall be the average of the mid-point of the last bid and ask prices for the Common Stock (or such other security) on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose. The **“Last Reported Sale Price”** shall be determined without regard to after-hours trading or any other trading outside of regular trading session hours.

“Make-Whole Fundamental Change” means any transaction or event that constitutes a Fundamental Change (as defined above and determined after giving effect to any exceptions to or exclusions from such definition, but without regard to the *proviso* in clause (b) of the definition thereof).

“Make-Whole Fundamental Change Period” shall have the meaning specified in Section 14.03(a).

“Market Disruption Event” means, for the purposes of determining amounts due upon conversion (a) a failure by the primary U.S. national or regional securities exchange or market on which the Common Stock is listed or admitted for trading to open for trading during its regular trading session or (b) the occurrence or existence prior to 1:00 p.m., New York City time, on any Scheduled Trading Day for the Common Stock for more than one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant stock exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

“Material Asset” means any property, business or asset (including cash) in each case that is of material value or that is material to the operation of the business of the Company and its Subsidiaries, taken as a whole.

“Material Real Property” means any fee owned real property located in the United States that is owned by the Company or any Guarantor with a fair market value in excess of \$5,000,000 (at the Issue Date or, with respect to real property acquired (or owned by a Person that becomes the Company or a Guarantor) after the Issue Date, at the time of acquisition or, in each case, on any subsequent date, in each case, as reasonably estimated by the Company in good faith).

“Material Subsidiary” means (a) each Subsidiary of the Company that, as of the last day of the fiscal quarter of the Company most recently ended for which financial statements are available, had revenues or total assets for such quarter in excess of 2.5% of the consolidated revenues or total assets, as applicable, of the Company and its Subsidiaries for such quarter, and (b) any group comprising Subsidiaries of the Company that each would not have been a Material Subsidiary under clause (a) but that, taken together, as of the last day of the fiscal quarter of the Company most recently ended for which financial statements are available, had revenues or total assets for such quarter in excess of 5.0% of the consolidated revenues or total assets, as applicable, of the Company and its Subsidiaries for such quarter; provided that if, at any time and from time to time after the Issue Date, Subsidiaries that are not Material Subsidiaries have, in the aggregate, (x) consolidated revenues for such quarter greater than 5.0% of the consolidated revenues of the Company and its Subsidiaries for such quarter or (y) total assets as of the last day of such quarter greater than 5.0% of the total assets of the Company and its Subsidiaries on a consolidated basis then the Company shall, within thirty (30) days of the date on which financial statements for such quarter are furnished pursuant to this Indenture, (i) designate one or more of such Subsidiaries as “Material Subsidiaries” to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of Section 13.07 with respect to any such Subsidiaries.

“Maturity Date” means February 15, 2029.

“Measurement Period” shall have the meaning specified in Section 14.01(b)(i).

“Merger Event” shall have the meaning specified in Section 14.07(a).

“Mortgage” mean, collectively, the mortgages, trust deeds, deeds of trust, deeds to secure debt, assignments of leases and rents, and other security documents (including amendments to any of the foregoing) delivered with respect to Material Real Properties, in a reasonable and customary form sufficient to create a security interest in, and a mortgage on, the applicable Material Real Property in favor of the Collateral Agent, for the benefit of the Secured Parties, under the law of the applicable jurisdiction and suitable for recording in such jurisdiction.

“Note” or **“Notes”** shall have the meaning specified in the first paragraph of the recitals of this Indenture, and shall include the Guarantees as the case may be.

“Note Documents” shall mean this Indenture, the Notes, the Guarantees, the Collateral Documents and any Acceptable Intercreditor Agreement (as defined in the Security Agreement).

“Note Obligations” shall mean all Obligations of the Company or any of the Guarantors, in each case in respect of the Notes or arising under any Note Document.

“Note Register” shall have the meaning specified in Section 2.05(a).

“Note Registrar” shall have the meaning specified in Section 2.05(a).

“Notice of Conversion” shall have the meaning specified in Section 14.02(b).

“**NYSE**” means The New York Stock Exchange.

“**Obligations**” means any principal, interest, premium, penalties, fees, expenses, indemnifications, reimbursements, damages and other liabilities payable under the documentation governing any Indebtedness (including, without limitation, (i) any amounts or other consideration due upon conversion of such Indebtedness and (ii) any interest, fees or expenses accruing subsequent to the filing of a petition in an insolvency or liquidation proceeding or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest, fees or expenses are an allowed claim under applicable state, federal or foreign law).

“**Observation Period**” with respect to any Note subject to conversion means: (i) subject to clause (ii), if the relevant Conversion Date occurs prior to November 15, 2028, the 40 consecutive Trading Day period beginning on, and including, the second Trading Day immediately succeeding such Conversion Date; (ii) if a Conversion Date occurs due to the Company’s issuance of a Forced Conversion Notice pursuant to Section 16.02, the 40 consecutive Trading Days beginning on, and including, the 41st Scheduled Trading Day immediately preceding such Forced Conversion Date; and (iii) subject to clause (ii), if the relevant Conversion Date occurs on or after November 15, 2028, the 40 consecutive Trading Days beginning on, and including, the 41st Scheduled Trading Day immediately preceding the Maturity Date.

“**Officer**” means, with respect to the Company, the Chief Executive Officer, the Chief Financial Officer, the Chief Accounting Officer, General Counsel, the Treasurer, the Secretary, or any President or Vice President (whether or not designated by a number or numbers or word or words added before or after the title “President” or “Vice President”).

“**Officer’s Certificate**,” when used with respect to the Company, means a certificate that is delivered to the Trustee and that is signed by an Officer of the Company. Each such certificate shall include the statements provided for in Section 17.05 if and to the extent required by the provisions of such Section. The Officer giving an Officer’s Certificate pursuant to Section 4.08 shall be the principal executive, financial or accounting officer of the Company.

“**open of business**” means 9:00 a.m. (New York City time).

“**Opinion of Counsel**” means an opinion in writing signed by legal counsel, who may be an employee of or counsel to the Company, or other counsel who is reasonably acceptable to the Trustee, that is delivered to the Trustee, which opinion may contain customary exceptions and qualifications as to the matters set forth therein. Each such opinion shall include the statements provided for in Section 17.05 if and to the extent required by the provisions of such Section 17.05.

“**outstanding**,” when used with reference to Notes, shall, subject to the provisions of Section 8.04, mean, as of any particular time, all Notes authenticated and delivered by the Trustee under this Indenture, except:

- (a) Notes theretofore canceled by the Trustee or accepted by the Trustee for cancellation;

(b) Notes, or portions thereof, that have become due and payable and in respect of which monies in the necessary amount shall have been deposited in trust with the Trustee or with any Paying Agent (other than the Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent);

(c) Notes that have been paid pursuant to Section 2.06 or Notes in lieu of which, or in substitution for which, other Notes shall have been authenticated and delivered pursuant to the terms of Section 2.06 unless proof satisfactory to the Trustee is presented that any such Notes are held by protected purchasers in due course; and

(d) Notes converted pursuant to Article 14 or Article 16 and required to be cancelled pursuant to Section 2.08.

“Ownership Limitation” shall have the meaning specified in Section 14.13.

“Paying Agent” shall have the meaning specified in Section 4.02.

“Permitted Secured Indebtedness” means Secured Indebtedness that is (i) existing on the date hereof and any refinancing or replacement thereof, provided that the principal amount thereof shall not be increased pursuant to any such refinancing or replacement, (ii) represented by the Notes issued on the Issue Date (including any PIK Interest paid on such Notes) and the related Guarantees at any time outstanding, (iii) secured solely by a letter of credit, (iv) secured solely by special project content to finance the production of such content, or (v) in an amount at any time outstanding that is no greater than the sum of (A) \$75,000,000, plus (B) the aggregate principal amount of Notes permitted by clause (ii) above (other than Notes issued on account of PIK Interest) that are converted, repaid, or repurchased pursuant to this Indenture.

“Permitted Transfer” means a conveyance, sale, lease, license, sale and leaseback, assignment, farm-out, transfer or other disposition (including by means of a loan, advance, contribution or other investment) by the Company or any Guarantor of (i) cash or cash equivalents for working capital purposes of the transferee, (ii) cash or cash equivalents to fund business activities of the transferee in the ordinary course (including, for the avoidance of doubt, content production), (iii) cash or cash equivalents for to fund ongoing operations of the transferee at the reasonable determination of the Company, (iv) intercompany licenses of intellectual property in the ordinary course of business, or (v) Material Assets with a fair market value (as reasonably determined by the Company), in the aggregate with all other Material Assets subject to a Permitted Transfer pursuant to this clause (v), not to exceed \$50,000,000, provided such transfer is on terms no less favorable to the transferor than would be received in a transaction with a Person that is not an Affiliate.

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

“**Physical Notes**” means permanent certificated Notes in registered form issued in denominations of \$1,000 principal amount and integral multiples thereof, or \$1.00 and integral multiples thereof after a PIK Payment.

“**PIK Interest**” means payment of the interest on the Notes through an increase in the principal amount of the outstanding Notes or through the issuance of PIK Notes.

“**PIK Notes**” shall have the meaning specified in Section 2.02(b).

“**PIK Notice**” shall have the meaning specified in Section 2.03(b).

“**PIK Payment**” means the payment of any PIK Interest on the Notes.

“**Physical Settlement**” shall have the meaning specified in Section 14.02(a).

“**Predecessor Note**” of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 2.06 in lieu of or in exchange for a mutilated, lost, destroyed or stolen Note shall be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Note that it replaces.

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

“**Registration Rights Agreement**” means that certain Registration Rights Agreement, dated as of the Issue Date, between the Company and the investor signatories thereto.

“**Reference Property**” shall have the meaning specified in Section 14.07(a).

“**Regular Record Date**,” with respect to any Interest Payment Date, shall mean the February 1 or August 1 (whether or not such day is a Business Day) immediately preceding the applicable February 15 and August 15 Interest Payment Date, respectively.

“**Reported Outstanding Share Number**” shall have the meaning specified in Section 14.13.

“**Resale Restriction Termination Date**” shall have the meaning specified in Section 2.05(c).

“Requisite Stockholder Approval” means the stockholder approval contemplated by NYSE Listing Standard Rule 312.03(c) with respect to the issuance of shares of Common Stock upon conversion of the Notes in excess of the limitations imposed by such rule; *provided, however*, that the Requisite Stockholder Approval will be deemed to be obtained if, due to any amendment or binding change in the interpretation of the applicable listing standards of the NYSE, such stockholder approval is no longer required for the Company to settle all conversions of the Notes by Physical Settlement, assuming, for these purposes, that all remaining interest payments will be paid via PIK Interest and the Conversion Rate is increased by the maximum amount pursuant to which the Conversion Rate may be increased pursuant to Section 14.03. For the avoidance of doubt, the Requisite Stockholder Approval (if applicable) shall apply to conversions of both the initial Notes and PIK Notes. The Company shall deliver written notice to the Trustee upon obtaining the Requisite Stockholder Approval.

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

“Restricted Securities” shall have the meaning specified in Section 2.05(c).

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

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

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

“Secured Indebtedness” means Indebtedness that is secured by a lien on any or all of the assets of the Company or any Guarantor.

“Secured Parties” means the Trustee, the Collateral Agent, the Holders of the Notes and any other holder of Note Obligations or Secured Obligations (as defined in the Security Agreement).

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

“Security Agreement” means that certain Pledge and Security Agreement, dated as the Issue Date, by and among the Company, the other grantors from time to time party thereto and the Collateral Agent.

“Settlement Amount” shall have the meaning specified in Section 14.02(a)(iv).

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

“**Settlement Method Election Deadline**” shall have the meaning specified in Section 14.02(a)(iii).

“**Settlement Notice**” shall have the meaning specified in Section 14.02(a)(iii).

“**Share Issuance Cap**” shall have the meaning specified in Section 14.14.

“**Significant Subsidiary**” means a Subsidiary of the Company that is a “significant subsidiary” as defined in Article 1, Rule 1-02(w) of Regulation S-X under the Exchange Act promulgated by the Commission; *provided* that, in the case of a Subsidiary of the Company that meets the criteria of clause (3) of the definition thereof but not clause (1) or (2) thereof, in each case as such rule is in effect on the initial issuance date of the Notes, such Subsidiary shall not be deemed to be a Significant Subsidiary unless such Subsidiary’s income from continuing operations before income taxes, exclusive of amounts attributable to any non-controlling interests for the last completed fiscal year prior to the date of such determination exceeds \$15,000,000 (with such amount calculated pursuant to Rule 1-02(w) as in effect on the initial issuance date of the Notes). For the avoidance of doubt, for purposes of this definition, to the extent any such Subsidiary would not be deemed to be a “significant subsidiary” under the relevant definition set forth in Rule 1-02(w) of Regulation S-X (or any successor rule) as in effect on the relevant date of determination, such Subsidiary shall not be deemed to be a “Significant Subsidiary” hereunder irrespective of whether such Subsidiary would otherwise be deemed to be a “Significant Subsidiary” after giving effect to the proviso in the immediately preceding sentence.

“**Specified Dollar Amount**” means the maximum cash amount per \$1,000 principal amount of Notes to be received upon conversion as specified in the Settlement Notice related to any converted Notes (or deemed specified pursuant to Section 14.02(a)).

“**Spin-Off**” shall have the meaning specified in Section 14.04(c).

“**Stock Price**” shall have the meaning specified in Section 14.03(c).

“**Subsidiary**” means, with respect to any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, general partners or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person; (ii) such Person and one or more Subsidiaries of such Person; or (iii) one or more Subsidiaries of such Person.

“**Successor Company**” shall have the meaning specified in Section 11.01(a).

“**Trading Day**” means, except for purposes determining amounts due upon conversion as set forth below, a day on which (i) trading in the Common Stock (or other security for which a closing sale price must be determined) generally occurs on The New York Stock Exchange or, if the Common Stock (or such other security) is not then listed on The New York Stock Exchange, on the principal other U.S. national or regional securities exchange on which the Common Stock (or such other security) is then listed or, if the Common Stock (or such other security) is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock (or such other security) is then traded and (ii) a Last Reported Sale Price for the Common Stock (or closing sale price for such other security) is available on such securities exchange or market; *provided* that if the Common Stock (or such other security) is not so listed or traded, “**Trading Day**” means a Business Day; and *provided, further*, that for purposes of determining amounts due upon conversion only, “**Trading Day**” means a day on which (x) there is no Market Disruption Event and (y) trading in the Common Stock generally occurs on The New York Stock Exchange or, if the Common Stock is not then listed on The New York Stock Exchange, on the principal other U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then listed or admitted for trading, except that if the Common Stock is not so listed or admitted for trading, “**Trading Day**” means a Business Day.

“**Trading Price**” of the Notes on any date of determination means the average of the secondary market bid quotations obtained by the Bid Solicitation Agent for \$5,000,000 principal amount of Notes at approximately 3:30 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers the Company selects for this purpose; *provided* that if three such bids cannot reasonably be obtained by the Bid Solicitation Agent but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the Bid Solicitation Agent, that one bid shall be used. If, on any determination date, the Bid Solicitation Agent cannot reasonably obtain at least one bid for \$5,000,000 principal amount of Notes on such date from a nationally recognized securities dealer, then the Trading Price per \$1,000 principal amount of Notes on such determination date shall be deemed to be less than 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate.

“**transfer**” shall have the meaning specified in Section 2.05(c).

“**Trigger Event**” shall have the meaning specified in Section 14.04(c).

“**Trust Indenture Act**” means the Trust Indenture Act of 1939, as amended.

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

“**unit of Reference Property**” shall have the meaning specified in Section 14.07(a).

“**Valuation Period**” shall have the meaning specified in Section 14.04(c).

“**Wholly-Owned Subsidiary**” means, with respect to any Person, any direct or indirect Subsidiary of such Person, except that, solely for purposes of this definition, the reference to “more than 50%” in the definition of “Subsidiary” shall be deemed replaced by a reference to “100%,” the calculation of which shall exclude nominal amounts of the voting power of shares of Capital Stock or other interests in the relevant Subsidiary not held by such Person to the extent required to satisfy local minority interest requirements outside of the United States.

Section 1.02. *References to Interest.* Unless the context otherwise requires, any reference to interest on, or in respect of, any Note in this Indenture shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to Section 6.03. Unless the context otherwise requires, any express mention of Additional Interest in any provision hereof shall not be construed as excluding Additional Interest in those provisions hereof where such express mention is not made. Unless the context otherwise requires or a PIK Notice has been delivered with respect to a specific Interest Payment Date, any express mention of interest in any provision hereof shall be construed as referring to Cash Interest payable at the rate such Cash Interest bears.

ARTICLE 2

ISSUE, DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE OF NOTES

Section 2.01. *Designation and Amount.* The Notes shall be designated as the “Convertible Senior Secured Notes due 2029.” The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is initially \$177,506,000, subject to Section 2.10 and any PIK Payments permitted by this Indenture that are made pursuant to Section 2.02(b) and Section 2.03 and, except for Notes authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of other Notes to the extent expressly permitted hereunder.

Section 2.02. *Form of Notes.* (a) The Notes and the Trustee’s certificate of authentication to be borne by such Notes shall be substantially in the respective forms set forth in Exhibit A, the terms and provisions of which shall constitute, and are hereby expressly incorporated in and made a part of this Indenture. Any PIK Notes that are Physical Notes will be issued with the designation “PIK Note” on the face of such PIK Note. To the extent applicable, the Company, the Guarantors, the Collateral Agent and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby. In the case of any conflict between this Indenture and a Note, the provisions of this Indenture shall control and govern to the extent of such conflict.

Any Global Note may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Indenture as may be required by the Custodian or the Depositary, or as may be required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange or automated quotation system upon which the Notes may be listed or traded or designated for issuance or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Notes are subject.

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

Each Global Note shall represent such principal amount of the outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be increased or reduced to reflect repurchases, cancellations, conversions, transfers or exchanges permitted hereby. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in such manner and upon instructions given by the Holder of such Notes in accordance with this Indenture. Payment of principal (including the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, a Global Note shall be made to the Holder of such Note on the date of payment, unless a record date or other means of determining Holders eligible to receive payment is provided for herein.

(b) If the Company elects to pay PIK Interest in respect of the Notes as set forth in Section 2.03 below, either the outstanding principal amount of the Notes shall be increased to reflect such PIK Interest or additional Notes (“**PIK Notes**”) reflecting such PIK Interest shall be issued under this Indenture having the same terms (except that PIK Notes shall be made in a minimum denomination of \$1.00 and integral multiples of \$1.00) as the Notes (in each case, a “**PIK Payment**”), as provided in Section 2.03 and delivered in accordance with Section 2.03(b). In the event that the Company shall determine to pay PIK Interest for any Interest Period, then the Company shall deliver a PIK Notice (as defined below) to the Trustee as required by the form of Note in Exhibit A. Any PIK Notes will be considered to be part of the same series of, and rank equally and ratably with all other, Notes issued under this Indenture. The aggregate principal amount of outstanding Notes represented by a Global Note shall from time to time be increased, as applicable, to reflect PIK Interest.

(c) The legend substantially in the following form shall also be included on any Notes issued with OID, as defined below:

THE FOLLOWING INFORMATION IS SUPPLIED SOLELY FOR U.S. FEDERAL INCOME TAX PURPOSES. THIS NOTE WAS ISSUED WITH ORIGINAL ISSUE DISCOUNT (“OID”) WITHIN THE MEANING OF SECTION 1273 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”), AND THIS LEGEND IS REQUIRED BY SECTION 1275(c) OF THE CODE. UPON REQUEST, THE ISSUER WILL PROMPTLY MAKE AVAILABLE TO A HOLDER OF THIS NOTE INFORMATION REGARDING THE ISSUE PRICE, AMOUNT OF OID, ISSUE DATE AND YIELD TO MATURITY OF THE NOTES BY SUBMITTING A WRITTEN REQUEST FOR SUCH INFORMATION TO THE ISSUER AT FUBO TV, INC. 1290 AVENUE OF THE AMERICAS, NEW YORK, NEW YORK, 10020, ATTENTION: CHIEF LEGAL OFFICER.

Section 2.03. *Date and Denomination of Notes; Payments of Interest and Defaulted Amounts.* (a) The Notes shall be issuable in registered form without coupons in minimum denominations of \$1,000 principal amount and integral multiples of \$1,000 in excess thereof; provided that after the issuance of PIK Notes or an increase in the principal amount of a Global Note in order to evidence PIK Interest, the minimum denominations shall be \$1.00 and integral multiples of \$1.00 in excess thereof. Each Note shall be dated the date of its authentication and shall bear interest from and including the Issue Date (or, in the case of PIK Notes, from the date of issuance thereof), or from the most recent date to which interest has been paid or provided for to, but excluding the next scheduled Interest Payment Date, at either (i) the rate of 7.50% per annum, if interest is paid in cash (“**Cash Interest**”), or (ii) the rate of 10.00% per annum, if PIK Interest is paid, subject to Section 2.03(b) below. Accrued interest on the Notes shall be computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of the number of days actually elapsed in a 30-day month.

(b) (i) In the absence of a Default or Event of Default the Company may determine to pay PIK Interest for any Interest Period; *provided* that the Company shall deliver a notice (a “**PIK Notice**”) to the Trustee and the Holders not less than five (5) Business Days prior to the Interest Payment Date of the relevant Interest Period, which notice shall state that the total amount of interest to be paid on the Interest Payment Date in respect of such Interest Period and that such interest will be paid as PIK Interest. If the Company does not timely provide a PIK Notice, the Company shall be deemed to have elected Cash Interest for the relevant Interest Period.

(ii) Any PIK Interest on the Notes will be payable to Holders and (x) with respect to the Notes represented by one or more Global Notes registered in the name of, or held by, the Depositary or its nominee on the relevant Regular Record Date, by increasing the principal amount of the outstanding Global Notes by an amount equal to the amount of PIK Interest for the applicable Interest Period (rounded to the nearest whole dollar, with amounts of \$0.50 or more being rounded up), and the Trustee will, upon receipt of a Company Order from the Company, record such increase in principal amount and (y) with respect to Notes represented by Physical Notes, by issuing PIK Notes in the form of Physical Notes in an aggregate principal amount equal to the amount of PIK Interest for the applicable Interest Period (rounded to the nearest whole dollar, with amounts of \$0.50 or more being rounded up), and the Trustee will, upon receipt of a Company Order and PIK Notes from the Company, authenticate and deliver such PIK Notes in certificated form for original issuance to the Holders on the relevant record date, as shown by the records of the register of Holders. Following an increase in the principal amount of the outstanding Global Notes as a result of a PIK Payment, the Global Notes will bear interest on such increased principal amount from and after the date of such PIK Payment. Any PIK Notes issued in the form of Physical Notes will be distributed to Holders, will be dated as of the applicable Interest Payment Date and will bear interest from and after such date in accordance with the terms of this Indenture. All Notes issued pursuant to a PIK Payment will mature on the Maturity Date and will be governed by, and subject to the terms, provisions and conditions of, the Indenture and shall have the same rights and benefits as the other Notes. Any PIK Notes issued in the form of Physical Notes will be issued with the description “PIK Note” on the face of such PIK Note.

(iii) Notwithstanding anything to the contrary, the payment of accrued interest in connection with any repurchase, discharge or defeasance of the Notes as described in Articles 3 or 15 of this Indenture or otherwise, or during the existence of a Default or Event of Default or an exercise of enforcement rights and remedies, shall be made solely via Cash Interest.

(c) The Person in whose name any Note (or its Predecessor Note) is registered on the Note Register at the close of business on any Regular Record Date with respect to any Interest Payment Date shall be entitled to receive the interest payable on such Interest Payment Date. The Company shall pay (or cause the Paying Agent to pay) the principal amount of any Note (x) in the case of any Physical Note, at the office or agency of the Company designated by the Company for such purposes in the United States of America, which shall initially be the Corporate Trust Office and (y) in the case of any Global Note, by wire transfer of immediately available funds to the account of the Depositary or its nominee. The Company shall pay (or cause the Paying Agent to pay) Cash Interest (i) on any Physical Notes (A) to Holders holding Physical Notes having an aggregate principal amount of \$5,000,000 or less, by check mailed to the Holders of these Notes at their address as it appears in the Note Register and (B) to Holders holding Physical Notes having an aggregate principal amount of more than \$5,000,000, either by check mailed to each such Holder or, upon application by such a Holder to the Note Registrar (containing the requisite information for the Trustee or Paying Agent to make such wire transfer) not later than the relevant Regular Record Date, by wire transfer in immediately available funds to that Holder's account within the United States of America if such Holder has provided the Company, the Trustee or the Paying Agent (if other than the Trustee) with the requisite information necessary to make such wire transfer, which application shall remain in effect until the Holder notifies, in writing, the Note Registrar to the contrary or (ii) on any Global Note by wire transfer of immediately available funds to the account of the Depositary or its nominee.

(d) Any Defaulted Amounts shall forthwith cease to be payable to the Holder on the relevant payment date but shall accrue interest per annum at the rate borne by the Notes from, and including, such relevant payment date, and such Defaulted Amounts together with such interest thereon shall be paid via Cash Interest by the Company, at its election in each case, as provided in clause (i) or (ii) below:

(i) The Company may elect to make payment of any Defaulted Amounts to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on a special record date for the payment of such Defaulted Amounts, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of the Defaulted Amounts proposed to be paid on each Note and the date of the proposed payment (which shall be not less than 25 days after the receipt by the Trustee of such notice, unless the Trustee shall consent to an earlier date), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount to be paid in respect of such Defaulted Amounts or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Amounts as in this clause provided. Thereupon the Company shall fix a special record date for the payment of such Defaulted Amounts which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment, and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment (unless the Trustee shall consent to an earlier date). The Company shall promptly notify the Trustee in writing of such special record date and the Trustee, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Amounts and the special record date therefor to be delivered to each Holder at its address as it appears in the Note Register, or by electronic means to the Depositary in the case of Global Notes, not less than 10 days prior to such special record date. Notice of the proposed payment of such Defaulted Amounts and the special record date therefor having been so delivered, such Defaulted Amounts shall be paid to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on such special record date and shall no longer be payable pursuant to the following clause (ii) of this Section 2.03(d). The Trustee shall have no responsibility whatsoever for the calculation of the Defaulted Amounts.

(ii) The Company may make payment of any Defaulted Amounts in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, and upon such notice as may be required by such exchange or automated quotation system, if, after written notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Section 2.04. *Execution, Authentication and Delivery of Notes.* The Notes shall be signed in the name and on behalf of the Company by the manual or facsimile or other electronic signature of any of its Chief Executive Officer, President, Chief Financial Officer, Treasurer, Secretary or any of its Executive or Senior Vice Presidents.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Notes executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Notes, and the Trustee in accordance with such Company Order shall authenticate and deliver such Notes, without any further action by the Company hereunder; provided that, as set forth in Section 17.05, the Trustee shall be entitled to receive an Officer's Certificate and (other than with respect to any PIK Notes) an Opinion of Counsel of the Company with respect to the issuance, authentication and delivery of such Notes.

Only such Notes as shall bear thereon a certificate of authentication substantially in the form set forth on the Form of Note attached as Exhibit A hereto, executed manually by an authorized signatory of the Trustee (or an authenticating agent appointed by the Trustee as provided by Section 17.10), shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee (or such an authenticating agent) upon any Note executed by the Company shall be conclusive evidence that the Note so authenticated has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this Indenture.

In case any Officer of the Company who shall have signed any of the Notes shall cease to be such Officer before the Notes so signed shall have been authenticated and delivered by the Trustee, or disposed of by the Company, such Notes nevertheless may be authenticated and delivered or disposed of as though the Person who signed such Notes had not ceased to be such Officer of the Company; and any Note may be signed on behalf of the Company by such persons as, at the actual date of the execution of such Note, shall be the Officers of the Company, although at the date of the execution of this Indenture any such Person was not such an Officer.

Section 2.05. *Exchange and Registration of Transfer of Notes; Restrictions on Transfer; Depositary.* (a) The Company shall cause to be kept at the Corporate Trust Office a register (the register maintained in such office or in any other office or agency of the Company designated pursuant to Section 4.02, the “**Note Register**”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. Such register shall be in written form or in any form capable of being converted into written form within a reasonable period of time. The Trustee is hereby initially appointed the “**Note Registrar**” for the purpose of registering Notes and transfers of Notes as herein provided. The Company may appoint one or more co-Note Registrars in accordance with Section 4.02.

Upon surrender for registration of transfer of any Note to the Note Registrar or any co-Note Registrar, and satisfaction of the requirements for such transfer set forth in this Section 2.05, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture.

Notes may be exchanged for other Notes of any authorized denominations and of a like aggregate principal amount, upon surrender of the Notes to be exchanged at any such office or agency maintained by the Company pursuant to Section 4.02. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Notes that the Holder making the exchange is entitled to receive, bearing registration numbers not contemporaneously outstanding.

All Notes presented or surrendered for registration of transfer or for exchange, repurchase or conversion shall (if so required by the Company, the Trustee, the Note Registrar or any co-Note Registrar) be duly endorsed, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and duly executed, by the Holder thereof or its attorney-in-fact duly authorized in writing.

No service charge shall be imposed by the Company, the Guarantors, the Trustee, the Note Registrar, any co-Note Registrar or the Paying Agent for any exchange or registration of transfer of Notes, but the Company may require a Holder to pay a sum sufficient to cover any documentary, stamp or similar issue or transfer tax required in connection therewith as a result of the name of the Holder of new Notes issued upon such exchange or registration of transfer being different from the name of the Holder of the old Notes surrendered for exchange or registration of transfer.

None of the Company, the Guarantors, the Trustee, the Note Registrar or any co-Note Registrar shall be required to exchange or register a transfer of (i) any Notes surrendered for conversion or, if a portion of any Note is surrendered for conversion, such portion thereof surrendered for conversion or (ii) any Notes, or a portion of any Note, surrendered for repurchase (and not withdrawn) in accordance with Article 15.

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

(b) So long as the Notes are eligible for book-entry settlement with the Depositary, unless otherwise required by law, subject to the fourth paragraph from the end of Section 2.05(c) all Notes shall be represented by one or more Notes in global form (each, a “**Global Note**”) registered in the name of the Depositary or the nominee of the Depositary. Each Global Note shall bear the legend required on a Global Note set forth in Exhibit A hereto. The transfer and exchange of beneficial interests in a Global Note that does not involve the issuance of a Physical Note shall be effected through the Depositary (but not the Trustee or the Custodian) in accordance with this Indenture (including the restrictions on transfer set forth herein) and the procedures of the Depositary therefor.

(c) Every Note that bears or is required under this Section 2.05(c) to bear the legend set forth in this Section 2.05(c) (together with any Common Stock issued upon conversion of the Notes that is required to bear the legend set forth in Section 2.05(d), collectively, the “**Restricted Securities**”) shall be subject to the restrictions on transfer set forth in this Section 2.05(c) (including those contained in the legend set forth below), unless such restrictions on transfer shall be eliminated or otherwise waived by written consent of the Company, and the Holder of each such Restricted Security, by such Holder’s acceptance thereof, agrees to be bound by all such restrictions on transfer. As used in this Section 2.05(c) and Section 2.05(d), the term “**transfer**” encompasses any sale, pledge, transfer or other disposition whatsoever of any Restricted Security.

Until the date (the “**Resale Restriction Termination Date**”) that is the latest of (1) the date that is one year after the date of original issuance of the Notes, or such shorter period of time as permitted by Rule 144 or any successor provision thereto, (2) such later date, if any, as may be required by applicable law (as determined in good faith by the Company), and (3) the date the Company receives notice from a Holder requesting that the legend be removed, any certificate evidencing such Note (and all securities issued in exchange therefor or substitution thereof, other than Common Stock, if any, issued upon conversion thereof, which shall bear the legend set forth in Section 2.05(d), if applicable) shall bear a legend in substantially the following form (unless such Notes have been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or sold pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or unless otherwise agreed by the Company in writing, with notice thereof to the Trustee):

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

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A “QUALIFIED INSTITUTIONAL BUYER” (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF FUBOTV INC. (THE “COMPANY”) THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATEST OF (X) ONE YEAR AFTER THE DATE OF ORIGINAL ISSUANCE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 OR ANY SUCCESSOR PROVISION THERETO, (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW (AS DETERMINED IN GOOD FAITH BY THE COMPANY), AND (Z) THE DATE THE COMPANY RECEIVES NOTICE FROM A HOLDER REQUESTING THAT THE LEGEND BE REMOVED, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT,
OR

(C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT
OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

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

No transfer of any Note prior to the Resale Restriction Termination Date will be registered by the Note Registrar unless the applicable box on the Form of Assignment and Transfer has been checked.

Any Note (or security issued in exchange or substitution therefor) (i) as to which such restrictions on transfer shall have expired in accordance with their terms, (ii) that has been transferred pursuant to a registration statement that has become effective or been declared effective under the Securities Act and that continues to be effective at the time of such transfer or (iii) that has been sold pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, may, upon surrender of such Note for exchange to the Note Registrar in accordance with the provisions of this Section 2.05, be exchanged for a new Note or Notes, of like tenor and aggregate principal amount, which shall not bear the restrictive legend required by this Section 2.05(c) and shall not be assigned a restricted CUSIP number. The Company shall be entitled to instruct the Custodian in writing to so surrender any Global Note as to which any of the conditions set forth in clause (i) through (iii) of the immediately preceding sentence have been satisfied, and, upon such instruction, the Custodian shall so surrender such Global Note for exchange; and any new Global Note so exchanged therefor shall not bear the restrictive legend specified in this Section 2.05(c) and shall not be assigned a restricted CUSIP number. The Company shall promptly notify the Trustee upon the occurrence of the Resale Restriction Termination Date and promptly after a registration statement, if any, with respect to the Notes or any Common Stock issued upon conversion of the Notes has been declared effective under the Securities Act. Any exchange pursuant to the foregoing paragraph shall be in accordance with the applicable procedures of the Depository.

Pursuant to the Registration Rights Agreement, upon the occurrence of the Resale Restriction Termination Date, certain provisions of the Registration Rights Agreement shall immediately terminate in accordance with and pursuant to the terms of Section 9 thereof.

Notwithstanding any other provisions of this Indenture (other than the provisions set forth in this Section 2.05(c)), a Global Note may not be transferred as a whole or in part except (i) by the Depository to a nominee of the Depository or by a nominee of the Depository to the Depository or another nominee of the Depository or by the Depository or any such nominee to a successor Depository or a nominee of such successor Depository and (ii) for transfers of portions of a Global Note in certificated form made upon request of a member of, or a participant in, the Depository (for itself or on behalf of a beneficial owner) by written notice given to the Trustee by or on behalf of the Depository in accordance with applicable procedures of the Depository and in compliance with this Section 2.05(c).

The Depository shall be a clearing agency registered under the Exchange Act. The Company initially appoints The Depository Trust Company to act as Depository with respect to each Global Note. Initially, each Global Note shall be issued to the Depository, registered in the name of Cede & Co., as the nominee of the Depository, and deposited with the Trustee as custodian for Cede & Co.

If (i) the Depositary notifies the Company at any time that the Depositary is unwilling or unable to continue as depositary for the Global Notes and a successor depositary is not appointed within 90 days, (ii) the Depositary ceases to be registered as a clearing agency under the Exchange Act and a successor depositary is not appointed within 90 days or (iii) an Event of Default with respect to the Notes has occurred and is continuing and, subject to the Depositary's applicable procedures, a beneficial owner of any Note requests that its beneficial interest therein be issued as a Physical Note, the Company shall execute, and the Trustee, upon receipt of an Officer's Certificate, an Opinion of Counsel and a Company Order for the authentication and delivery of Notes, shall authenticate and deliver (x) in the case of clause (iii), a Physical Note to such beneficial owner in a principal amount equal to the principal amount of such Note corresponding to such beneficial owner's beneficial interest and (y) in the case of clause (i) or (ii), Physical Notes to each beneficial owner of the related Global Notes (or a portion thereof) in an aggregate principal amount equal to the aggregate principal amount of such Global Notes in exchange for such Global Notes, and upon delivery of the Global Notes to the Trustee such Global Notes shall be canceled.

Physical Notes issued in exchange for all or a part of the Global Note pursuant to this Section 2.05(c) shall be registered in such names and in such authorized denominations as the Depositary, pursuant to instructions from its direct or indirect participants or otherwise, or, in the case of clause (iii) of the immediately preceding paragraph, the relevant beneficial owner shall instruct the Trustee. Upon execution and authentication, the Trustee shall deliver such Physical Notes to the Persons in whose names such Physical Notes are so registered.

At such time as all interests in a Global Note have been converted, canceled, repurchased upon a Fundamental Change or transferred, such Global Note shall be, upon receipt thereof, canceled by the Trustee in accordance with standing procedures and existing instructions between the Depositary and the Custodian. At any time prior to such cancellation, if any interest in a Global Note is exchanged for Physical Notes, converted, canceled, repurchased upon a Fundamental Change or transferred to a transferee who receives Physical Notes therefor or any Physical Note is exchanged or transferred for part of such Global Note, the principal amount of such Global Note shall, in accordance with the standing procedures and instructions existing between the Depositary and the Custodian, be appropriately reduced or increased, as the case may be, and an endorsement shall be made on such Global Note, by the Trustee or the Custodian, at the direction of the Trustee, to reflect such reduction or increase.

None of the Company, the Trustee (including in its capacity as Paying Agent) or any agent of the Company or the Trustee shall have any responsibility or liability for any act or omission of the Depositary or for the payment of amounts to owners of beneficial interest in a Global Note, for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Note or maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Neither the Company nor the Trustee shall have any responsibility or liability for any act or omission of the Depositary. All notices and communications to be given to the Holders and all payments to be made to Holders in respect of the Notes shall be given or made only to, or upon the order of, the registered Holder(s) (which shall be the Depositary or its nominee in the case of a Global Note).

The rights of beneficial owners in any Global Note shall be exercised only through the Depositary subject to the Applicable Procedures of the Depositary. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depositary with respect to its members, participants and any beneficial owners.

(d) Until the Resale Restriction Termination Date, any stock certificate representing Common Stock issued upon conversion of such Note shall bear a legend in substantially the following form (unless such Common Stock has been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or such Common Stock has been issued upon conversion of a Note that has been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or unless otherwise agreed by the Company with written notice thereof to the Trustee and any transfer agent for the Common Stock):

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

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A “QUALIFIED INSTITUTIONAL BUYER” (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF FUBOTV INC. (THE “**COMPANY**”) THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE DATE OF ORIGINAL ISSUE OF THE SERIES OF NOTES UPON THE CONVERSION OF WHICH THIS SECURITY WAS ISSUED OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO, (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW (AS DETERMINED IN GOOD FAITH BY THE COMPANY), AND (Z) THE DATE THE COMPANY RECEIVES NOTICE FROM A HOLDER REQUESTING THAT THE LEGEND BE REMOVED, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT,
OR

(C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT
OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

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

Any such Common Stock (i) as to which such restrictions on transfer shall have expired in accordance with their terms, (ii) that has been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer or (iii) that has been sold pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, may, upon surrender of the certificates representing such shares of Common Stock for exchange in accordance with the procedures of the transfer agent for the Common Stock, be exchanged for a new certificate or certificates for a like aggregate number of shares of Common Stock, which shall not bear the restrictive legend required by this Section 2.05(d).

(e) Any Note or Common Stock issued upon the conversion or exchange of a Note that is repurchased or owned by any Affiliate of the Company (or any Person who was an Affiliate of the Company at any time during the three months preceding) may not be resold by such Affiliate (or such Person, as the case may be) unless registered under the Securities Act or resold pursuant to an exemption from the registration requirements of the Securities Act. The Company may cause any Note that is repurchased or owned by it to be surrendered to the Trustee for cancellation in accordance with Section 2.08.

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

(g) Neither the Trustee nor any agent shall have any responsibility or liability for any actions taken or not taken by the Depositary, and may assume performance absent written notice to the contrary.

Section 2.06. *Mutilated, Destroyed, Lost or Stolen Notes.* In case any Note shall become mutilated or be destroyed, lost or stolen, the Company in its discretion may execute, and upon receipt of a Company Order, the Trustee or an authenticating agent appointed by the Trustee shall authenticate and deliver, a new Note, bearing a registration number not contemporaneously outstanding, in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. In every case the applicant for a substituted Note shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless from any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company, to the Trustee and, if applicable, to such authenticating agent evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

The Trustee or such authenticating agent may authenticate any such substituted Note and deliver the same upon the receipt of such security or indemnity as the Trustee, the Company and, if applicable, such authenticating agent may require. No service charge shall be imposed by the Company, the Trustee, the Note Registrar, any co-Note Registrar or the Paying Agent upon the issuance of any substitute Note, but the Company may require a Holder to pay a sum sufficient to cover any documentary, stamp or similar issue or transfer tax required in connection therewith as a result of the name of the Holder of the new substitute Note being different from the name of the Holder of the old Note that became mutilated or was destroyed, lost or stolen. In case any Note that has matured or is about to mature or has been surrendered for required repurchase or is about to be converted in accordance with Article 14 shall become mutilated or be destroyed, lost or stolen, the Company may, in its sole discretion, instead of issuing a substitute Note, pay or authorize the payment of or convert or authorize the conversion of the same (without surrender thereof except in the case of a mutilated Note), as the case may be, if the applicant for such payment or conversion shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless for any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, evidence satisfactory to the Company, the Trustee and, if applicable, any Paying Agent or Conversion Agent of the destruction, loss or theft of such Note and of the ownership thereof.

Every substitute Note issued pursuant to the provisions of this Section 2.06 by virtue of the fact that any Note is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be found at any time, and shall be entitled to all the benefits of (but shall be subject to all the limitations set forth in) this Indenture equally and proportionately with any and all other Notes duly issued hereunder. To the extent permitted by law, all Notes shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement, payment, conversion or repurchase of mutilated, destroyed, lost or stolen Notes and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement, payment, conversion or repurchase of negotiable instruments or other securities without their surrender.

Section 2.07. *Temporary Notes.* Pending the preparation of Physical Notes, the Company may execute and the Trustee or an authenticating agent appointed by the Trustee shall, upon receipt of a Company Order, authenticate and deliver temporary Notes (printed or lithographed). Temporary Notes shall be issuable in any authorized denomination, and substantially in the form of the Physical Notes but with such omissions, insertions and variations as may be appropriate for temporary Notes, all as may be determined by the Company. Every such temporary Note shall be executed by the Company and authenticated by the Trustee or such authenticating agent upon the same conditions and in substantially the same manner, and with the same effect, as the Physical Notes. Without unreasonable delay, the Company shall execute and deliver to the Trustee or such authenticating agent Physical Notes (other than any Global Note) and thereupon any or all temporary Notes (other than any Global Note) may be surrendered in exchange therefor, at each office or agency maintained by the Company pursuant to Section 4.02 and the Trustee or such authenticating agent shall authenticate and deliver in exchange for such temporary Notes an equal aggregate principal amount of Physical Notes. Such exchange shall be made by the Company at its own expense and without any charge therefor. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as Physical Notes authenticated and delivered hereunder.

Section 2.08. *Cancellation of Notes Paid, Converted, Etc.* The Company shall cause all Notes surrendered for the purpose of payment at maturity, repurchase upon a Fundamental Change, registration of transfer or exchange or conversion (other than any Notes exchanged pursuant to Section 14.12), if surrendered to the Company or any of its agents, Subsidiaries or Affiliates, in each case, that the Company controls, to be surrendered to the Trustee for cancellation. All Notes delivered to the Trustee shall be canceled promptly by it, in accordance with its customary procedures. Except for Notes surrendered for registration of transfer or exchange, no Notes shall be authenticated in exchange therefor except as expressly permitted by any of the provisions of this Indenture. The Trustee shall dispose of canceled Notes in accordance with its customary procedures and, after such disposition, shall deliver a certificate of such cancellation to the Company upon the Company's written request.

Section 2.09. *CUSIP Numbers.* The Company in issuing the Notes may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in all notices issued to Holders as a convenience to such Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or on such notice and that reliance may be placed only on the other identification numbers printed on the Notes. The Company shall promptly notify the Trustee in writing of any change in the "CUSIP" numbers.

Section 2.10. *Additional Notes; Repurchases.* The Company may, without the consent, or notice to, of the Holders and notwithstanding Section 2.01, reopen this Indenture and issue additional Notes hereunder with the same terms as the Notes initially issued hereunder (other than differences in the issue date, the issue price, interest accrued prior to the issue date of such additional Notes and, if applicable, restrictions on transfer in respect of such additional Notes (including pursuant to Section 2.05 hereunder)) in an unlimited aggregate principal amount; *provided* that if any such additional Notes (or any Notes that have been resold after they have been repurchased or otherwise acquired by the Company or its Subsidiaries) are not fungible with the Notes initially issued hereunder for U.S. federal securities law or income tax purposes, such additional Notes (or such resold Notes) shall have one or more separate CUSIP numbers. Prior to the issuance of any such additional Notes, the Company shall deliver to the Trustee a Company Order, an Officer's Certificate and an Opinion of Counsel, such Officer's Certificate and Opinion of Counsel to cover such matters required by Section 17.05. In addition, the Company may, to the extent permitted by law, and, without the consent of Holders, directly or indirectly (regardless of whether such Notes are surrendered to the Company), repurchase Notes in the open market or otherwise, whether by the Company or its Subsidiaries or through a privately negotiated transaction or public tender or exchange offer or through counterparties to private agreements, including by cash-settled swaps or other derivatives. The Company may, at its option and to the extent permitted by applicable law, reissue, resell or surrender to the Trustee for cancellation in accordance with Section 2.08 any Notes that the Company may repurchase, in the case of a reissuance or resale, so long as such Notes do not constitute restricted securities upon such reissuance or resale. Any Notes that the Company may (or is required under this Indenture to) repurchase will be considered "outstanding" for all purposes under this Indenture (other than, at any time when such Notes are held by the Company or any of its Subsidiaries, as set forth in Section 8.04) unless and until such time the Company surrenders them to the Trustee for cancellation and, upon receipt of a written order from the Company, the Trustee will cancel all Notes so surrendered.

ARTICLE 3 SATISFACTION AND DISCHARGE

Section 3.01. *Satisfaction and Discharge.* (a) This Indenture (including, for the avoidance of doubt, the covenants contained in this Indenture), the Guarantees, the Collateral Documents and the Notes shall cease to be of further effect when (i) all Notes theretofore authenticated and delivered (other than (x) Notes which have been destroyed, lost or stolen and which have been replaced, paid or converted as provided in Section 2.06 and (y) Notes for whose payment money has heretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 4.04(d)) have been delivered to the Trustee for cancellation; (ii) the Company has deposited with the Trustee or delivered to Holders, as applicable, after the Notes have become due and payable, whether on the Maturity Date or any Fundamental Change Repurchase Date, upon conversion or otherwise, cash, shares of Common Stock or a combination thereof, as applicable, solely to satisfy the Company's Conversion Obligation, sufficient to pay all of the outstanding Notes and all other sums due and payable under this Indenture or the Notes by the Company, or (iii) following settlement of the Forced Conversion; and (b) the Trustee and the Collateral Agent, as applicable, upon request of the Company contained in an Officer's Certificate and at the expense of the Company, shall execute instruments reasonably requested by the Company acknowledging satisfaction and discharge of this Indenture and the Notes, when the Company has delivered to the Trustee and the Collateral Agent, as applicable, an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture and the Notes have been complied with. Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee and Collateral Agent under Section 7.06 shall survive.

Section 3.02. *Effective Discharge of Certain Provisions.* If the Company completes an Effective Discharge, then (i) the first priority liens on the Collateral will be automatically released with respect to the Notes and the Guarantees pursuant to Section 18.02, and (ii) the covenants contained in Section 4.10 through Section 4.12 shall cease to be of further effect. The Company may complete an Effective Discharge at any time. Upon request of the Company contained in an Officer's Certificate and at the expense of the Company, the Trustee and the Collateral Agent, as applicable, shall execute instruments reasonably requested by the Company acknowledging the occurrence of an Effective Discharge, when the Company has delivered to the Trustee and the Collateral Agent, as applicable, an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to an Effective Discharge have been complied with.

ARTICLE 4
PARTICULAR COVENANTS OF THE COMPANY

Section 4.01. *Payment of Principal and Interest.* The Company covenants and agrees that it will cause to be paid the principal (including the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes. Any applicable withholding taxes (including backup withholding) may be withheld from payments of interest and payments upon conversion, repurchase or maturity of the Notes (or, in some circumstances from any payments of Common Stock) or sales proceeds received by or other funds or assets of the Holder or beneficial owner.

Section 4.02. *Maintenance of Office or Agency.* The Company will maintain in the United States of America an office or agency where the Notes may be surrendered for registration of transfer or exchange or for presentation for payment or repurchase ("**Paying Agent**") or for conversion ("**Conversion Agent**") and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office in the United States of America as a place where Notes may be presented for payment or for registration of transfer.

The Company may also from time to time designate as co-Note Registrars one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided* that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the United States of America so designated by the Trustee as a place for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency. The terms “**Paying Agent**” and “**Conversion Agent**” include any such additional or other offices or agencies, as applicable.

The Company hereby initially designates the Trustee as the Paying Agent, Note Registrar, Custodian and Conversion Agent and the Corporate Trust Office as the office or agency in the United States of America where Notes may be surrendered for registration of transfer or exchange or for presentation for payment or repurchase or for conversion and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served; provided that the Corporate Trust Office shall not be a place for service of legal process on the Company.

Section 4.03. *Appointments to Fill Vacancies in Trustee's Office and Collateral Agent's Office.* The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 7.09, a Trustee, so that there shall at all times be a Trustee hereunder. The Company, whenever necessary to avoid or fill a vacancy in the office of Collateral Agent, will appoint, in the manner provided in Section 7.14, a Collateral Agent, so that there shall at all times be a Collateral Agent hereunder.

Section 4.04. *Provisions as to Paying Agent.* (a) If the Company shall appoint a Paying Agent other than the Trustee, the Company will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 4.04:

(i) that it will hold all sums held by it as such agent for the payment of the principal (including the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest to be paid via Cash Interest on, the Notes in trust for the benefit of the Holders of the Notes;

(ii) that it will give the Trustee prompt written notice of any failure by the Company to make any payment of the principal (including the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest to be paid via Cash Interest on, the Notes when the same shall be due and payable; and

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

The Company shall, on or before each due date of the principal (including the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid interest to be paid via Cash Interest on, the Notes, deposit with the Paying Agent a sum sufficient to pay such principal (including the Fundamental Change Repurchase Price, if applicable) or accrued and unpaid interest to be paid via Cash Interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee in writing of any failure to take such action; *provided* that if such deposit is made on the due date, such deposit must be received by the Paying Agent by 11:00 a.m., New York City time, on such date.

(b) If the Company shall act as its own Paying Agent, it will, on or before each due date of the principal (including the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest to be paid via Cash Interest on, the Notes, set aside, segregate and hold in trust for the benefit of the Holders of the Notes a sum sufficient to pay such principal (including the Fundamental Change Repurchase Price, if applicable) and accrued and unpaid interest to be paid via Cash Interest so becoming due and will promptly notify the Trustee in writing of any failure to take such action and of any failure by the Company to make any payment of the principal (including the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid interest to be paid via Cash Interest on, the Notes when the same shall become due and payable.

(c) Anything in this Section 4.04 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay, cause to be paid or deliver to the Trustee all sums or amounts held in trust by the Company or any Paying Agent hereunder as required by this Section 4.04, such sums or amounts to be held by the Trustee upon the trusts herein contained and upon such payment or delivery by the Company or any Paying Agent to the Trustee, the Company or such Paying Agent shall be released from all further liability but only with respect to such sums or amounts. Upon the occurrence of any event specified in Section 6.01(h) or Section 6.01(i), the Trustee shall automatically become the Paying Agent.

(d) Subject to applicable escheatment laws, any money or property deposited with the Trustee, the Conversion Agent or any Paying Agent, or then held by the Company, in trust for the payment of the principal (including the Fundamental Change Repurchase Price, if applicable) of, accrued and unpaid interest to be paid via Cash Interest on and the consideration due upon conversion of any Note and remaining unclaimed for two years after such principal (including the Fundamental Change Repurchase Price, if applicable), interest to be paid via Cash Interest or consideration due upon conversion has become due and payable shall be paid to the Company on request of the Company contained in an Officer's Certificate, or (if then held by the Company) shall be discharged from such trust and the Trustee shall have no further liability with respect to such funds or property; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee, the Conversion Agent or such Paying Agent with respect to such trust money, and all liability of the Company as trustee with respect to such trust money and shares of Common Stock, and all liability of the Company as trustee thereof, shall thereupon cease.

Section 4.05. *Existence.* Subject to Article 11, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

Section 4.06. *Rule 144A Information Requirement and Annual Reports.* (a) At any time the Company is not subject to Section 13 or 15(d) of the Exchange Act, the Company shall, so long as any of the Notes or any shares of Common Stock issuable upon conversion thereof shall, at such time, constitute “restricted securities” within the meaning of Rule 144(a)(3) under the Securities Act, promptly provide to the Trustee and will, upon written request, provide to any Holder, beneficial owner or prospective purchaser of such Notes or any shares of Common Stock issuable upon conversion of such Notes, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of such Notes or shares of Common Stock pursuant to Rule 144A.

(b) The Company shall file with the Trustee, within 15 days after the same are required to be filed with the Commission (giving effect to any grace period provided by Rule 12b-25 (or any successor rule) under the Exchange Act), copies of any annual or quarterly reports (on Form 10-K or Form 10-Q or any respective successive form) that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act (excluding any such information, documents or reports, or portions thereof, subject to confidential treatment and any correspondence with the Commission). Any such document or report that the Company files with the Commission via the Commission’s EDGAR system (or any successor thereto) shall be deemed to be filed with the Trustee for purposes of this Section 4.06(b) at the time such documents are filed via the EDGAR system (or any successor thereto), it being understood that the Trustee shall not be responsible for determining whether such filings have been made.

(c) Delivery of the reports and documents described in subsection (b) above to the Trustee is for informational purposes only, and the Trustee’s receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company’s compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on an Officer’s Certificate).

Section 4.07. *Stay, Extension and Usury Laws.* The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law that would prohibit or forgive the Company from paying all or any portion of the principal of or interest on the Notes as contemplated herein, wherever enacted, now or at any time hereafter in force, or that may affect the covenants or the performance of this Indenture; and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 4.08. *Compliance Certificate; Statements as to Defaults.* The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company (beginning with the fiscal year ending on December 31, 2024) an Officer’s Certificate (i) stating whether the signers thereof have knowledge of any Default under the Indenture that occurred during such fiscal year and, if so, specifying each such Default and the nature thereof and (ii) an updated Perfection Certificate (as defined in the Security Agreement) reflecting all changes since the date of the information most recently received pursuant to this Section 4.08 (or certifying as to the absence of any such changes).

In addition, the Company shall deliver to the Trustee, within 30 days after obtaining knowledge of the occurrence of any Event of Default or Default, an Officer's Certificate setting forth the details of such Event of Default or Default, its status and the action that the Company is taking or proposing to take in respect thereof; *provided* that the Company is not required to deliver such notice if such Event of Default or Default has been cured.

Section 4.09. *Further Instruments and Acts.* Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

Section 4.10. *Limitation on Indebtedness.* Neither the Company nor any of the Guarantors shall incur additional Secured Indebtedness other than Permitted Secured Indebtedness. No Subsidiary of the Company (other than the Guarantors) shall incur any Indebtedness or shall guarantee any Indebtedness (i) which (or the proceeds of which) repays, refinances, refunds, replaces, renews or is exchanged for Indebtedness of the Company or any Guarantor or (ii) the proceeds of which are used to fund the business of Company or any Guarantor.

Section 4.11. *Limitation on Transfers of Material Assets.* Neither the Company nor any of the Guarantors shall convey, sell, lease, license, sell and leaseback, assign, farm-out, transfer or otherwise dispose (including by means of a loan, advance, contribution or other investment) of any Material Asset to any Subsidiary of the Company that is not a Guarantor other than any Permitted Transfer.

Section 4.12. *Mortgages.* (a) Within 120 days after the acquisition of any Material Real Property after the Issue Date (or such later date as may be reasonably necessary despite the Company or applicable Guarantor's use of commercially reasonable efforts), the Company or the applicable Guarantor shall (i) grant to the Collateral Agent (for the benefit of the Secured Parties) a security interest in, and a Mortgage on, such Material Real Property to secure the Secured Obligations (as defined in the Security Agreement) pursuant to Mortgage and other documentation in a form reasonably acceptable to the Company and necessary to effect such security interest, which security interest and mortgage shall constitute valid and enforceable Liens, (ii) deliver for recording or filing, with all required documentation, such Mortgage or instruments related thereto in such manner and in such places as is required by law to establish, perfect, preserve and protect the Liens in favor of the Collateral Agent (for the benefit of the Secured Parties) required to be granted pursuant to the Mortgages and pay in full, all taxes, fees and other charges required to be paid in connection with such recording or filing and (iii) deliver an opinion of counsel to the Company or such applicable Guarantor as to such matters relating to such Mortgage as are customarily covered thereby in the applicable jurisdiction.

(b) The Company and the Guarantors shall cause the Collateral Agent to be listed as a co-loss payee on property and casualty policies with respect to tangible personal property and assets constituting Collateral located in the United States and as an additional insured on all general liability policies with respect to which the Company or a Guarantor is the primary insured.

ARTICLE 5
LISTS OF HOLDERS AND REPORTS BY THE COMPANY AND THE TRUSTEE

Section 5.01. *Lists of Holders.* The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee, semi-annually, not more than 15 days after each February 1 and August 1 in each year beginning with February 1, 2024, and at such other times as the Trustee may request in writing, within 30 days after receipt by the Company of any such request (or such lesser time as the Trustee may reasonably request in order to enable it to timely provide any notice to be provided by it hereunder), a list in such form as the Trustee may reasonably require of the names and addresses of the Holders as of a date not more than 15 days (or such other date as the Trustee may reasonably request in order to so provide any such notices) prior to the time such information is furnished, except that no such list need be furnished so long as the Trustee is acting as Note Registrar.

Section 5.02. *Preservation and Disclosure of Lists.* The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Holders contained in the most recent list furnished to it as provided in Section 5.01 or maintained by the Trustee in its capacity as Note Registrar, if so acting. The Trustee may destroy any list furnished to it as provided in Section 5.01 upon receipt of a new list so furnished.

ARTICLE 6
DEFAULTS AND REMEDIES

Section 6.01. *Events of Default.* Each of the following events shall be an “**Event of Default**” with respect to the Notes:

- (a) default in any payment of interest on any Note when due and payable, and the default continues for a period of 30 days;
- (b) default in the payment of principal of any Note when due and payable on the Maturity Date, upon any required repurchase, upon declaration of acceleration or otherwise;
- (c) failure by the Company to comply with its obligation to convert the Notes in accordance with this Indenture upon Forced Conversion or an exercise of a Holder’s conversion right, and such failure continues for five (5) Business Days;
- (d) failure by the Company to issue a Fundamental Change Company Notice in accordance with Section 15.02(c), notice of a Make-Whole Fundamental Change in accordance with Section 14.03(b), or notice of a specified corporate event in accordance with Section 14.01(b)(ii) or 14.01(b)(iii), in each case when due, and such failure continues for three (3) Business Days;

(e) failure by the Company to comply with its obligations under Article 11 or failure by a Guarantor to comply with its obligations under Article 13;

(f) failure by the Company for 60 days after written notice from the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding has been received by the Company to comply with any of its other agreements contained in the Notes or this Indenture;

(g) default by the Company, a Guarantor or any Significant Subsidiary of the Company with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed in excess of \$40,000,000 (or its foreign currency equivalent) in the aggregate of the Company and/or any such Guarantor and/or Significant Subsidiary, whether such indebtedness now exists or shall hereafter be created (i) resulting in such indebtedness becoming or being declared due and payable prior to its stated maturity date or (ii) constituting a failure to pay the principal of any such indebtedness when due and payable (after the expiration of all applicable grace periods) at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise, and, in the case of clauses (i) and (ii), such acceleration shall not, after the expiration of any applicable grace period, have been rescinded or annulled or such failure to pay or default shall not have been cured or waived, or such indebtedness is not paid or discharged, as the case may be, within 30 days after written notice to the Company from the Trustee or to the Company and the Trustee from Holders of at least 25% in aggregate principal amount of Notes then outstanding in accordance with this Indenture;

(h) the Company, a Guarantor or any Significant Subsidiary shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to the Company or any such Guarantor and/or Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or any such Guarantor or Significant Subsidiary or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due;

(i) a court of competent jurisdiction enters an order or decree against the Company, a Guarantor or any Significant Subsidiary seeking liquidation, reorganization or other relief with respect to the Company or such Guarantor or Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or such Guarantor or Significant Subsidiary or any substantial part of its property, and such order or decree shall remain undismissed and unstayed for a period of 60 consecutive days; or

(j) any Collateral Document, after delivery thereof pursuant hereto, shall for any reason fail or cease to create, or should be asserted by a the Company or any Guarantor not to create, a valid and perfected and, except to the extent expressly permitted by the terms hereof or thereof, first priority lien in favor of the Collateral Agent for the benefit of the Holders on any Collateral purported to be covered thereby, other than (A) to the extent resulting from the failure of the Trustee or the Collateral Agent or any of their agents or bailees to maintain possession of Collateral, or (B) as to Collateral consisting of real property to the extent that (1) such losses are covered by a title insurance policy for the benefit of the Collateral Agent or (2) a deficiency arose through no fault of the Company or any Guarantor, in the case of each of clause (A) and (B), to the extent such deficiencies are (1) corrected with reasonable diligence upon obtaining knowledge thereof and (2) do not materially adversely affect the security interest of the Holders in the Collateral.

Section 6.02. *Acceleration; Rescission and Annulment.* If one or more Events of Default shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), then, and in each and every such case (other than an Event of Default specified in Section 6.01(h) or Section 6.01(i) with respect to the Company), unless the principal of all of the Notes shall have already become due and payable, either the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding determined in accordance with Section 8.04, by notice in writing to the Company (and to the Trustee if given by Holders), may declare 100% of the principal of, and accrued and unpaid interest on, all the Notes to be due and payable immediately, and upon any such declaration the same shall become and shall automatically be immediately due and payable, anything contained in this Indenture or in the Notes to the contrary notwithstanding. If an Event of Default specified in Section 6.01(h) or Section 6.01(i) with respect to the Company occurs and is continuing, 100% of the principal of, and accrued and unpaid interest, if any, on, all Notes shall become and shall automatically be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

The immediately preceding paragraph, however, is subject to the conditions that if, at any time after the principal of the Notes shall have been so declared due and payable, and before any judgment or decree for the payment of the monies due shall have been obtained or entered as hereinafter provided, and if (1) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (2) any and all existing Events of Default under this Indenture, other than the nonpayment of the principal of and accrued and unpaid interest, if any, on Notes that shall have become due solely by such acceleration, shall have been cured or waived pursuant to Section 6.09, then and in every such case (except as provided in the immediately succeeding sentence) the Holders of a majority in aggregate principal amount of the Notes then outstanding, by written notice to the Company and to the Trustee, may waive all Defaults or Events of Default with respect to the Notes and rescind and annul such declaration and its consequences and such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent Default or Event of Default, or shall impair any right consequent thereon. Notwithstanding anything to the contrary herein, no such waiver or rescission and annulment shall extend to or shall affect any Default or Event of Default resulting from (i) the nonpayment of the principal (including the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid interest on, any Notes, (ii) a failure to repurchase any Notes when required or (iii) a failure to pay or deliver, as the case may be, the consideration due upon conversion of the Notes.

Section 6.03. *Additional Interest.* Notwithstanding anything in this Indenture or in the Notes to the contrary, to the extent the Company elects, the sole remedy for an Event of Default relating to the Company's failure to comply with its obligations as set forth in Section 4.06(b) shall, for the first 360 calendar days after the occurrence of such an Event of Default, consist exclusively of the right to receive Additional Interest on the Notes at a rate equal to (i) 0.25% per annum of the principal amount of the Notes outstanding for each day during the first 180 calendar days of the 360-day period after the occurrence of such an Event of Default during which such Event of Default is continuing (or, if earlier, the date on which such Event of Default is cured or waived as provided for in this Indenture) and (ii) 0.50% per annum of the principal amount of the Notes outstanding for each day from, and including, the 181st calendar day to, and including, the 360th calendar day after the occurrence of such an Event of Default during which such Event of Default is continuing (or, if earlier, the date on which such Event of Default is cured or waived as provided for in this Indenture). If the Company so elects, such Additional Interest shall be payable in the same manner and on the same dates as the stated interest payable on the Notes. On the 361st day after such Event of Default (if the Event of Default relating to the Company's failure to comply with its obligations as set forth in Section 4.06(b) is not cured or waived prior to such 361st day), the Notes shall be subject to acceleration as provided in Section 6.02. The provisions of this paragraph will not affect the rights of Holders in the event of the occurrence of any Event of Default other than the Company's failure to comply with its obligations as set forth in Section 4.06(b). In the event the Company does not elect to pay Additional Interest following an Event of Default in accordance with this Section 6.03 or the Company elected to make such payment but does not pay the Additional Interest when due, the Notes shall be immediately subject to acceleration as provided in Section 6.02.

In order to elect to pay Additional Interest as the sole remedy during the first 360 days after the occurrence of any Event of Default described in the immediately preceding paragraph, the Company must notify all Holders of the Notes, the Trustee and the Paying Agent in an Officer's Certificate of such election prior to the beginning of such 360-day period. Upon the failure to timely give such notice, the Notes shall be immediately subject to acceleration as provided in Section 6.02.

Section 6.04. *Payments of Notes on Default; Suit Therefor.* If an Event of Default described in clause (a) or (b) of Section 6.01 shall have occurred and be continuing (including upon failure to pay amounts owed following acceleration of the Note Obligations), the Company shall, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of the Notes, the Trustee and the Collateral Agent, the whole amount then due and payable on the Notes for principal and interest, if any, with interest on any overdue principal and interest, if any, at the PIK Interest rate borne by the Notes at such time, and, in addition thereto, such further amount as shall be sufficient to cover any amounts due to the Trustee under Section 7.06. If the Company shall fail to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon the Notes and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Notes, wherever situated.

In the event there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor on the Notes under Title 11 of the United States Code, or any other applicable law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Company or such other obligor, the property of the Company or such other obligor, or in the event of any other judicial proceedings relative to the Company or such other obligor upon the Notes, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 6.04, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal and accrued and unpaid interest, if any, in respect of the Notes, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents and to take such other actions as it may deem necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee and the Collateral Agent, their agents and counsel) and of the Holders allowed in such judicial proceedings relative to the Company or any other obligor on the Notes, its or their creditors, or its or their property, and to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute the same after the deduction of any amounts due to the Trustee and the Collateral Agent under Section 7.06; and any receiver, assignee or trustee in bankruptcy or reorganization, liquidator, custodian or similar official is hereby authorized by each of the Holders to make such payments to the Trustee, as administrative expenses, and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee and the Collateral Agent any amount due it for reasonable compensation, expenses, advances and disbursements, including agents and counsel fees, and including any other amounts due to the Trustee and the Collateral Agent under Section 7.06, incurred by it up to the date of such distribution. To the extent that such payment of reasonable compensation, expenses, advances and disbursements out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, monies, securities and other property that the Holders of the Notes may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting such Holder or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

All rights of action and of asserting claims under this Indenture, or under any of the Notes, may be enforced by the Trustee without the possession of any of the Notes, or the production thereof at any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Notes.

In any proceedings brought by the Trustee (and in any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders of the Notes, and it shall not be necessary to make any Holders of the Notes parties to any such proceedings.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of any waiver pursuant to Section 6.09 or any rescission and annulment pursuant to Section 6.02 or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the Holders, the Trustee and the Collateral Agent shall, subject to any determination in such proceeding, be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company, the Holders, the Trustee and the Collateral Agent shall continue as though no such proceeding had been instituted.

Section 6.05. *Application of Monies Collected by Trustee.* Any monies or property collected by the Trustee pursuant to this Article 6 with respect to the Notes shall be applied in the following order, at the date or dates fixed by the Trustee for the distribution of such monies or property, upon presentation of the several Notes, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

First, to the payment of all amounts due the Trustee and Collateral Agent in all of their capacities, including their agent and counsel, under Section 7.06;

Second, in case the principal of the outstanding Notes shall not have become due and be unpaid, to the payment of interest on, and any cash due upon conversion of, the Notes in default in the order of the date due of the payments of such interest and cash due upon conversion, as the case may be, with interest (to the extent that such interest has been collected by the Trustee) upon such overdue payments at the rate borne by the Notes at such time, such payments to be made ratably to the Persons entitled thereto;

Third, in case the principal of the outstanding Notes shall have become due, by declaration or otherwise, and be unpaid to the payment of the whole amount (including, if applicable, the payment of the Fundamental Change Repurchase Price and any cash due upon conversion) then owing and unpaid upon the Notes for principal and interest, if any, with interest on the overdue principal and, to the extent that such interest has been collected by the Trustee, upon overdue installments of interest at the rate borne by the Notes at such time, and in case such monies shall be insufficient to pay in full the whole amounts so due and unpaid upon the Notes, then to the payment of such principal (including, if applicable, the Fundamental Change Repurchase Price and any cash due upon conversion) and interest without preference or priority of principal over interest, or of interest over principal or of any installment of interest over any other installment of interest, or of any Note over any other Note, ratably to the aggregate of such principal (including, if applicable, the Fundamental Change Repurchase Price and any cash due upon conversion) and accrued and unpaid interest; and

Fourth, to the payment of the remainder, if any, to the Company.

Section 6.06. *Proceedings by Holders*. Except to enforce the right to receive payment of principal (including, if applicable, the Fundamental Change Repurchase Price) or interest when due, or the right to receive payment or delivery of the consideration due upon conversion, no Holder of any Note shall have any right by virtue of or by availing of any provision of this Indenture or the Notes to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture, or for the appointment of a receiver, trustee, liquidator, custodian or other similar official, or for any other remedy hereunder, unless:

(a) such Holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof, as herein provided;

(b) Holders of at least 25% in aggregate principal amount of the Notes then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder;

(c) such Holders shall have offered, and if requested, provided to the Trustee such security or indemnity reasonably satisfactory to it against any loss, liability or expense to be incurred therein or thereby;

(d) the Trustee for 60 days after its receipt of such notice, request and offer of such security or indemnity, shall have neglected or refused to institute any such action, suit or proceeding; and

(e) no direction that, in the opinion of the Trustee, is inconsistent with such written request shall have been given to the Trustee by the Holders of a majority of the aggregate principal amount of the Notes then outstanding within such 60-day period pursuant to Section 6.09, it being understood and intended, and being expressly covenanted by the taker and Holder of every Note with every other taker and Holder and the Trustee that no one or more Holders shall have any right in any manner whatever by virtue of or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of any other Holder (it being understood that the Trustee shall not have an affirmative duty to ascertain whether or not any such direction is unduly prejudicial to any other Holder), or to obtain or seek to obtain priority over or preference to any other such Holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all Holders (except as otherwise provided herein). For the protection and enforcement of this Section 6.06, each and every Holder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provision of this Indenture and any provision of any Note, the right of any Holder to receive payment or delivery, as the case may be, of (x) the principal (including the Fundamental Change Repurchase Price, if applicable) of, (y) accrued and unpaid interest, if any, on, and (z) the consideration due upon conversion of, such Note, on or after the respective due dates expressed or provided for in such Note or in this Indenture, or to institute suit for the enforcement of any such payment or delivery, as the case may be, on or after such respective dates against the Company shall not be impaired or affected without the consent of such Holder.

Section 6.07. *Proceedings by Trustee.* In case of an Event of Default, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as are necessary to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Section 6.08. *Remedies Cumulative and Continuing.* Except as provided in the last paragraph of Section 2.06, all powers and remedies given by this Article 6 to the Trustee or to the Holders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the Holders of the Notes, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission of the Trustee or of any Holder of any of the Notes to exercise any right or power accruing upon any Default or Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Default or Event of Default or any acquiescence therein; and, subject to the provisions of Section 6.06, every power and remedy given by this Article 6 or by law to the Trustee or to the Holders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Holders.

Section 6.09. *Direction of Proceedings and Waiver of Defaults by Majority of Holders.* Subject to the Trustee's right to receive security or indemnity from the relevant Holders as described herein, the Holders of a majority of the aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or the Collateral Agent or exercising any trust or power conferred on the Trustee or the Collateral Agent with respect to the Notes (whether under applicable law, the terms of any of the Note Documents or otherwise); *provided, however*, that (a) such direction shall not be in conflict with any rule of law or with the Note Documents, and (b) each of the Trustee and the Collateral Agent may take any other action deemed proper by the Trustee or the Collateral Agent, as applicable, that is not inconsistent with such direction. Each of the Trustee and the Collateral Agent may refuse to follow any direction that the Trustee or the Collateral Agent, as applicable, determines is unduly prejudicial to the rights of any other Holder or that would involve the Trustee or the Collateral Agent, as applicable, in personal liability (it being understood that the Trustee and the Collateral Agent shall not have an affirmative duty to ascertain whether or not any such direction is unduly prejudicial to any other Holder). The Holders of a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 may on behalf of the Holders of all of the Notes waive any past Default or Event of Default hereunder and its consequences except (i) any continuing defaults relating to the nonpayment of accrued and unpaid interest, if any, on, or the principal (including any Fundamental Change Repurchase Price) of, the Notes when due that has not been cured pursuant to the provisions of Section 6.01, (ii) a failure by the Company to pay or deliver, as the case may be, the consideration due upon conversion of the Notes or (iii) a default in respect of a covenant or provision hereof which under Article 10 cannot be modified or amended without the consent of each Holder of an outstanding Note affected. Upon any such waiver the Company, the Trustee, the Collateral Agent and the Holders of the Notes shall be restored to their former positions and rights hereunder; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon. Whenever any Default or Event of Default hereunder shall have been waived as permitted by this Section 6.09, said Default or Event of Default shall for all purposes of the Notes and this Indenture be deemed to have been cured and to be not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

Section 6.10. *Notice of Defaults.* The Trustee shall, within 90 days after obtaining knowledge of the occurrence and continuance of a Default of which a Responsible Officer has actual knowledge, deliver to all Holders notice of all such Defaults, unless such Defaults shall have been cured or waived before the giving of such notice; *provided* that, except in the case of a Default in the payment of the principal of (including the Fundamental Change Repurchase Price, if applicable), or accrued and unpaid interest on, any of the Notes or a Default in the payment or delivery of the consideration due upon conversion, the Trustee shall be protected in withholding such notice if and so long as it in good faith determines that the withholding of such notice is in the interests of the Holders.

Section 6.11. *Undertaking to Pay Costs.* All parties to this Indenture agree, and each Holder of any Note by its acceptance thereof shall be deemed to have agreed, that any court may, in its discretion, require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee and the Collateral Agent for any action taken or omitted by it as Trustee and Collateral Agent, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; *provided* that the provisions of this Section 6.11 (to the extent permitted by law) shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Notes at the time outstanding determined in accordance with Section 8.04, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or accrued and unpaid interest, if any, on any Note (including, but not limited to, the Fundamental Change Repurchase Price with respect to the Notes being repurchased as provided in this Indenture) on or after the due date expressed or provided for in such Note or to any suit for the enforcement of the right to convert any Note in accordance with the provisions of Article 14.

ARTICLE 7
CONCERNING THE TRUSTEE AND COLLATERAL AGENT

Section 7.01. *Duties and Responsibilities of Trustee.* The Trustee, prior to the occurrence of an Event of Default of which a Responsible Officer of the Trustee has written notice or actual knowledge and after the curing or waiver of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In the event an Event of Default has occurred and is continuing of which a Responsible Officer of the Trustee has written notice or actual knowledge, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs; *provided* that if an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise any of the rights or powers under this Indenture at the request or direction of any of the Holders unless such Holders have offered (and, if requested, provided) to the Trustee indemnity or security satisfactory to it against any loss, liability or expense that might be incurred by it in compliance with such request or direction.

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

(a) prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default that may have occurred:

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

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

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

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority of the aggregate principal amount of the Notes at the time outstanding determined as provided in Section 8.04 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(d) whether or not therein provided, every provision of this Indenture relating to the conduct or affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions of this Section;

(e) the Trustee shall not be liable in respect of any payment (as to the correctness of amount, entitlement to receive or any other matters relating to payment) or notice effected by the Company or any Paying Agent or any records maintained by any co-Note Registrar with respect to the Notes;

(f) if any party fails to deliver a notice relating to an event the fact of which, pursuant to this Indenture, requires notice to be sent to the Trustee, the Trustee may conclusively rely on its failure to receive such notice as reason to act as if no such event occurred, unless a Responsible Officer of the Trustee had actual knowledge of such event;

(g) in the absence of written investment direction from the Company, all cash received by the Trustee shall be placed in a non-interest bearing trust account, and in no event shall the Trustee be liable for the selection of investments or for investment losses incurred thereon or for losses incurred as a result of the liquidation of any such investment prior to its maturity date or the failure of the party directing such investments prior to its maturity date or the failure of the party directing such investment to provide timely written investment direction, and the Trustee shall have no obligation to invest or reinvest any amounts held hereunder in the absence of such written investment direction from the Company;

(h) in the event that the Trustee is also acting as Collateral Agent, Custodian, Note Registrar, Paying Agent, Conversion Agent, Bid Solicitation Agent or transfer agent hereunder, the rights, benefits, immunities, indemnities and protections afforded to the Trustee pursuant to this Indenture shall also be afforded to such Collateral Agent, Custodian, Note Registrar, Paying Agent, Conversion Agent, Bid Solicitation Agent or transfer agent; and

(i) under no circumstances shall the Trustee be liable in its individual capacity for the obligations evidenced by the Notes.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

Section 7.02. *Reliance on Documents, Opinions, Etc.* Except as otherwise provided in Section 7.01:

(a) the Trustee may conclusively rely and shall be fully protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, note, coupon or other paper or document (whether in its original or facsimile form) believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officer's Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any Board Resolution may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company;

(c) the Trustee may consult with counsel of its selection and require an Opinion of Counsel and any written or verbal advice of such counsel or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel. Before the Trustee acts or refrains from acting, it may require an Officer's Certificate or an Opinion of Counsel or both. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel;

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

(e) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, custodians, nominees or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, custodian, nominee or attorney appointed by it with due care hereunder;

(f) the permissive rights of the Trustee enumerated herein shall not be construed as duties;

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

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

(i) the Trustee shall not be deemed to have notice of any Default or Event of Default (except in the case of a Default or Event of Default in payment of scheduled principal of, premium, if any, or interest on, any Note) unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a Default or Event of Default (and stating the occurrence of a Default or Event of Default) is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Notes and this Indenture;

(j) the Trustee shall not be responsible or liable for any action it takes or omits to take in good faith which it reasonably believes to be authorized or within its rights or powers;

(k) the Trustee shall not be responsible or liable for any action taken or omitted by it in good faith at the direction of the Holders of not less than a majority in principal amount of the Notes as to the time, method and place of conducting any proceedings for any remedy available to the Trustee or the exercising of any power conferred by this Indenture;

(l) neither the Trustee nor any of its directors, officers, employees, agents or affiliates shall be responsible for nor have any duty to monitor the performance or any action of the Company, or any of their respective directors, members, officers, agents, affiliates or employee, nor shall it have any liability in connection with the malfeasance or nonfeasance by such party. The Trustee shall not be responsible for any inaccuracy in the information obtained from the Company or for any inaccuracy or omission in the records which may result from such information or any failure by the Trustee to perform its duties as set forth herein as a result of any inaccuracy or incompleteness;

(m) in no event shall the Trustee be liable for any consequential, punitive, special or indirect loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action. The Trustee shall not be charged with knowledge of any Default or Event of Default with respect to the Notes, unless either (1) a Responsible Officer shall have actual knowledge of such Default or Event of Default or (2) written notice of such Default or Event of Default shall have been given to the Trustee by the Company or by any Holder of the Notes at the Corporate Trust Office and such notice references the Notes and/or this Indenture; and

(n) neither the Trustee nor any Agent shall have any responsibility or liability for any actions taken or not taken by the Depositary.

Section 7.03. *No Responsibility for Recitals, Etc.* The recitals contained herein and in the Notes (except in the Trustee's certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity, sufficiency or enforceability of this Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Company of any Notes or the proceeds of any Notes authenticated and delivered by the Trustee in conformity with the provisions of this Indenture or any money paid to the Company or upon the Company's direction under any provision of the Indenture. The Trustee shall have no responsibility or liability with respect to any information, statement or recital in any disclosure material prepared or distributed with respect to the issuance of the Notes.

Section 7.04. *Trustee, Collateral Agent, Paying Agents, Conversion Agents, Bid Solicitation Agent or Note Registrar May Own Notes.* The Trustee, the Collateral Agent, any Paying Agent, any Conversion Agent, Bid Solicitation Agent (if other than the Company or any Subsidiary thereof) or Note Registrar, in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not the Trustee, Collateral Agent, Paying Agent, Conversion Agent, Bid Solicitation Agent or Note Registrar.

Section 7.05. *Monies and Shares of Common Stock to Be Held in Trust.* All monies and any shares of Common Stock received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Money and shares of Common Stock held by the Trustee in trust hereunder need not be segregated from other funds or property except to the extent required by law. The Trustee shall be under no liability for interest on any money or shares of Common Stock received by it hereunder except as may be agreed from time to time by the Company and the Trustee.

Section 7.06. *Compensation and Expenses of Trustee and Collateral Agent.* The Company covenants and agrees to pay to the Trustee and the Collateral Agent, each in any capacity under this Indenture or any other Note Document, from time to time, and the Trustee and the Collateral Agent shall receive such compensation for all services rendered by it hereunder in any capacity (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) as mutually agreed to in writing between the Trustee or the Collateral Agent, as applicable, and the Company, and the Company will pay or reimburse the Trustee and the Collateral Agent upon their respective request for all reasonable expenses, disbursements and advances reasonably incurred or made by the Trustee or the Collateral Agent as applicable, in accordance with any of the provisions of this Indenture in any capacity thereunder (including the reasonable compensation and the expenses and disbursements of its agents and counsel and of all Persons not regularly in its employ) except any such expense, disbursement or advance as shall have been caused by its gross negligence or willful misconduct as determined by a final, non-appealable decision of a court of competent jurisdiction. The Company also covenants to indemnify the Trustee and the Collateral Agent, each in any capacity under this Indenture, any other Note Document and any other document or transaction entered into in connection herewith and its officers, directors, attorneys, employees and agents and any authenticating agent for, and to hold them harmless against, any loss, claim (whether asserted by the Company, a Holder or any Person), damage, liability or expense (including attorneys' fees) incurred without gross negligence or willful misconduct on the part of the Trustee, the Collateral Agent, their respective officers, directors, attorneys, agents or employees, or such agent or authenticating agent, as the case may be, as determined by a final, non-appealable decision of a court of competent jurisdiction, and arising out of or in connection with the acceptance or administration of this Indenture or any other Note Document or in any other capacity hereunder, including the costs and expenses of defending themselves against any claim of liability in the premises or the enforcement of this Section 7.06. The obligations of the Company under this Section 7.06 to compensate or indemnify the Trustee and the Collateral Agent and to pay or reimburse the Trustee and the Collateral Agent for expenses, disbursements and advances shall be secured by a senior lien to which the Notes are hereby made subordinate on all money or property held or collected by the Trustee, except, subject to the effect of Section 6.05, funds held in trust herewith for the benefit of the Holders of particular Notes, and, for the avoidance of doubt, such lien shall not be extended in a manner that would conflict with the Company's obligations to its other creditors. The Trustee's and the Collateral Agent's right to receive payment of any amounts due under this Section 7.06 shall not be subordinate to any other liability or indebtedness of the Company. The obligation of the Company under this Section 7.06 shall survive the satisfaction and discharge of this Indenture and the other Note Documents and the earlier resignation or removal of the Trustee. The Company need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld. The indemnification provided in this Section 7.06 shall extend to the officers, directors, agents and employees of the Trustee and the Collateral Agent.

Without prejudice to any other rights available to the Trustee or the Collateral Agent under applicable law, when the Trustee and the Collateral Agent and their respective agents and any authenticating agent incur expenses or render services after an Event of Default specified in Section 6.01(h) or Section 6.01(i) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any bankruptcy, insolvency or similar laws.

Section 7.07. *Officer's Certificate and Opinion of Counsel as Evidence.* Except as otherwise provided in Section 7.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of gross negligence or willful misconduct on the part of the Trustee, be deemed to be conclusively proved and established by an Officer's Certificate and Opinion of Counsel delivered to the Trustee, and such Officer's Certificate and Opinion of Counsel, in the absence of gross negligence or willful misconduct on the part of the Trustee, shall be full warrant to the Trustee for any action taken or omitted by it under the provisions of this Indenture upon the faith thereof.

Section 7.08. *Eligibility of Trustee.* There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act (as if, for this purpose, the Trust Indenture Act were applicable hereto) to act as such and has a combined capital and surplus of at least \$50,000,000. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 7.09. *Resignation or Removal of Trustee.* (a) The Trustee may at any time resign by giving written notice of such resignation to the Company and by delivering notice thereof to the Holders. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 45 days after the giving of such notice of resignation to the Holders, the resigning Trustee may, upon ten Business Days' notice to the Company and the Holders and at the expense of the Company, petition any court of competent jurisdiction for the appointment of a successor trustee, or any Holder who has been a bona fide holder of a Note or Notes for at least six months (or since the date of this Indenture) may, subject to the provisions of Section 6.11, on behalf of himself or herself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(i) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.08 and shall fail to resign after written request therefor by the Company or by any such Holder, or

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

then, in either case, the Company may by a Board Resolution remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.11, any Holder who has been a bona fide holder of a Note or Notes for at least six months (or since the date of this Indenture) may, on behalf of himself or herself and all others similarly situated, petition any court of competent jurisdiction at the expense of the Company for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The Holders of a majority in aggregate principal amount of the Notes at the time outstanding, as determined in accordance with Section 8.04, may at any time remove the Trustee and nominate a successor trustee that shall be deemed appointed as successor trustee unless within ten days after notice to the Company of such nomination the Company objects thereto, in which case the Trustee so removed or any Holder, upon the terms and conditions and otherwise as in Section 7.09(a) provided, may petition any court of competent jurisdiction for an appointment of a successor trustee.

(d) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 7.09 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 7.10.

Section 7.10. *Acceptance by Successor Trustee.* Any successor trustee appointed as provided in Section 7.09 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any amounts then due it pursuant to the provisions of Section 7.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a senior lien to which the Notes are hereby made subordinate on all money or property held or collected by such trustee as such, except for funds held in trust for the benefit of Holders of particular Notes, to secure any amounts then due it pursuant to the provisions of Section 7.06.

No successor trustee shall accept appointment as provided in this Section 7.10 unless at the time of such acceptance such successor trustee shall be eligible under the provisions of Section 7.08.

Upon acceptance of appointment by a successor trustee as provided in this Section 7.10, each of the Company and the successor trustee, at the written direction and at the expense of the Company shall deliver or cause to be delivered notice of the succession of such trustee hereunder to the Holders. If the Company fails to deliver such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be delivered at the expense of the Company.

Section 7.11. *Succession by Merger, Etc.* Any corporation or other entity into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee (including the administration of this Indenture), shall be the successor to the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto; *provided* that in the case of any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee such corporation or other entity shall be eligible under the provisions of Section 7.08.

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee or authenticating agent appointed by such predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee or an authenticating agent appointed by such successor trustee may authenticate such Notes either in the name of any predecessor trustee hereunder or in the name of the successor trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Notes or in this Indenture provided that the certificate of the Trustee shall have; *provided, however*, that the right to adopt the certificate of authentication of any predecessor trustee or to authenticate Notes in the name of any predecessor trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 7.12. *Trustee's Application for Instructions from the Company.* Any application by the Trustee for written instructions from the Company (other than with regard to any action proposed to be taken or omitted to be taken by the Trustee that affects the rights of the Holders of the Notes under this Indenture) may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable to the Company for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three Business Days after notice that the Company has been deemed to have been given pursuant to Section 17.03, unless any such officer shall have consented in writing to any earlier date), unless, prior to taking any such action (or the effective date in the case of any omission), the Trustee shall have received written instructions in accordance with this Indenture in response to such application specifying the action to be taken or omitted.

Section 7.13. *Collateral Agent; Collateral Documents.*

(a) U.S. Bank Trust Company, National Association, is hereby designated and appointed as the Collateral Agent under this Indenture and the other Collateral Documents and U.S. Bank Trust Company, National Association, hereby accepts such designation and appointment.

(b) By their acceptance of the Notes, the Holders hereby authorize and direct the Trustee and Collateral Agent, as the case may be, to execute and deliver any Collateral Documents in which the Trustee or the Collateral Agent, as applicable, is named as a party, including any Collateral Documents executed after the date of this Indenture. It is hereby expressly acknowledged and agreed that, in doing so, the Trustee and the Collateral Agent are (a) expressly authorized to make the representations attributed to the Holders in any such agreements and (b) not responsible for the terms or contents of such agreements, or for the validity or enforceability thereof, or the sufficiency thereof for any purpose; provided that nothing in this sentence shall be construed to relieve the Trustee or the Collateral Agent from liability for its own grossly negligent action, its own grossly negligent failure to act or its own willful misconduct. Whether or not so expressly stated therein, in entering into, or taking (or forbearing from) any action under, any Collateral Documents, the Trustee and the Collateral Agent each shall have all of the rights, immunities, indemnities and other protections granted to it under this Indenture (in addition to those that may be granted to it under the terms of such other agreement or agreements). The Collateral Agent shall have all rights, privileges and immunities as are granted to the Trustee under this Indenture.

Section 7.14. *Replacement of Collateral Agent.* The Collateral Agent may resign, be removed and be replaced in accordance with Section 7.09 as though references to the Trustee therein were references to the Collateral Agent. Any successor collateral agent appointed as provided in this section shall execute, acknowledge and deliver to the Company and to its predecessor collateral agent an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor collateral agent shall become effective and such successor collateral agent, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Collateral Agent herein; but, nevertheless, on the written request of the Company or of the successor collateral agent, the collateral agent ceasing to act shall, at the expense of the Company and subject to payment of any amounts then due pursuant to the provisions of Section 7.06, execute and deliver an instrument transferring to such successor collateral agent all the rights and powers of the trustee so ceasing to act. Upon request of any such collateral agent, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor collateral agent all such rights and powers. Any collateral agent ceasing to act shall, nevertheless, retain a senior lien to which the Notes are hereby made subordinate on all money or property held or collected by such collateral agent as such, except for funds held in trust for the benefit of Holders of particular Notes, to secure any amounts then due it pursuant to the provisions of Section 7.06. No successor collateral agent shall accept appointment unless at the time of such acceptance, such successor collateral agent shall be eligible under the provisions of Section 7.08. Upon acceptance of appointment by a successor collateral agent, each of the Company and the successor collateral agent, at the written direction and at the expense of the Company, shall give or cause to be given notice of the succession of such collateral agent hereunder to the Holders in accordance with Section 17.03. If the Company fails to give such notice within ten days after acceptance of appointment by the successor collateral agent, the successor collateral agent shall cause such notice to be given at the expense of the Company.

ARTICLE 8
CONCERNING THE HOLDERS

Section 8.01. *Action by Holders.* Whenever in this Indenture it is provided that the Holders of a specified percentage of the aggregate principal amount of the Notes may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action, the Holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by Holders in person or by agent or proxy appointed in writing, or (b) by the record of the Holders voting in favor thereof at any meeting of Holders duly called and held in accordance with the provisions of Article 9, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Holders. Whenever the Company or the Trustee solicits the taking of any action by the Holders of the Notes, the Company or the Trustee may fix, but shall not be required to, in advance of such solicitation, a date as the record date for determining Holders entitled to take such action. The record date if one is selected shall be not more than fifteen days prior to the date of commencement of solicitation of such action.

Section 8.02. *Proof of Execution by Holders.* Subject to the provisions of Section 7.01, Section 7.02 and Section 9.05, proof of the execution of any instrument by a Holder or its agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The holding of Notes shall be proved by the Note Register or by a certificate of the Note Registrar. The record of any Holders' meeting shall be proved in the manner provided in Section 9.06.

Section 8.03. *Who Are Deemed Absolute Owners.* The Company, the Trustee, any authenticating agent, any Paying Agent, any Conversion Agent and any Note Registrar may deem the Person in whose name a Note shall be registered upon the Note Register to be, and may treat it as, the absolute owner of such Note (whether or not such Note shall be overdue and notwithstanding any notation of ownership or other writing thereon made by any Person other than the Company or any Note Registrar) for the purpose of receiving payment of or on account of the principal (including any Fundamental Change Repurchase Price) of and (subject to Section 2.03) accrued and unpaid interest on such Note, for conversion of such Note and for all other purposes under this Indenture; and neither the Company nor the Trustee nor any Paying Agent nor any Conversion Agent nor any Note Registrar shall be affected by any notice to the contrary. The sole registered holder of a Global Note shall be the Depositary or its nominee. All such payments or deliveries so made to any Holder for the time being, or upon its order, shall be valid, and, to the extent of the sums or shares of Common Stock so paid or delivered, effectual to satisfy and discharge the liability for monies payable or shares deliverable upon any such Note. Notwithstanding anything to the contrary in this Indenture or the Notes following an Event of Default, any owner of a beneficial interest in a Global Note may directly enforce against the Company, without the consent, solicitation, proxy, authorization or any other action of the Depositary or any other Person, such holder's right to exchange such beneficial interest for a Note in certificated form in accordance with the provisions of this Indenture.

Section 8.04. *Company-Owned Notes Disregarded.* In determining whether the Holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under this Indenture, Notes that are owned by the Company or by any Subsidiary thereof shall be disregarded and deemed not to be outstanding for the purpose of any such determination; *provided* that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent, waiver or other action only Notes that a Responsible Officer actually knows are so owned shall be so disregarded. Notes so owned that have been pledged in good faith may be regarded as outstanding for the purposes of this Section 8.04 if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to so act with respect to such Notes and that the pledgee is not the Company or a Subsidiary thereof. In the case of a dispute as to such right, any decision or indecision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officer's Certificate listing and identifying all Notes, if any, known by the Company to be owned or held by or for the account of any of the above described Persons; and, subject to Section 7.01, the Trustee shall be entitled to accept such Officer's Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination.

Section 8.05. *Revocation of Consents; Future Holders Bound.* At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01, of the taking of any action by the Holders of the percentage of the aggregate principal amount of the Notes specified in this Indenture in connection with such action, any Holder of a Note that is shown by the evidence to be included in the Notes the Holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Note. Except as aforesaid, any such action taken by the Holder of any Note shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Note and of any Notes issued in exchange or substitution therefor or upon registration of transfer thereof, irrespective of whether any notation in regard thereto is made upon such Note or any Note issued in exchange or substitution therefor or upon registration of transfer thereof.

ARTICLE 9
HOLDERS' MEETINGS

Section 9.01. *Purpose of Meetings.* A meeting of Holders may be called at any time and from time to time pursuant to the provisions of this Article 9 for any of the following purposes:

(a) to give any notice to the Company or to the Trustee or the Collateral Agent or to give any directions to the Trustee or the Collateral Agent permitted under this Indenture, or to consent to the waiving of any Default or Event of Default hereunder (in each case, as permitted under this Indenture) and its consequences, or to take any other action authorized to be taken by Holders pursuant to any of the provisions of Article 6;

(b) to remove the Trustee or the Collateral Agent and nominate a successor trustee or collateral agent pursuant to the provisions of Article 7;

(c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 10.02; or

(d) to take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Notes under any other provision of this Indenture or under applicable law.

Section 9.02. *Call of Meetings by Trustee.* The Trustee may at any time call a meeting of Holders to take any action specified in Section 9.01, to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of the Holders, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting and the establishment of any record date pursuant to Section 8.01, shall be delivered to Holders of such Notes. Such notice shall also be delivered to the Company. Such notices shall be delivered not less than 20 nor more than 90 days prior to the date fixed for the meeting.

Any meeting of Holders shall be valid without notice if the Holders of all Notes then outstanding are present in person or by proxy or if notice is waived before or after the meeting by the Holders of all Notes then outstanding, and if the Company and the Trustee are either present by duly authorized representatives or have, before or after the meeting, waived notice.

Section 9.03. *Call of Meetings by Company or Holders.* In case at any time the Company, pursuant to a Board Resolution, or the Holders of at least 10% of the aggregate principal amount of the Notes then outstanding, shall have requested the Trustee to call a meeting of Holders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have delivered the notice of such meeting within 20 days after receipt of such request, then the Company or such Holders may determine the time and the place for such meeting and may call such meeting to take any action authorized in Section 9.01, by delivering notice thereof as provided in Section 9.02.

Section 9.04. *Qualifications for Voting.* To be entitled to vote at any meeting of Holders a Person shall (a) be a Holder of one or more Notes on the record date pertaining to such meeting or (b) be a Person appointed by an instrument in writing as proxy by a Holder of one or more Notes on the record date pertaining to such meeting. The only Persons who shall be entitled to be present or to speak at any meeting of Holders shall be the Persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 9.05. *Regulations.* Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders, in regard to proof of the holding of Notes and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders as provided in Section 9.03, in which case the Company or the Holders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Holders of a majority in aggregate principal amount of the outstanding Notes represented at the meeting and entitled to vote at the meeting.

Subject to the provisions of Section 8.04, at any meeting of Holders each Holder or proxyholder shall be entitled to one vote for each \$1.00 principal amount of Notes held or represented by him or her; *provided, however*, that no vote shall be cast or counted at any meeting in respect of any Note challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Notes held by it or instruments in writing as aforesaid duly designating it as the proxy to vote on behalf of other Holders. Any meeting of Holders duly called pursuant to the provisions of Section 9.02 or Section 9.03 may be adjourned from time to time by the Holders of a majority of the aggregate principal amount of Notes represented at the meeting, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

Section 9.06. *Voting.* The vote upon any resolution submitted to any meeting of Holders shall be by written ballot on which shall be subscribed the signatures of the Holders or of their representatives by proxy and the outstanding aggregate principal amount of the Notes held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Holders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was delivered as provided in Section 9.02. The record shall show the aggregate principal amount of the Notes voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

Section 9.07. *No Delay of Rights by Meeting.* Nothing contained in this Article 9 shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Holders or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Holders under any of the provisions of this Indenture or of the Notes. Nothing contained in this Article 9 shall be deemed or construed to limit any Holder's actions pursuant to the applicable procedures of the Depositary so long as the Notes are Global Notes.

ARTICLE 10 SUPPLEMENTAL INDENTURES

Section 10.01. *Supplemental Indentures Without Consent of Holders.* Without the consent of any Holder, the Company, the Guarantors, the Trustee and the Collateral Agent, as applicable, at the Company's expense, may from time to time and at any time enter into an indenture or indentures supplemental hereto or amend or supplement any of the other Note Documents for one or more of the following purposes:

- (a) to cure any ambiguity, omission, defect or inconsistency;
- (b) to provide for the assumption by a Successor Company of the obligations of (i) the Company under this Indenture and the other Note Documents pursuant to Article 11 or (ii) a Guarantor under this Indenture and the other Note Documents pursuant to Article 13;
- (c) to add guarantees with respect to the Notes or to add additional assets as Collateral;
- (d) to add to the covenants or Events of Default of the Company for the benefit of the Holders or surrender any right or power conferred upon the Company under this Indenture;
- (e) to make any change that does not adversely affect the rights of any Holder, as determined by the Company in good faith;
- (f) to increase the Conversion Rate as provided in this Indenture;
- (g) to provide for the acceptance of appointment by a successor trustee pursuant to Section 7.09 or by a successor collateral agent pursuant to Section 7.14 or to facilitate the administration of the trusts by more than one trustee;

(h) in connection with any Merger Event, to provide that the Notes are convertible into Reference Property, subject to the provisions of Section 14.02, and make such related changes to the terms of the Notes to the extent expressly required by Section 14.07;

(i) to comply with the rules of the Depositary in a manner that does not adversely affect the rights of any Holder;

(j) to provide for or confirm the issuance of PIK Notes pursuant to Section 2.03 or to remove the ability for the Company to pay PIK Interest;

(k) to provide for the release of a Guarantee or a Lien on Collateral pursuant to this Indenture and the other Note Documents when permitted or required by this Indenture and the other Note Documents; and

(l) to irrevocably elect a Settlement Method or a Specified Dollar Amount, or eliminate the Company's right to elect a Settlement Method; provided, however, that no such settlement election or elimination will affect any Settlement Method theretofore elected (or deemed to be elected) with respect to any Note pursuant to Article 14.

Upon the written request of the Company, the Trustee and the Collateral Agent are hereby authorized to, and shall join with the Company in the execution of any such supplemental indenture, amendment or supplement, and to make any further appropriate agreements and stipulations that may be therein contained, except that the Trustee and Collateral Agent shall not be obligated to, but may in their respective discretion, enter into any such supplemental indenture, amendment or supplement that affects the Trustee or Collateral Agent's own rights, duties, liabilities or immunities under this Indenture or otherwise.

Any supplemental indenture, amendment or supplement authorized by the provisions of this Section 10.01 may be executed by the Company, the Guarantors, the Collateral Agent and the Trustee, as applicable, without the consent of the Holders of any of the Notes at the time outstanding, notwithstanding any of the provisions of Section 10.02.

Section 10.02. *Supplemental Indentures with Consent of Holders.* With the consent (evidenced as provided in Article 8) of the Holders of at least a majority of the aggregate principal amount of the Notes then outstanding (determined in accordance with Article 8 and including, without limitation, consents obtained in connection with a repurchase of, or tender or exchange offer for, the Notes), the Company, the Guarantors, the Trustee and the Collateral Agent, at the Company's expense, may from time to time and at any time enter into an indenture or indentures supplemental hereto or amend or supplement any of the other Note Documents for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture, the Notes, any supplemental indenture or any of the other Note Documents or of modifying in any manner the rights of the Holders; *provided, however*, that, without the consent of each Holder of an outstanding Note affected, no such supplemental indenture or amendment or supplement to any of the other Note Documents shall:

- (a) reduce the principal amount of Notes whose Holders must consent to an amendment;
- (b) reduce the rate of or extend the stated time for payment of interest on any Note;
- (c) reduce the principal of or extend the Maturity Date of any Note;
- (d) make any change that adversely affects the conversion rights of any Notes other than as required by this Indenture;
- (e) reduce the Fundamental Change Repurchase Price of any Note or amend or modify in any manner adverse to the Holders the Company's obligation to make such payments, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;
- (f) make any Note payable in a currency, or at a place of payment, other than that stated in the Note;
- (g) change the ranking of the Notes;
- (h) impair the right of any Holder to receive payment of principal and interest on such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Note; or
- (i) make any change in this Article 10 that requires each Holder's consent or in the waiver provisions in Section 6.02 or Section 6.09.

In addition, without the consent of the Holders of at least 66.67% in principal amount of Notes then outstanding, no supplemental indenture, amendment, supplement or waiver may modify any Collateral Document or the provisions in this Indenture or any other Note Documents dealing with the Guarantees, the Collateral or the Collateral Documents if such amendment, supplement or waiver would have the effect of releasing all or substantially all of the value of the Guarantees or releasing all or substantially all of the Collateral from Liens created by the Collateral Documents (except as permitted by the terms of this Indenture and the Collateral Documents immediately prior to giving effect to such amendment, supplement or waiver) or alter the priority of the Liens created by the Collateral Documents in the Collateral.

Upon the written request of the Company, and upon the filing with the Trustee of evidence of the consent of the requisite Holders as aforesaid and subject to Section 10.05, the Trustee and Collateral Agent shall join with the Company in the execution of such supplemental indenture, amendment, supplement or waiver unless such supplemental indenture, amendment, supplement or waiver affects the Collateral Agent or Trustee's own rights, duties, liabilities or immunities under this Indenture or otherwise, in which case the Collateral Agent or the Trustee, as applicable, may in its discretion, but shall not be obligated to, enter into such supplemental indenture, amendment, supplement or waiver.

Holders do not need under this Section 10.02 to approve the particular form of any proposed supplemental indenture, amendment, supplement or waiver. It shall be sufficient if such Holders approve the substance thereof. After any supplemental indenture, amendment, supplement or waiver becomes effective pursuant to Section 10.01 or this Section 10.02, the Company shall deliver to the Holders (with a copy to the Trustee) a notice briefly describing such supplemental indenture, amendment, supplement or waiver. However, the failure to give such notice to all the Holders (with a copy to the Trustee), or any defect in the notice, will not impair or affect the validity of the supplemental indenture, amendment, supplement or waiver.

Section 10.03. *Effect of Supplemental Indentures.* Upon the execution of any supplemental indenture, amendment, supplement or waiver pursuant to the provisions of this Article 10, this Indenture or the applicable other Note Document shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitation of rights, obligations, duties and immunities under this Indenture of the Collateral Agent, the Trustee, the Company and the Holders shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments and all the terms and conditions of any such supplemental indenture, amendment, supplement or waiver shall be and be deemed to be part of the terms and conditions of this Indenture or the applicable other Note Document for any and all purposes.

Section 10.04. *Notation on Notes.* Notes authenticated and delivered after the execution of any supplemental indenture, amendment, supplement or waiver pursuant to the provisions of this Article 10 may, at the Company's request and expense, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture, amendment, supplement or waiver. If the Company or the Trustee shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Company, to any modification of this Indenture or the applicable other Note Document contained in any such supplemental indenture, amendment, supplement or waiver may, at the Company's expense, be prepared and executed by the Company, authenticated, upon receipt of a Company Order, by the Trustee (or an authenticating agent duly appointed by the Trustee pursuant to Section 17.10) and delivered in exchange for the Notes then outstanding, upon surrender of such Notes then outstanding.

Section 10.05. *Evidence of Compliance of Supplemental Indenture to Be Furnished Trustee and Collateral Agent.* In addition to the documents required by Section 17.05, the Trustee and the Collateral Agent shall receive an Officer's Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture, amendment, supplement or waiver executed pursuant hereto complies with the requirements of this Article 10 and is permitted or authorized by this Indenture and the other Note Documents and that the supplemental indenture, amendment, supplement or waiver constitutes the legal, valid and binding obligation of the Company enforceable in accordance with its terms.

ARTICLE 11

CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE

Section 11.01. *Company May Consolidate, Etc. on Certain Terms.* Subject to the provisions of Section 11.02, the Company shall not consolidate with, merge with or into, or sell, convey, transfer or lease all or substantially all of the consolidated properties and assets of the Company and its Subsidiaries, taken as a whole, to another Person (other than to a Guarantor or to one or more of its Wholly-Owned Subsidiaries), unless:

(a) the resulting, surviving or transferee Person (the "**Successor Company**"), if not the Company, shall be a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia, and the Successor Company (if not the Company) shall expressly assume by supplemental indenture, or other amendment or supplement, all of the obligations of the Company under the Note Documents;

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

(c) the Company shall have delivered to the Trustee an Officer's Certificate and Opinion of Counsel to the Trustee and the Collateral Agent, each stating that such transaction complies with this Article and that all conditions precedent provided for in this Indenture and the other Note Documents relating to such transaction have been complied with.

Section 11.02. *Successor Corporation to Be Substituted.* In case of any such consolidation, merger, sale, conveyance, transfer or lease and upon the assumption by the Successor Company, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of and accrued and unpaid interest on all of the Notes, the due and punctual delivery or payment, as the case may be, of any consideration due upon conversion of the Notes and the due and punctual performance of all of the obligations under this Indenture, the Collateral Documents and the other Note Documents to be performed by the Company, such Successor Company (if not the Company) shall succeed to and, except in the case of a lease of all or substantially all of the Company's properties and assets, shall be substituted for the Company, with the same effect as if it had been named herein as the party of the first part, and may thereafter exercise every right and power of the Company under this Indenture. Such Successor Company thereupon may cause to be signed, and may issue either in its own name or in the name of the Company any or all of the Notes issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such Successor Company instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Notes that previously shall have been signed and delivered by the Officers of the Company to the Trustee for authentication, and any Notes that such Successor Company thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Notes had been issued at the date of the execution hereof. In the event of any such consolidation, merger, sale, conveyance or transfer (but not in the case of a lease), upon compliance with this Article 11 the Person named as the "Company" in the first paragraph of this Indenture (or any successor that shall thereafter have become such in the manner prescribed in this Article 11) may be dissolved, wound up and liquidated at any time thereafter and, except in the case of a lease, such Person shall be released from its liabilities as obligor and maker of the Notes and from its obligations under this Indenture and the Notes.

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

ARTICLE 12

IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 12.01. *Indenture and Notes Solely Corporate Obligations.* No recourse for the payment of the principal of or accrued and unpaid interest on any Note or Guarantee, nor for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company or any Guarantor in this Indenture or in any supplemental indenture or in any Note or Guarantee, nor because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, Officer or director or Subsidiary, as such, past, present or future, of the Company or any Guarantor or of any successor corporation, either directly or through the Company or any Guarantor or any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Notes and Guarantees.

ARTICLE 13

GUARANTEE

Section 13.01. *Guarantee.* (a) Subject to this Article 13, each of the Guarantors hereby, jointly and severally, irrevocably and unconditionally, as a primary obligor and not merely as a surety, guarantees to each Holder of Notes, the Trustee, the Collateral Agent and each other Secured Party and their successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the other Note Documents or the Obligations of the Company hereunder or thereunder, the performance and punctual payment or delivery, as applicable, when due, whether at maturity, by acceleration or otherwise, of all Obligations under the Indenture, the Notes and the other Note Documents and Secured Obligations (as defined in the Security Agreement), including principal (including the Fundamental Change Repurchase Price, if applicable), premium, if any, interest (including interest on overdue amounts), consideration due upon conversion of the Notes and all other Note Obligations (including for reimbursement of expenses, indemnity or otherwise) of the Company or any Guarantor, all in accordance with the terms hereof and thereof (all of the foregoing, collectively, the “**Guaranteed Obligations**”). In furtherance of the foregoing and not in limitation of any other right which any Holder of the Notes or the Trustee or the Collateral Agent has at law or in equity against any Guarantor by virtue of this Article XIII, failing payment or, if applicable, delivery when due (at maturity, by acceleration or otherwise) of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantors will be jointly and severally obligated to pay and, if applicable, perform and deliver the Guaranteed Obligations immediately. Each Guarantor further agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from any Guarantor, and that each Guarantor shall remain bound under this Article XIII notwithstanding any extension or renewal of any Guaranteed Obligation. Each Guarantor agrees that this is a guarantee of payment and performance when due (and not a guarantee of collection) and waives any right to require that any resort be had by any Holder of the Notes or the Trustee or Collateral Agent to any security held for payment of the Guaranteed Obligations. The Guarantees shall not be convertible and shall automatically terminate with respect to a given Note when such Note is converted.

(b) The Guarantors hereby agree that their obligations hereunder are unconditional and absolute, irrespective of (i) the validity, regularity or enforceability of the Notes, this Indenture or any other Note Document, (ii) the absence of any action to enforce the same or to exercise any right or remedy against any Guarantor, (iii) any extension or renewal of this Indenture, the Notes or any other Note Document, (iv) any rescission, settlement, compromise, waiver, modification, amendment, consent or release in respect of this Indenture, the Notes or any other Note Document or any of the Guaranteed Obligations, (v) any change in the corporate existence, structure or ownership of the Company, any Guarantor or any of their respective Subsidiaries, (vi) any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Company, any Guarantor, any of their respective Subsidiaries or any of their respective assets or any resulting release or discharge of any obligation of the Company, any Guarantor or any of their respective Subsidiaries contained in this Indenture, the Notes or any other Note Document, (vii) the existence of any claim, set-off or other rights which any Guarantor may have at any time against the Company, the Trustee, the Collateral Agent or any other Person, whether in connection with this Indenture, the Notes, any other Note Document or any unrelated transactions (*provided* that nothing herein prevents the assertion of any such claim by separate suit or compulsory counterclaim), (viii) any invalidity or unenforceability relating to or against the Company for any reason of this Indenture, the Notes or any of the other Note Documents, (ix) any provision of applicable law or regulation purporting to prohibit the payment by the Company or any of the Guarantors of the principal of or interest on the Notes or any other amount payable and/or deliverable by the Company under this Indenture, the Notes or any other Note Document, (x) the recovery of any judgment against the Company or any Guarantor, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a Guarantor, or (xi) any other act or omission to act or delay of any kind by the Company, the Trustee, the Collateral Agent or any other Person or any other circumstance whatsoever which might, but for the provisions of this paragraph, constitute a legal or equitable discharge of or defense to such Guarantor's obligations hereunder. Each Guarantor hereby waives diligence, presentment, demand of payment and protest to the Company, filing of claims with a court in the event of insolvency or bankruptcy of the Company, any right to require a proceeding first against the Company, protest, notice and all demands whatsoever and covenant that this Guarantee will not be discharged except by complete performance of the obligations contained in the Notes and this Indenture. Each Guarantor hereby waives any right to which it may be entitled to have its Guarantee hereunder divided among the Guarantors, such that such Guarantor's Guarantee would be less than the full amount claimed. Each Guarantor hereby waives any right to which it may be entitled to have the assets of the Company first be used and depleted as payment of the Company's obligations under this Indenture, the Notes and the other Note Documents and such Guarantor's Guarantee hereunder prior to any amounts being claimed from or paid by such Guarantor hereunder. Each Guarantor hereby waives any right to which it may be entitled to require that the Company be sued prior to an action being initiated against such Guarantor.

(c) Except as expressly set forth in Section 13.02, the Guarantee of each Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense of setoff, counterclaim, recoupment or termination whatsoever or by reason of the invalidity, illegality or unenforceability of the Guaranteed Obligations or otherwise. Without limiting the generality of the foregoing, the Guarantee of each Guarantor herein shall not be discharged or impaired or otherwise affected by the failure of any Holder or the Trustee or Collateral Agent to assert any claim or demand or to enforce any remedy under this Indenture, the Notes or any other agreement, by any waiver or modification of any thereof, by any default, failure or delay, willful or otherwise, in the performance of the Guaranteed Obligations, or by any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of any Guarantor or would otherwise operate as a discharge of any Guarantor as a matter of law or equity.

(d) Except as expressly set forth in Section 13.06, each Guarantor agrees that its Guarantee shall remain in full force and effect until payment, performance and delivery in full of all the Guaranteed Obligations of such Guarantor. Each Guarantor further agrees that its Guarantee herein shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of principal of or interest on any Guaranteed Obligation is rescinded or must otherwise be restored by any Holder of the Notes or the Trustee upon the bankruptcy or reorganization of Company or any Guarantor or otherwise.

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

(f) Each Guarantor agrees that it will not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment, performance and delivery in full of all obligations guaranteed hereby. Each Guarantor further agrees that, as between the Guarantors, on the one hand, and the Holders and the Trustee and the Collateral Agent, on the other hand, (i) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 hereof for the purposes of this Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (ii) in the event of any declaration of acceleration of such obligations as provided in Article 6 hereof, such obligations (whether or not due and payable) will forthwith become due and payable by the Guarantors for the purpose of this Guarantee. The Guarantors will have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Guarantee.

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

Section 13.03. *Guarantors May Consolidate, etc., on Certain Terms.* (a) Except for a transaction made in compliance with Section 4.11 or 11.01, no Guarantor may consolidate with or merge into any other Person other than the Company or another Guarantor, or convey, transfer or lease its properties and assets substantially as an entirety to any Person, other than to the Company or another Guarantor, unless, in each case:

(1) either (a) in the case of a consolidation or merger, the Guarantor is the surviving entity, or (b) the Person formed by or surviving such consolidation or merger (if other than the Guarantor) or the Person to which such sale, assignment, transfer, conveyance, lease or other disposition has been made (such Person, the “**Successor Guarantor**”) shall expressly assume by supplemental indenture, or other amendment or supplement, all of the obligations of the Guarantor under the Note Documents;

(2) the Successor Guarantor, if any, is an entity organized and existing under the laws of the United States of America, any state thereof or the District of Columbia;

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

(5) the Guarantor has delivered to the Trustee and Collateral Agent an Officer’s Certificate and an Opinion of Counsel, each stating that such transaction complies with this Article and that all conditions precedent provided for in this Indenture and the other Note Documents relating to such transaction have been complied with.

(b) In case of any such consolidation, merger, sale or conveyance and upon the assumption by the Successor Guarantor, by supplemental indenture or other amendment or supplement, as applicable, executed and delivered to the Trustee and the Collateral Agent, of the Guarantee and the due and punctual performance of all of the obligations under this Indenture, the Collateral Documents and the other Note Documents to be performed by the Guarantor, such successor Person shall succeed to and be substituted for the Guarantor with the same effect as if it had been named herein as a Guarantor. Such Successor Guarantor thereupon may cause to be signed any or all of the Guarantees to be endorsed upon all of the Notes issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee. All the Guarantees so issued will in all respects have the same legal rank and benefit under this Indenture as the Guarantees theretofore and thereafter issued in accordance with the terms of this Indenture as though all of such Guarantees had been issued on the date of the execution hereof.

Section 13.04. *Stay of Acceleration.* If acceleration of the time for payment of any amount payable or, if applicable, deliverable by the Company under this Indenture or the Notes is stayed upon the insolvency, bankruptcy or reorganization of the Company, all such amounts otherwise subject to acceleration under the terms of this Indenture are nonetheless payable or, if applicable, deliverable by the Guarantors hereunder forthwith on demand by the Trustee, the Collateral Agent or the Holders.

Section 13.05. *Execution and Delivery of Guarantee.* The execution by each future Guarantor of a supplemental indenture evidences the Guarantee of such Guarantor, whether or not the person signing as an officer of such Guarantor still holds that office at the time of authentication of any Note. The delivery of Notes by the Trustee after authentication constitutes due delivery of the Guarantee set forth in this Indenture on behalf of each Guarantor.

Section 13.06. *Releases.*

(a) A Guarantor's Guarantee with respect to the Notes will be released automatically and immediately (without the necessity of any action by the Trustee or the Collateral Agent) upon:

(i) the consummation of any sale or other disposition of all or substantially all of the properties or assets of that Guarantor, by way of merger, consolidation or otherwise, to a Person that is not (either before or after giving effect to such transaction) the Company or a Subsidiary of the Company;

(ii) the consummation of any sale or other disposition of the Capital Stock of that Guarantor (by way of merger, consolidation or otherwise) to a Person that is not (either before or after giving effect to such transaction) the Company or a Subsidiary of the Company; *provided* that the Guarantor ceases to be a Subsidiary of the Company as a result of the sale or other disposition;

(iii) the liquidation or dissolution of such Guarantor; *provided* no Default or Event of Default occurs as a result thereof or has occurred or is continuing;

(iv) such Guarantor consolidating with, merging into or transferring all of its properties or assets to the Company or another Guarantor, and as a result of, or in connection with, such transaction such Guarantor dissolves or otherwise ceases to exist; or

(v) satisfaction and discharge of this Indenture in respect of the Notes as provided in Article 3 hereof.

(b) Upon delivery by the Company to the Trustee and the Collateral Agent of an Officer's Certificate to the effect that the action or event giving rise to a release has occurred as specified above, the Trustee or the Collateral Agent, as applicable, shall, upon receipt by it of the documents described in Section 17.05, execute any documents reasonably requested by the Company or the Trustee in order to evidence the release of any Guarantor from its obligations under its Guarantee.

(c) Any Guarantor not released from its obligations under its Guarantee as provided in this Section 13.06 will remain liable for the full amount of principal of and interest on the Notes and for the other Note Obligations of the Company and any Guarantor under this Indenture as provided in this Article 13.

Section 13.07. *Future Guarantors.* If, after the Issue Date, any entity that is organized and existing under the laws of the United States of America, any State thereof or the District of Columbia becomes a Subsidiary of the Company or any Guarantor (including by acquisition or creation), then, unless such Subsidiary would be an Excluded Subsidiary, the Company will, as soon as reasonably practicable but no later than forty-five (45) Business Days after such entity became such a Subsidiary, cause such Subsidiary to (i) execute an amended or supplemental indenture causing such Subsidiary to become a Guarantor under this Indenture and (ii) execute and deliver all applicable Collateral Documents (or supplements or joinders, as applicable, to the applicable Collateral Documents) in order to grant a lien in the Collateral owned by such Subsidiary to the Collateral Agent (for the benefit of the Secured Parties) to secure the Secured Obligations (as defined in the Security Agreement) to the same extent as set forth in this Indenture and the Collateral Documents and take all actions required by the Collateral Documents to perfect such lien.

ARTICLE 14 CONVERSION OF NOTES

Section 14.01. *Conversion Privilege.* (a) Subject to and upon compliance with the provisions of this Article 14, each Holder of a Note shall have the right, at such Holder's option, to convert all or any portion (if the portion to be converted is \$1,000 principal amount or an integral multiple of \$1.00 in excess thereof) of such Note (i) subject to satisfaction of the conditions described in Section 14.01(b), at any time prior to the close of business on the Business Day immediately preceding November 15, 2028 under the circumstances and during the periods set forth in Section 14.01(b), and (ii) regardless of the conditions described in Section 14.01(b), on or after November 15, 2028 and prior to the close of business on the second Scheduled Trading Day immediately preceding the Maturity Date, in each case, at an initial conversion rate of 260.6474 shares of Common Stock (subject to adjustment as provided in this Article 14, the "**Conversion Rate**") per \$1,000 principal amount of Notes (subject to, and in accordance with, the settlement provisions of Section 14.02, the "**Conversion Obligation**"). Notwithstanding anything to the contrary in this Section 14.01, the Notes will not be convertible at such Holder's option (A) on or after a Forced Conversion Notice Date, unless the conversion is not settled in accordance with the Forced Conversion Notice, and (B) prior to the earlier of (i) June 30, 2024, and (ii) the date the Requisite Stockholder Approval is obtained.

(b) (i) Prior to the close of business on the Business Day immediately preceding November 15, 2028, a Holder may surrender all or any portion of its Notes for conversion at any time during the five Business Day period immediately after any five consecutive Trading Day period (the "**Measurement Period**") in which the Trading Price per \$1,000 principal amount of Notes, as determined following a request by a Holder of Notes in accordance with this Section 14.01(b)(i), for each Trading Day of the Measurement Period was less than 98% of the product of the Last Reported Sale Price of the Common Stock on each such Trading Day and the Conversion Rate on each such Trading Day. The Trading Prices shall be solicited by the Bid Solicitation Agent and determined by the Company pursuant to this Section 14.01(b)(i) and the definition of Trading Price set forth in this Indenture. The Company shall provide written notice to the Bid Solicitation Agent (if other than the Company) of the three independent nationally recognized securities dealers selected by the Company pursuant to the definition of Trading Price, along with appropriate contact information for each. The Bid Solicitation Agent (if other than the Company) shall have no obligation to solicit the Trading Price per \$1,000 principal amount of Notes unless the Company has requested such solicitation in writing, and the Company shall have no obligation to make such request (or, if the Company is acting as Bid Solicitation Agent, the Company shall have no obligation to solicit and/or determine the Trading Price per \$1,000 principal amount of Notes) unless a Holder of at least \$5,000,000 aggregate principal amount of Notes provides the Company with reasonable evidence that the Trading Price per \$1,000 principal amount of Notes would be less than 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate and the Company shall instruct the three independent nationally recognized securities dealers to deliver bids to the Bid Solicitation Agent. At such time, the Company shall instruct the Bid Solicitation Agent (if other than the Company) to solicit, or if the Company is acting as Bid Solicitation Agent, the Company shall solicit such bids beginning on the next Trading Day and on each successive Trading Day until the Trading Price per \$1,000 principal amount of Notes is greater than or equal to 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate. The Company will determine the Trading Price in accordance with the bids solicited by the Bid Solicitation Agent. If (x) the Company is not acting as Bid Solicitation Agent, and the Company does not, when the Company is required to, instruct the Bid Solicitation Agent in writing to obtain the Trading Price per \$1,000 principal amount of Notes when obligated as provided in this Section 14.01(b)(i), or if the Company so instructs the Bid Solicitation Agent to obtain bids and the Bid Solicitation Agent fails to make such solicitation, or (y) the Company is acting as Bid Solicitation Agent and the Company fails to make such solicitation when obligated as provided in this Section 14.01(b)(i) then, in either case, the Trading Price per \$1,000 principal amount of Notes shall be deemed to be less than 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate on each Trading Day of such failure. If the Trading Price condition has been met on any Trading Day, the Company will so notify the Holders, the Trustee and the Conversion Agent (if other than the Trustee) in writing on or within one Business Day of such Trading Day. Any such determination will be conclusive absent manifest error. If, at any time after the Trading Price condition set forth above has been met, the Trading Price per \$1,000 principal amount of Notes is greater than or equal to 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate for such Trading Day, the Company shall so notify the Holders of the Notes, the Trustee and the Conversion Agent (if other than the Trustee) in writing that the Trading Price condition is no longer met and thereafter neither the Company nor the Bid Solicitation Agent (if other than the Company) shall be required to solicit bids again until another qualifying request is made as provided above.

(ii) If, prior to the close of business on the Business Day immediately preceding November 15, 2028, the Company elects to:

(A) issue to all or substantially all holders of shares of the Common Stock any rights, options or warrants (other than in connection with a stockholder rights plan so long as such rights have not separated from the shares of the Common Stock) entitling them, for a period of not more than 60 calendar days after the announcement date of such issuance, to subscribe for or purchase shares of the Common Stock at a price per share that is less than the average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance; or

(B) distribute to all or substantially all holders of shares of the Common Stock the Company's assets, securities or rights to purchase securities of the Company, which distribution has a per share value, as reasonably determined by the Company, exceeding 10% of the Last Reported Sale Price of the Common Stock on the Trading Day preceding the date of announcement for such distribution,

then, in either case, the Company shall notify all Holders of the Notes (with a copy to the Trustee and the Conversion Agent (if other than the Trustee)) at least 45 Scheduled Trading Days prior to the Ex-Dividend Date for such issuance or distribution (or, if later in the case of any such separation of rights issued pursuant to a stockholder rights plan, as soon as reasonably practicable after the Company becomes aware that such separation or triggering event has occurred or will occur). Once the Company has given such notice, a Holder may surrender all or any portion of its Notes for conversion at any time until the earlier of (1) the close of business on the Business Day immediately preceding the Ex-Dividend Date for such issuance or distribution and (2) the Company's announcement that such issuance or distribution will not take place, in each case, even if the Notes are not otherwise convertible at such time; *provided* that Holders of the Notes may not convert their Notes pursuant to this Section 14.01(b)(ii) if they participate, at the same time and upon the same terms as holders of the Common Stock and solely as a result of holding the Notes, in any of the transactions described in clause (A) or (B) of this Section 14.01(b)(ii) without having to convert their Notes as if they held a number of shares of the Common Stock equal to the product of (x) the Applicable Conversion Multiplier and (y) the applicable Conversion Rate as of the record date for such distribution.

(iii) If (i) a transaction or event that constitutes (x) a Fundamental Change or (y) a Make-Whole Fundamental Change occurs prior to the close of business on the Business Day immediately preceding November 15, 2028, regardless of whether a Holder has the right to require the Company to repurchase the Notes pursuant to Section 15.02, or (ii) the Company is a party to a Merger Event (as defined below) (other than a Merger Event that is solely for the purpose of changing the Company's jurisdiction of organization that (x) does not constitute a Fundamental Change or a Make-Whole Fundamental Change and (y) results in a reclassification, conversion or exchange of outstanding shares of the Common Stock solely into shares of common stock of the surviving entity and such common stock becomes Reference Property for the Notes) that occurs prior to the close of business on the Business Day immediately preceding November 15, 2028 (each such Fundamental Change, Make-Whole Fundamental Change or Merger Event, a "**Corporate Event**"), all or any portion of a Holder's Notes may be surrendered for conversion at any time from and after the effective date for such Corporate Event until the earlier of (x) 35 Scheduled Trading Days after the effective date of such Corporate Event (or, if the Company gives notice of such Corporate Event after the effective date of such Corporate Event, until 35 Trading Days after the date the Company gives notice of such Corporate Event), or if such Corporate Event also constitutes a Fundamental Change, until the close of business on the Business Day immediately preceding the related Fundamental Change Repurchase Date and (y) the close of business on the second Scheduled Trading Day immediately preceding the Maturity Date. The Company shall notify Holders, the Trustee and the Conversion Agent (if other than the Trustee) in writing no later than the effective date of such Corporate Event.

(iv) Prior to the close of business on the Business Day immediately preceding November 15, 2028, a Holder may surrender all or any portion of its Notes for conversion at any time during any calendar quarter commencing after the calendar quarter ending on March 31, 2024 (and only during such calendar quarter), if the Last Reported Sale Price of the Common Stock for at least 20 Trading Days (whether or not consecutive) during the period of 30 consecutive Trading Days ending on, and including, the last Trading Day of the immediately preceding calendar quarter is greater than or equal to 130% of the Conversion Price then in effect on each applicable Trading Day. Neither the Trustee nor the Conversion Agent (if other than the Trustee) shall have any duty to determine or verify the determination of whether the sale price condition in this Section 14.01(b)(iv) has been met.

Section 14.02. *Conversion Procedure; Settlement upon Conversion.*

(a) Subject to this Section 14.02, Section 14.03(b), Section 14.07(a), Section 14.13 and Section 14.14, upon conversion of any Note, the Company shall satisfy its Conversion Obligation by paying or delivering, as the case may be, to the converting Holder, in respect of Notes being converted, cash (“**Cash Settlement**”), shares of Common Stock, together with cash, if applicable, in lieu of delivering any fractional share of Common Stock in accordance with subsection (j) of this Section 14.02 (“**Physical Settlement**”) or a combination of cash and shares of Common Stock, together with cash, if applicable, in lieu of delivering any fractional share of Common Stock in accordance with subsection (j) of this Section 14.02 (“**Combination Settlement**”), at its election, as set forth in this Section 14.02.

(i) All conversions for which the relevant Conversion Date occurs (x) on or after November 15, 2028 shall be settled using the same Settlement Method or (y) in connection with a Forced Conversion shall be settled using the same Settlement Method.

(ii) Except for any conversions for which the relevant Conversion Date occurs on or after November 15, 2028, the Company shall use the same Settlement Method for all conversions occurring on the same Conversion Date, but the Company shall not have any obligation to use the same Settlement Method with respect to conversions that occur on different Conversion Dates.

(iii) If, in respect of any Conversion Date (or in the case of any conversions occurring or after November 15, 2028), the Company elects to deliver a notice (the “**Settlement Notice**”) of the relevant Settlement Method in respect of such Conversion Date (or such period, as the case may be), the Company shall deliver such Settlement Notice to converting Holders, the Trustee and the Conversion Agent (if other than the Trustee) no later than the close of business on the Scheduled Trading Day immediately following the relevant Conversion Date (or, in the case of any conversions occurring on or after November 15, 2028, no later than the close of business on Scheduled Trading Day immediately preceding November 15, 2028) (in each case, the “**Settlement Method Election Deadline**”). If the Company does not timely elect a Settlement Method prior to the deadline set forth in the immediately preceding sentence, the Company shall be deemed to have elected Physical Settlement in respect of its Conversion Obligation. Such Settlement Notice shall specify the relevant Settlement Method and in the case of an election of Combination Settlement, the relevant Settlement Notice shall indicate the Specified Dollar Amount per \$1,000 principal amount of Notes. If the Company timely delivers a Settlement Notice electing Combination Settlement in respect of its Conversion Obligation but does not indicate a Specified Dollar Amount per \$1,000 principal amount of Notes in such Settlement Notice, the Specified Dollar Amount per \$1,000 principal amount of Notes shall be deemed to be \$1,000.

By notice to Holders, the Trustee and the Conversion Agent (if other than the Trustee), the Company may, prior to November 15, 2028, at its option, irrevocably elect to satisfy its Conversion Obligation with respect to the Notes through Combination Settlement with a Specified Dollar Amount per \$1,000 principal amount of Notes of at least \$1,000 for all Conversion Dates occurring subsequent to delivery of such notice. If the Company irrevocably elects Combination Settlement with an ability to continue to set the Specified Dollar Amount per \$1,000 principal amount of Notes at or above a specific amount, the Company will, after the date of such election, inform Holders converting their Notes, the Trustee and the Conversion Agent (if other than the Trustee) of such Specified Dollar Amount no later than the relevant Settlement Method Election Deadline, or, if the Company does not timely notify Holders, the Trustee and the Conversion Agent (if other than the Trustee), such Specified Dollar Amount will be the specific amount set forth in the Settlement Notice or, if no specific amount was set forth in the Settlement Notice, such Specified Dollar Amount will be \$1,000 per \$1,000 principal amount of Notes. The irrevocable election will apply to all Note conversions on Conversion Dates occurring subsequent to delivery of such notice; provided, however, that no such election will affect any settlement method theretofore elected (or deemed to be elected) with respect to any Note. For the avoidance of doubt, such an irrevocable election, if made, will be effective without the need to amend this Indenture or the Notes, including pursuant to Section 10.01(l). However, the Company may nonetheless choose to execute such an amendment at its option.

If the Company irrevocably fixes the Settlement Method pursuant to this Section 14.02(a)(iii), then, concurrently with providing notice to Holders of the Notes, the Trustee and the Conversion Agent (if other than the Trustee) of such election, the Company shall either post the fixed settlement method on its website or disclose the same in a current report on Form 8-K (or any successor form) that is filed with the Commission.

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

(A) subject to Section 14.14, if the Company elects to satisfy its Conversion Obligation in respect of such conversion by Physical Settlement, the Company shall deliver to the converting Holder in respect of the Notes being converted a number of shares of Common Stock equal to the product of (A) the Applicable Conversion Multiplier and (B) the Conversion Rate in effect on the Conversion Date;

(B) if the Company elects to satisfy its Conversion Obligation in respect of such conversion by Cash Settlement, the Company shall pay to the converting Holder in respect of the Notes being converted cash in an amount equal to the product of (A) the Applicable Conversion Multiplier and (B) the sum of the Daily Conversion Values for each of the 40 consecutive Trading Days during the related Observation Period; and

(C) subject to Section 14.14, if the Company elects (or is deemed to have elected) to satisfy its Conversion Obligation in respect of such conversion by Combination Settlement, the Company shall pay or deliver, as the case may be, to the converting Holder in respect of the Notes being converted, a Settlement Amount equal to the product of (A) the Applicable Conversion Multiplier and (B) the sum of the Daily Settlement Amounts for each of the 40 consecutive Trading Days during the related Observation Period.

(v) The Daily Settlement Amounts (if applicable) and the Daily Conversion Values (if applicable) shall be determined by the Company promptly following the last day of the Observation Period. Promptly after such determination of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and the amount of cash payable in lieu of delivering any fractional share of Common Stock, the Company shall notify the Trustee and the Conversion Agent (if other than the Trustee) of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and the amount of cash payable in lieu of delivering fractional shares of Common Stock. The Trustee and the Conversion Agent (if other than the Trustee) shall have no responsibility for any such determination.

(b) Subject to Section 14.02(e), before any Holder of a Note shall be entitled to convert a Note as set forth above, such Holder shall (i) in the case of a Global Note, comply with the applicable procedures of the Depositary in effect at that time and, if required, pay funds equal to interest payable on the next Interest Payment Date to which such Holder is not entitled as set forth in Section 14.02(h) and (ii) in the case of a Physical Note (1) complete, manually sign and deliver an irrevocable notice to the Conversion Agent as set forth in the Form of Notice of Conversion (or a facsimile, PDF or other electronic transmission thereof) (a notice pursuant to the applicable procedures of the Depositary or a notice as set forth in the Form of Notice of Conversion, a “**Notice of Conversion**”) at the office of the Conversion Agent and state in writing therein the principal amount of Notes to be converted and the name or names (with addresses) in which such Holder wishes the certificate or certificates for any shares of Common Stock to be delivered upon settlement of the Conversion Obligation to be registered, (2) surrender such Notes, duly endorsed to the Company or in blank (and accompanied by appropriate endorsement and transfer documents), at the office of the Conversion Agent, (3) if required, furnish appropriate endorsements and transfer documents and (4) if required, pay funds equal to interest payable on the next Interest Payment Date to which such Holder is not entitled as set forth in Section 14.02(h). The Trustee (and, if different, the Conversion Agent) shall notify the Company of any conversion pursuant to this Article 14 on the Conversion Date for such conversion. No Notes may be surrendered for conversion by a Holder thereof if such Holder has also delivered a Fundamental Change Repurchase Notice to the Company in respect of such Notes and has not validly withdrawn such Fundamental Change Repurchase Notice in accordance with Section 15.03.

If more than one Note shall be surrendered for conversion at one time by the same Holder, the Conversion Obligation with respect to such Notes shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof to the extent permitted thereby) so surrendered.

(c) A Note shall be deemed to have been converted immediately prior to the close of business on the date (the “**Conversion Date**”) that the Holder has complied with the requirements set forth in subsection (b) above. Except as set forth in Section 14.03(b) and Section 14.07(a), the Company shall pay or deliver, as the case may be, the consideration due in respect of the Conversion Obligation on the second Business Day immediately following the relevant Conversion Date, if the Company elects Physical Settlement, or on the second Business Day immediately following the last Trading Day of the relevant Observation Period, in the case of any other Settlement Method. If any shares of Common Stock are due to a converting Holder, the Company shall issue or cause to be issued, and deliver to the Conversion Agent or to such Holder, or such Holder’s nominee or nominees, certificates or a book-entry transfer through the Depositary for the full number of shares of Common Stock to which such Holder shall be entitled in satisfaction of the Company’s Conversion Obligation.

(d) In case any Note shall be surrendered for partial conversion, the Company shall execute and the Trustee shall authenticate and deliver to or upon the written order of the Holder of the Note so surrendered a new Note or Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Note, without payment of any service charge by the converting Holder but, if required by the Company or Trustee, with payment of a sum sufficient to cover any documentary, stamp or similar issue or transfer tax or similar governmental charge required by law or that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such conversion being different from the name of the Holder of the old Notes surrendered for such conversion.

(e) If a Holder submits a Note for conversion, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of any shares of Common Stock upon conversion, unless the tax is due because the Holder requests such shares to be issued in a name other than the Holder's name, in which case the Holder shall pay such tax. The Conversion Agent may refuse to deliver the certificates representing the shares of Common Stock being issued in a name other than the Holder's name until the Trustee receives a sum sufficient to pay any tax that is due by such Holder in accordance with the immediately preceding sentence.

(f) Except as provided in Section 14.04, no adjustment shall be made for dividends on any shares of Common Stock issued upon the conversion of any Note as provided in this Article 14.

(g) Upon the conversion of an interest in a Global Note, the Trustee, or the Custodian at the direction of the Trustee, shall make a notation on such Global Note as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing of any conversion of Notes effected through any Conversion Agent other than the Trustee.

(h) Upon conversion, a Holder shall not receive any separate cash payment or PIK Payment for accrued and unpaid interest, if any, except as set forth below. The Company's settlement of the full Conversion Obligation shall be deemed to satisfy in full its obligation to pay the principal amount of the Note and accrued and unpaid interest, if any, to, but excluding, the relevant Conversion Date. As a result, accrued and unpaid interest, if any, to, but excluding, the relevant Conversion Date shall be deemed to be paid in full rather than cancelled, extinguished or forfeited. Upon a conversion of Notes into a combination of cash and shares of Common Stock, accrued and unpaid interest will be deemed to be paid first out of the cash paid upon such conversion. Notwithstanding the foregoing, if Notes are converted after the close of business on a Regular Record Date and prior to the open of business on the corresponding Interest Payment Date, Holders of such Notes as of the close of business on such Regular Record Date will receive the full amount of interest payable on such Notes on the corresponding Interest Payment Date notwithstanding the conversion. Notes surrendered for conversion during the period from the close of business on any Regular Record Date to the open of business on the immediately following Interest Payment Date must be accompanied by funds equal to the amount of Cash Interest payable on the Notes so converted; *provided* that no such payment shall be required (1) for conversions following the Regular Record Date immediately preceding the Maturity Date; (2) if the Company has specified a Fundamental Change Repurchase Date that is after a Regular Record Date and on or prior to the Business Day immediately succeeding the corresponding Interest Payment Date; (3) if the Company has specified a Forced Conversion Date that is after a Regular Record Date and on or prior to the second Scheduled Trading Day immediately succeeding the corresponding Interest Payment Date, or (4) to the extent of any Defaulted Amounts, if any Defaulted Amounts exists at the time of conversion with respect to such Note. Therefore, for the avoidance of doubt, all Holders of record on the Regular Record Date immediately preceding the Maturity Date, any Fundamental Change Repurchase Date or Forced Conversion Date, in each case, as described above, shall receive the full interest payment due on the Maturity Date or other applicable Interest Payment Date via Cash Interest regardless of whether their Notes have been converted and/or repurchased, as applicable, following such Regular Record Date.

(i) The Person in whose name the certificate for any shares of Common Stock delivered upon conversion is registered shall be treated as a stockholder of record as of the close of business on the relevant Conversion Date (if the Company elects to satisfy the related Conversion Obligation by Physical Settlement) or the last Trading Day of the relevant Observation Period (if the Company elects to satisfy the related Conversion Obligation by Combination Settlement), as the case may be. Upon a conversion of Notes, such Person shall no longer be a Holder of such Notes surrendered for conversion.

(j) The Company shall not issue any fractional share of Common Stock upon conversion of the Notes and shall instead pay cash in lieu of delivering any fractional share of Common Stock issuable upon conversion based on the Daily VWAP on the relevant Conversion Date (in the case of Physical Settlement) or based on the Daily VWAP on the last Trading Day of the relevant Observation Period (in the case of Combination Settlement). For each Note surrendered for conversion, if the Company has elected (or is deemed to have elected) Combination Settlement, the full number of shares that shall be issued upon conversion thereof shall be computed on the basis of the aggregate Daily Settlement Amounts for the relevant Observation Period and any fractional shares remaining after such computation shall be paid in cash.

Section 14.03. *Increased Conversion Rate Applicable to Certain Notes Surrendered in Connection with Make-Whole Fundamental Changes.* (a) If the Effective Date of a Make-Whole Fundamental Change occurs prior to the Maturity Date and a Holder elects to convert its Notes (or any portion thereof) in connection with such Make-Whole Fundamental Change, the Company shall, under the circumstances described below, increase the Conversion Rate for the Notes so surrendered for conversion by a number of additional shares of Common Stock (the “**Additional Shares**”), as described below. A conversion of Notes shall be deemed for these purposes to be “in connection with” such Make-Whole Fundamental Change if the relevant Conversion Date occurs during the period from, and including, the Effective Date of the Make-Whole Fundamental Change up to, and including, the Business Day immediately prior to the related Fundamental Change Repurchase Date (or, in the case of a Make-Whole Fundamental Change that would have been a Fundamental Change but for the *proviso* in clause (b) of the definition thereof, the 35th Trading Day immediately following the Effective Date of such Make-Whole Fundamental Change) (such period, the “**Make-Whole Fundamental Change Period**”).

(b) Upon surrender of Notes for conversion during a Make-Whole Fundamental Change Period, the Company shall, at its option, satisfy the related Conversion Obligation by Physical Settlement, Cash Settlement or Combination Settlement in accordance with Section 14.02 based on the Conversion Rate as increased to reflect the Additional Shares pursuant to the table below; *provided, however*, that, if the Reference Property in any Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change is composed entirely of cash, for any conversion of Notes following the Effective Date of such Make-Whole Fundamental Change, the Conversion Obligation shall be calculated based solely on the Stock Price for the transaction and shall be deemed to be an amount of cash per \$1,000 principal amount of converted Notes equal to the Conversion Rate (including any increase to reflect the Additional Shares per \$1,000 principal amount), *multiplied by* such Stock Price. In such event, the Conversion Obligation shall be determined and paid to Holders in cash on the second Business Day following the Conversion Date. The Company shall notify the Holders, the Trustee and the Conversion Agent (if other than the Trustee) in writing of the Effective Date of any Make-Whole Fundamental Change no later than five Business Days after such Effective Date.

(c) The number of Additional Shares, if any, by which the Conversion Rate shall be increased for conversions during the Make-Whole Fundamental Change Period shall be determined by reference to the table below, based on the date on which the Make-Whole Fundamental Change occurs or becomes effective (the “**Effective Date**”), and the price (the “**Stock Price**”) paid (or deemed to be paid) per share of the Common Stock in the Make-Whole Fundamental Change as set forth in this Section 14.03. If the holders of the Common Stock receive in exchange for their Common Stock only cash in a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the Stock Price shall be the cash amount paid per share. In the case of any other Make-Whole Fundamental Change, the Stock Price shall be the average of the Last Reported Sale Prices of the Common Stock over the five consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Effective Date of the Make-Whole Fundamental Change.

(d) The Stock Prices set forth in the column headings of the table below shall be adjusted as of any date on which the Conversion Rate of the Notes is otherwise adjusted. The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, *multiplied by* a fraction, the numerator of which is the Conversion Rate immediately prior to such adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares set forth in the table below shall be adjusted in the same manner and at the same time as the Conversion Rate as set forth in Section 14.04.

(e) The following table sets forth the number of Additional Shares by which the Conversion Rate shall be increased per \$1,000 principal amount of Notes pursuant to this Section 14.03 for each Stock Price and Effective Date set forth below:

Effective Date	Stock Price									
	\$ 3.3362	\$ 3.5000	\$ 3.8366	\$ 4.0000	\$ 5.0000	\$ 6.0000	\$7.0000	\$7.6732	\$9.0000	\$10.0000
January 2, 2024	39.0948	36.0286	30.6754	28.4850	18.8220	13.2817	9.9614	8.4657	6.5211	5.5750
February 15, 2025	39.0948	36.0286	30.4279	27.9750	16.6500	9.3550	4.4414	0.0000	0.0000	0.0000
February 15, 2026	39.0948	36.0286	30.3914	27.8675	16.4540	9.2367	4.3929	0.0000	0.0000	0.0000
February 15, 2027	39.0948	35.8457	29.2162	26.5975	15.3680	8.6267	4.1271	0.0000	0.0000	0.0000
February 15, 2028	39.0948	32.9457	24.8827	21.9725	11.5060	6.5433	3.3343	0.0000	0.0000	0.0000
February 15, 2029	39.0948	25.0686	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

The exact Stock Prices and Effective Dates may not be set forth in the table above, in which case:

(i) if the Stock Price is between two Stock Prices in the table above or the Effective Date is between two Effective Dates in the table above, the number of Additional Shares by which the Conversion Rate shall be increased shall be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Stock Prices and the earlier and later Effective Dates, as applicable, based on a 365-day year or 366-day year, as applicable;

(ii) if the Stock Price is greater than \$10.0000 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above pursuant to subsection (d) above), no Additional Shares shall be added to the Conversion Rate; and

(iii) if the Stock Price is less than \$3.3362 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above pursuant to subsection (d) above), no Additional Shares shall be added to the Conversion Rate.

Notwithstanding the foregoing, in no event shall the Conversion Rate per \$1,000 principal amount of Notes exceed 299.7422 shares of Common Stock, subject to adjustment in the same manner as the Conversion Rate pursuant to Section 14.04.

(f) Nothing in this Section 14.03 shall prevent an adjustment to the Conversion Rate pursuant to Section 14.04 in respect of a Make-Whole Fundamental Change.

Section 14.04. *Adjustment of Conversion Rate.* The Conversion Rate shall be adjusted from time to time by the Company if any of the following events occurs, except that the Company shall not make any adjustments to the Conversion Rate if Holders of the Notes participate (other than in the case of (x) a share split or share combination or (y) a tender or exchange offer), at the same time and upon the same terms as holders of the Common Stock and solely as a result of holding the Notes, in any of the transactions described in this Section 14.04, without having to convert their Notes, as if they held a number of shares of Common Stock equal to the product of (A) the Applicable Conversion Multiplier and (B) the Conversion Rate in effect at such time.

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

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

where,

- CR_0 = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date of such dividend or distribution, or immediately prior to the open of business on the Effective Date of such share split or share combination, as applicable;
- CR' = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date or Effective Date, as the case may be;
- OS_0 = the number of shares of Common Stock outstanding immediately prior to the open of business on such Ex-Dividend Date or Effective Date (before giving effect to any such dividend, distribution, share split or share combination), as the case may be; and
- OS' = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination, as the case may be.

Any adjustment made under this Section 14.04(a) shall become effective immediately after the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately after the open of business on the Effective Date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this Section 14.04(a) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(b) If the Company issues to all or substantially all holders of the Common Stock any rights, options or warrants (other than in connection with a stockholder rights plan) entitling them, for a period of not more than 60 calendar days after the announcement date of such issuance, to subscribe for or purchase shares of the Common Stock at a price per share that is less than the average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, the Conversion Rate shall be increased based on the following formula:

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

where,

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

- OS₀ = the number of shares of Common Stock outstanding immediately prior to the open of business on such Ex-Dividend Date;
- X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and
- Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants, *divided by* the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of the issuance of such rights, options or warrants.

Any increase made under this Section 14.04(b) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the open of business on the Ex-Dividend Date for such issuance. To the extent that shares of the Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so issued, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such Ex-Dividend Date for such issuance had not occurred.

For purposes of this Section 14.04(b) and Section 14.01(b)(ii)(A), in determining whether any rights, options or warrants entitle the holders of Common Stock to subscribe for or purchase shares of the Common Stock at less than such average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Company.

(c) If the Company distributes shares of its Capital Stock, evidences of its indebtedness, other assets or property of the Company or rights, options or warrants to acquire its Capital Stock or other securities of the Company, to all or substantially all holders of the Common Stock, excluding (i) dividends, distributions or issuances (including share splits) as to which an adjustment was effected pursuant to Section 14.04(a) or Section 14.04(b), (ii) dividends or distributions paid exclusively in cash as to which an adjustment was effected pursuant to Section 14.04(d), (iii) rights issued pursuant a stockholder rights plan except as set forth in Section 14.11, (iv) distributions of Reference Property in a transaction described in Section 14.07 and (v) Spin-Offs as to which the provisions set forth below in this Section 14.04(c) shall apply (any of such shares of Capital Stock, evidences of indebtedness, other assets or property or rights, options or warrants to acquire Capital Stock or other securities, the “**Distributed Property**”), then the Conversion Rate shall be increased based on the following formula:

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

where,

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

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

SP_0 = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

FMV = the fair market value (as determined by the Company) of the Distributed Property with respect to each outstanding share of the Common Stock on the Ex-Dividend Date for such distribution.

Any increase made under the portion of this Section 14.04(c) above shall become effective immediately after the open of business on the Ex-Dividend Date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such distribution had not been declared.

Notwithstanding the foregoing, if “FMV” (as defined above) is equal to or greater than “ SP_0 ” (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, in respect of each \$1,000 principal amount thereof, at the same time and upon the same terms as holders of the Common Stock receive the Distributed Property, the amount and kind of Distributed Property such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect on the Ex-Dividend Date for the distribution.

With respect to an adjustment pursuant to this Section 14.04(c) where there has been a payment of a dividend or other distribution on the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to any of its Subsidiaries or other business units of the Company, that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange (a “**Spin-Off**”), the Conversion Rate shall be increased based on the following formula:

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

where,

CR_0 = the Conversion Rate in effect immediately prior to the end of the Valuation Period;

CR' = the Conversion Rate in effect immediately after the end of the Valuation Period;

FMV₀ = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of the Common Stock (determined by reference to the definition of Last Reported Sale Price as set forth in Section 1.01 as if references therein to Common Stock were to such Capital Stock or similar equity interest) over the first 10 consecutive Trading Day period after, and including, the Ex-Dividend Date of the Spin-Off (the “**Valuation Period**”) *provided* that, if there is no Last Reported Sale Price of the Capital Stock or similar equity interest distributed to holders of the Common Stock on such Ex-Dividend Date, the “Valuation Period” shall be the 10 consecutive Trading Day period after, and including the first Trading Day such Last Reported Sale Price is available; and

MP₀ = the average of the Last Reported Sale Prices of the Common Stock over the Valuation Period.

The adjustment to the Conversion Rate under the preceding paragraph shall occur at the close of business on the last Trading Day of the Valuation Period; *provided* that (x) in respect of any conversion of Notes for which Physical Settlement is applicable, if the relevant Conversion Date occurs during the Valuation Period, references to “10” in the portion of this Section 14.04(c) related to Spin-Offs shall be deemed to be replaced with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date of such Spin-Off to, and including, the Conversion Date in determining the Conversion Rate and (y) in respect of any conversion of Notes for which Cash Settlement or Combination Settlement is applicable, for any Trading Day that falls within the relevant Observation Period for such conversion and within the Valuation Period, references to “10” in the portion of this Section 14.04(c) related to Spin-Offs shall be deemed to be replaced with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date of such Spin-Off to, and including, such Trading Day in determining the Conversion Rate as of such Trading Day of such Observation Period. If any dividend or distribution that constitutes a Spin-Off is declared but not so paid or made, the Conversion Rate shall be immediately decreased, effective as of the date the Board of Directors determines not to pay or make such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared or announced.

For purposes of this Section 14.04(c) (and subject in all respect to Section 14.11), rights, options or warrants distributed by the Company to all holders of the Common Stock entitling them to subscribe for or purchase shares of the Company’s Capital Stock, including Common Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events (“**Trigger Event**”): (i) are deemed to be transferred with such shares of the Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the Common Stock, shall be deemed not to have been distributed for purposes of this Section 14.04(c) (and no adjustment to the Conversion Rate under this Section 14.04(c) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 14.04(c). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Ex-Dividend Date with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the immediately preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 14.04(c) was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or purchase (x) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Conversion Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or purchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or purchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of Section 14.04(a), Section 14.04(b) and this Section 14.04(c), if any dividend or distribution to which this Section 14.04(c) is applicable also includes one or both of:

(A) a dividend or distribution of shares of Common Stock to which Section 14.04(a) is applicable (the “**Clause A Distribution**”); or

(B) a dividend or distribution of rights, options or warrants to which Section 14.04(b) is applicable (the “**Clause B Distribution**”),

then, in either case, (1) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this Section 14.04(c) is applicable (the “**Clause C Distribution**”) and any Conversion Rate adjustment required by this Section 14.04(c) with respect to such Clause C Distribution shall then be made, and (2) the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C Distribution and any Conversion Rate adjustment required by Section 14.04(a) and Section 14.04(b) with respect thereto shall then be made, except that, if determined by the Company (I) the “Ex-Dividend Date” of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Ex-Dividend Date of the Clause C Distribution and (II) any shares of Common Stock included in the Clause A Distribution or Clause B Distribution shall be deemed not to be “outstanding immediately prior to the open of business on such Ex-Dividend Date or Effective Date” within the meaning of Section 14.04(a) or “outstanding immediately prior to the open of business on such Ex-Dividend Date” within the meaning of Section 14.04(b).

(d) If the Company makes any cash dividend or distribution to all or substantially all holders of the Common Stock, the Conversion Rate shall be adjusted based on the following formula:

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

where,

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

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

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

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

Any increase made under this Section 14.04(d) shall become effective immediately after the open of business on the Ex-Dividend Date for such dividend or distribution. If such dividend or distribution is not so paid, the Conversion Rate shall be decreased, effective as of the date the Board of Directors determines not to make or pay such dividend or distribution, to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. Notwithstanding the foregoing, if “C” (as defined above) is equal to or greater than “ SP_0 ” (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, for each \$1,000 principal amount of Notes it holds, at the same time and upon the same terms as holders of shares of the Common Stock, the amount of cash that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate in effect on the Ex-Dividend Date for such cash dividend or distribution.

(e) If the Company or any of its Subsidiaries make a payment in respect of a tender or exchange offer for the Common Stock that is subject to the then applicable tender offer rules under the Exchange Act, other than an odd lot tender offer, to the extent that the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the Conversion Rate shall be increased based on the following formula:

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

where,

- CR₀ = the Conversion Rate in effect immediately prior to the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;
- CR' = the Conversion Rate in effect immediately after the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;
- AC = the aggregate value of all cash and any other consideration (as determined by the Company) paid or payable for shares of Common Stock purchased in such tender or exchange offer;
- OS₀ = the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires (prior to giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);
- OS' = the number of shares of Common Stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer); and
- SP' = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires.

The adjustment to the Conversion Rate under this Section 14.04(e) shall occur at the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires; *provided* that (x) in respect of any conversion of Notes for which Physical Settlement is applicable, if the relevant Conversion Date occurs during the 10 Trading Days immediately following, and including, the Trading Day next succeeding the expiration date of any tender or exchange offer, references to “10” or “10th” in this Section 14.04(e) shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the expiration date of such tender or exchange offer to, and including, such Conversion Date in determining the Conversion Rate and (y) in respect of any conversion of Notes for which Cash Settlement or Combination Settlement is applicable, for any Trading Day that falls within the relevant Observation Period for such conversion and within the 10 Trading Days immediately following, and including, the Trading Day next succeeding the expiration date of any tender or exchange offer, references to “10” or “10th” in this Section 14.04(e) shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the expiration date of such tender or exchange offer to, and including, such Trading Day in determining the Conversion Rate as of such Trading Day. If the Company or one of its Subsidiaries is obligated to purchase Common Stock pursuant to any such tender or exchange offer described in this Section 14.04(e) but the Company is, or such Subsidiary is, permanently prevented by applicable law from effecting any such purchase or all such purchases are rescinded, the Conversion Rate will be decreased to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made or had been made only in respect of the purchases that have been effected.

(f) Notwithstanding this Section 14.04 or any other provision of this Indenture or the Notes, if a Conversion Rate adjustment becomes effective on any Ex-Dividend Date, and a Holder that has converted its Notes on or after such Ex-Dividend Date and on or prior to the related Record Date would be treated as the record holder of the shares of Common Stock as of the related Conversion Date as described under Section 14.02(i) based on an adjusted Conversion Rate for such Ex-Dividend Date, then, notwithstanding the Conversion Rate adjustment provisions in this Section 14.04, the Conversion Rate adjustment relating to such Ex-Dividend Date shall not be made for such converting Holder. Instead, such Holder shall be treated as if such Holder were the record owner of the shares of Common Stock on an unadjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

(g) Except as stated herein, the Company shall not adjust the Conversion Rate for the issuance of shares of the Common Stock or any securities convertible into or exchangeable for shares of the Common Stock or the right to purchase shares of the Common Stock or such convertible or exchangeable securities.

(h) In addition to those adjustments required by clauses (a), (b), (c), (d) and (e) of this Section 14.04, and subject to the applicable listing standards of The New York Stock Exchange (or, if the Common Stock is not then listed on The New York Stock Exchange, the applicable listing standards of the principal other U.S. national or regional securities exchange on which the Common Stock is listed), the Company from time to time may increase the Conversion Rate by any amount for a period of at least 20 Business Days if the Board of Directors determines that such increase would be in the Company's best interest. In addition, subject to the applicable listing standards of The New York Stock Exchange (or, if the Common Stock is not then listed on The New York Stock Exchange, the applicable listing standards of the principal other U.S. national or regional securities exchange on which the Common Stock is listed), the Company may (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock in connection with a dividend or distribution of shares of Common Stock (or rights to acquire shares of Common Stock) or similar event.

(i) Notwithstanding anything to the contrary in this Article 14, the Conversion Rate shall not be adjusted:

(i) upon the issuance of shares of Common Stock at a price below the Conversion Price or otherwise, other than any such issuance described in Section 14.04(a), Section 14.04(b) and Section 14.04(c) above;

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

(iii) upon the issuance of any shares of Common Stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit or incentive plan or program (including pursuant to any evergreen plan) of or assumed by the Company or any of the Company's Subsidiaries;

(iv) upon the issuance of any shares of the Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (iii) of this subsection and outstanding as of the date the Notes were first issued;

(v) for a third-party tender offer by any party other than a tender offer by one or more of the Company's Subsidiaries as described in Section 14.04(e) above;

(vi) upon the repurchase of any shares of Common Stock pursuant to an open-market share repurchase program or other buy-back transaction (including, without limitation, through any structured or derivative transactions such as accelerated share repurchase transactions or similar forward derivatives), or other buy-back transaction, that is not a tender offer or exchange offer of the nature described in Section 14.04(e);

(vii) solely for a change in the par value (or lack of par value) of the Common Stock; or

(viii) for accrued and unpaid interest, if any.

(j) The Company shall not be required to make an adjustment pursuant to clauses (a), (b), (c), (d) or (e) of this Section 14.04 unless such adjustment would result in a change of at least 1% of the then effective Conversion Rate. However, the Company shall carry forward any adjustment that the Company would otherwise have to make and take that adjustment into account in any subsequent adjustment. Notwithstanding the foregoing, all such carried-forward adjustments shall be made with respect to the Notes (i) when the aggregate of all such carried-forward adjustments equals or exceeds 1% of the Conversion Rate, (ii) regardless of whether the aggregate adjustment is less than 1% of the Conversion Rate, (x) on the Conversion Date for any Notes (in the case of Physical Settlement) and (y) on each Trading Day of any Observation Period (in the case of Cash Settlement or Combination Settlement) (iii) November 15, 2028, (iv) on any date on which a Forced Conversion Notice is delivered by the Company and (v) on the Effective Date of any Make-Whole Fundamental Change, in each case, unless the adjustment has already been made. All calculations and other determinations under this Article 14 shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000th) of a share.

(k) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee (and the Conversion Agent if not the Trustee) an Officer's Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Neither the Trustee nor the Conversion Agent shall have any responsibility to verify the accuracy of any adjustment to the Conversion Rate. Unless and until a Responsible Officer of the Trustee shall have received such Officer's Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume without inquiry that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall deliver such notice of such adjustment of the Conversion Rate to each Holder. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(l) For purposes of this Section 14.04, the number of shares of Common Stock at any time outstanding shall not include shares of Common Stock held in the treasury of the Company so long as the Company does not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company, but shall include shares of Common Stock issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

Section 14.05. *Adjustments of Prices.* Whenever any provision of this Indenture requires the Company to calculate the Last Reported Sale Prices, the Daily VWAPs, the Daily Conversion Values or the Daily Settlement Amounts over a span of multiple days (including, without limitation, an Observation Period and the period, if any, for determining the Stock Price for purposes of a Make-Whole Fundamental Change), the Company shall make appropriate adjustments (without duplication in respect of any adjustment made pursuant to the provisions described under Section 14.04) to each to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date, Effective Date or expiration date of the event occurs, at any time during the period when the Last Reported Sale Prices, the Daily VWAPs, the Daily Conversion Values or the Daily Settlement Amounts are to be calculated.

Section 14.06. *Shares to Be Fully Paid.* The Company shall use its commercially reasonable efforts to provide, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to provide for conversion of the Notes from time to time as such Notes are presented for conversion (assuming delivery of the maximum number of Additional Shares pursuant to Section 14.03 and that at the time of computation of such number of shares, all such Notes would be converted by a single Holder and that Physical Settlement is applicable).

Section 14.07. *Effect of Recapitalizations, Reclassifications and Changes of the Common Stock.*

(a) In the case of:

(i) any recapitalization, reclassification or change of the Common Stock (other than a change to par value, or from par value to no par value, or changes resulting from a subdivision or combination),

(ii) any consolidation, merger, combination or similar transaction involving the Company,

(iii) any sale, lease or other transfer to a third party of the consolidated assets of the Company and the Company's Subsidiaries substantially as an entirety or

(iv) any statutory share exchange,

in each case, as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any such event, a **“Merger Event”**), then, at and after the effective time of such Merger Event, the right to convert the principal amount of Notes shall be changed into a right to convert such principal amount of Notes into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of Common Stock equal to the Conversion Rate immediately prior to such Merger Event would have owned or been entitled to receive (the **“Reference Property”**, with each **“unit of Reference Property”** meaning the kind and amount of Reference Property that a holder of one share of Common Stock is entitled to receive) upon such Merger Event and, at the effective time of such Merger Event, the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee a supplemental indenture permitted by Section 10.01(h) providing for such change in the right to convert the principal amount of Notes; *provided, however*, that at and after the effective time of the Merger Event (A) the Company or the successor or acquiring Person, as the case may be, shall continue to have the right to determine the form of consideration to be paid or delivered, as the case may be, upon conversion of Notes in accordance with Section 14.02 and (B) (I) any amount payable in cash upon conversion of the Notes in accordance with Section 14.02 shall continue to be payable in cash, (II) any shares of Common Stock that the Company would have been required to deliver upon conversion of the Notes in accordance with Section 14.02 shall instead be deliverable in the amount and type of Reference Property that a holder of that number of shares of Common Stock would have received in such Merger Event and (III) the Daily VWAP shall be calculated based on the value of a unit of Reference Property.

If the Merger Event causes the Common Stock to be converted into, or exchanged for, the right to receive more than a single type of consideration, then the Reference Property into which the Notes will be convertible shall be deemed to be the weighted average of the types and amounts of consideration actually received by the holders of Common Stock. If the holders of the Common Stock receive only cash in such Merger Event, then for all conversions for which the relevant Conversion Date occurs after the effective date of such Merger Event (A) the consideration due upon conversion of the principal amount of Notes shall be solely cash in an amount equal to the Conversion Rate in effect on the Conversion Date (as may be increased by any Additional Shares pursuant to Section 14.03), *multiplied by* the price paid per share of Common Stock in such Merger Event and (B) the Company shall satisfy the Conversion Obligation by paying cash to converting Holders on the second Business Day immediately following the relevant Conversion Date. The Company shall notify Holders, the Trustee and the Conversion Agent (if other than the Trustee) in writing of such weighted average as soon as reasonably practicable after such determination is made.

If the Reference Property in respect of any such Merger Event includes, in whole or in part, shares of Common Equity, the supplemental indenture described in the second immediately preceding paragraph shall provide for anti-dilution and other adjustments that shall be as nearly equivalent as is possible to the adjustments provided for in this Article 14 with respect to the portion of Reference Property constituting such Common Equity. If, in the case of any Merger Event, the Reference Property includes shares of stock, securities or other property or assets (other than cash and/or cash equivalents) of a Person other than the Company or the successor or purchasing corporation, as the case may be, in such Merger Event, then such supplemental indenture shall also be executed by such other Person and shall contain such additional provisions to protect the interests of the Holders as the Company shall reasonably consider necessary by reason of the foregoing, including the provisions providing for the purchase rights set forth in Article 15. The Company shall not become party to any such Merger Event unless its terms are consistent with this Section 14.07.

(b) When the Company executes a supplemental indenture pursuant to subsection (a) of this Section 14.07, the Company shall promptly file with the Trustee an Officer's Certificate briefly stating the reasons therefor, the kind or amount of cash, securities or property or asset that will comprise a unit of Reference Property after any such Merger Event, any adjustment to be made with respect thereto and that all conditions precedent have been complied with, and shall promptly deliver or cause to be delivered notice thereof to all Holders. The Company shall cause notice of the execution of such supplemental indenture to be delivered to each Holder within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

(c) None of the foregoing provisions shall affect the right of a holder of Notes to convert its Notes into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, as set forth in Section 14.01 and Section 14.02 prior to the effective date of such Merger Event.

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

(e) Upon the consummation of any Merger Event, references to "Common Stock" shall be deemed to refer to any Reference Property that constitutes capital stock after giving effect to such Merger Event.

Section 14.08. *Certain Covenants.* (a) The Company covenants that all shares of Common Stock issued upon conversion of Notes will be fully paid and non-assessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.

(b) The Company covenants that, if any shares of Common Stock to be provided for the purpose of conversion of Notes hereunder require registration with or approval of any governmental authority under any federal or state law before such shares of Common Stock may be validly issued upon conversion, the Company will, to the extent then permitted by the rules and interpretations of the Commission, secure such registration or approval, as the case may be.

(c) The Company further covenants that if at any time the Common Stock shall be listed on any national securities exchange or automated quotation system the Company will list and keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, any Common Stock issuable upon conversion of the Notes.

Section 14.09. *Responsibility of Trustee.* The Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to any Holder to determine the Conversion Rate (or any adjustment thereto) or whether any facts exist that may require any adjustment (including any increase) of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities, property or cash that may at any time be issued or delivered upon the conversion of any Note; and the Trustee and any other Conversion Agent make no representations with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article. Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 14.07 relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by Holders upon the conversion of their Notes after any event referred to in such Section 14.07 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 7.01, may accept (without any independent investigation) as conclusive evidence of the correctness of any such provisions, and shall be protected in conclusively relying upon, the Officer's Certificate (which the Company shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto. Neither the Trustee nor the Conversion Agent shall be responsible for determining whether any event contemplated by Section 14.01(b) has occurred that makes the Notes eligible for conversion or no longer eligible therefor until the Company has delivered to the Trustee and the Conversion Agent the notices referred to in Section 14.01(b) with respect to the commencement or termination of such conversion rights, on which notices the Trustee and the Conversion Agent may conclusively rely, and the Company agrees to deliver such notices to the Trustee and the Conversion Agent immediately after the occurrence of any such event or at such other times as shall be provided for in Section 14.01(b). Except as otherwise expressly provided herein, neither the Trustee nor any other agent acting under this Indenture (other than the Company, if acting in such capacity) shall have any obligation to make any calculation or to determine whether the Notes may be surrendered for conversion pursuant to this Indenture, or to notify the Company or the Depositary or any of the Holders if the Notes have become convertible pursuant to the terms of this Indenture.

Section 14.10. *Notice to Holders Prior to Certain Actions.* In case of any:

(a) action by the Company or one of its Subsidiaries that would require an adjustment in the Conversion Rate pursuant to Section 14.04 or Section 14.11; or

(b) voluntary or involuntary dissolution, liquidation or winding-up of the Company;

then, in each case (unless notice of such event is otherwise required pursuant to another provision of this Indenture), the Company shall cause to be filed with the Trustee and the Conversion Agent (if other than the Trustee) and to be delivered to each Holder, as promptly as possible but in any event at least 10 days prior to the applicable date hereinafter specified, a notice stating (i) the date on which a record is to be taken for the purpose of such action by the Company or one of its Subsidiaries or, if a record is not to be taken, the date as of which the holders of Common Stock of record are to be determined for the purposes of such action by the Company or one of its Subsidiaries, or (ii) the date on which such dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such action by the Company or one of its Subsidiaries, dissolution, liquidation or winding-up.

Section 14.11. *Stockholder Rights Plans.* If the Company has a stockholder rights plan in effect upon conversion of the Notes, each share of Common Stock, if any, issued upon such conversion shall be entitled to receive the appropriate number of rights, if any, and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any such stockholder rights plan, as the same may be amended from time to time. However, if, prior to any conversion of Notes, the rights have separated from the shares of Common Stock in accordance with the provisions of the applicable stockholder rights plan so that the Holders would not be entitled to receive any rights in respect of Common Stock, if any, issuable upon conversion of the Notes, the Conversion Rate shall be adjusted at the time of separation as if the Company distributed to all or substantially all holders of the Common Stock Distributed Property as provided in Section 14.04(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

Section 14.12. *Exchange In Lieu Of Conversion.* (a) When a Holder surrenders its Notes for conversion, the Company may, at its election, direct the Conversion Agent to surrender, on or prior to the Trading Day immediately following the relevant Conversion Date, such Notes to one or more financial institutions designated by the Company (each, a “**Designated Institution**”) for exchange in lieu of conversion (an “**Exchange Election**”). In order to accept any Notes surrendered for conversion for exchange in lieu of conversion, the Designated Institution(s) must agree to timely pay and/or deliver, as the case may be, in exchange for such Notes, the cash, shares of Common Stock or combination of cash and Common Stock, at the Company’s election, that would otherwise be due upon conversion (the “**Conversion Consideration**”) as described in Section 14.02 above. If the Company makes an Exchange Election, the Company shall, by the close of business on the Trading Day following the relevant Conversion Date, notify the Holder surrendering Notes for conversion, the Trustee and the Conversion Agent (if other than the Trustee), in writing that it has made an Exchange Election, and the Company shall concurrently notify the Designated Institution(s) of the relevant deadline for delivery of the Conversion Consideration and the type of conversion consideration to be paid and/or delivered, as the case may be. Any Notes exchanged by the Designated Institution(s) will remain outstanding, subject to applicable procedures of the Depository.

(b) If the Designated Institution(s) agree(s) to accept any Notes for exchange but does not timely pay and/or deliver, as the case may be, the related Conversion Consideration to the Conversion Agent, or if the Designated Institution(s) do(es) not accept such Notes for exchange, the Company shall, within the time period specified in Section 14.02(c), pay and/or deliver, as the case may be, the Conversion Consideration in accordance with the provisions of Section 14.02.

(c) For the avoidance of doubt, in no event will the Company's designation of any Designated Institution(s) pursuant to this Section 14.12 require the Designated Institution(s) to accept any Notes for exchange.

Section 14.13. *Beneficial Ownership Limitation.* Notwithstanding anything to the contrary in this Indenture or the Notes, but subject to the last paragraph of this Section 14.13, no Note will be optionally convertible by the Holder thereof to the extent, and only to the extent, that such conversion or convertibility would result in such Holder (together with its Affiliates and any Person whose beneficial ownership of Common Stock would be aggregated with that of the Holder for purposes of Section 13(d) of the Exchange Act and the applicable regulations of the Commission), or any "group" (within the meaning of Section 13(d)(3) of the Exchange Act) that includes such Holder, beneficially owning in excess of 9.99% of the shares of Common Stock outstanding immediately after giving effect to such conversion; *provided, however*, that this Section 14.13 will not apply to any Forced Conversion pursuant to Article 16 (the restrictions set forth in this sentence, the "**Ownership Limitation**"). For these purposes, beneficial ownership and calculations of percentage ownership will be determined in accordance with Section 13(d) of the Exchange Act and the applicable regulations of the Commission, including Rule 13d-3 under the Exchange Act. For purposes of determining the number of outstanding shares of Common Stock a Holder may acquire upon the conversion of such Notes without exceeding the Ownership Limitation, such Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company's most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the Commission, as the case may be, (y) a more recent public announcement by the Company or (z) any other written notice by the Company setting forth the number of shares of Common Stock outstanding (the "**Reported Outstanding Share Number**"). If the Company receives a notice of conversion from a Holder at a time when the actual number of outstanding shares of Common Stock is different from the Reported Outstanding Share Number, the Company shall notify such Holder in writing of the number of shares of Common Stock then outstanding. Upon any written or oral request of any Holder, the Company shall within three (3) Business Days confirm orally and in writing or by electronic mail to such Holder the number of shares of Common Stock then outstanding. Any purported delivery of shares of Common Stock upon conversion of any Note will be void and have no effect to the extent, and only to the extent, that such delivery would contravene the Ownership Limitation. For the avoidance of doubt, nothing in this Section 14.13 shall limit the Company's right to elect the Settlement Method applicable to any conversion permitted by this Indenture, and any failure to deliver the shares of Common Stock, if any, in respect of a conversion to the extent such conversion is not permitted due to this Section 14.13 will not constitute a Default. The Trustee shall have no obligation to monitor the Ownership Limitation or any Holder's compliance therewith.

Upon delivery of a written notice to the Company, any Holder may waive this Section 14.13, or increase the Ownership Limitation to such percentage as the Holder shall determine, in its sole discretion; *provided* that (i) any such waiver of the Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Company and (ii) any such waiver will apply only to such Holder and not to any other Holder. For purposes of clarity, the shares of Common Stock issuable to a Holder pursuant to the terms of this Indenture in excess of the Ownership Limitation shall not be deemed to be beneficially owned by such Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the Exchange Act. No prior inability to convert such Notes pursuant to this Section 14.13 shall have any effect on the applicability of the provisions of this Section 14.13 with respect to any subsequent determination of convertibility. The limitation contained in this Section 14.13 may not be waived other than pursuant to this Section 14.13 and shall apply to a successor holder of such Notes.

Section 14.14. *NYSE Blocker*. Notwithstanding anything to the contrary in this Indenture or the Notes, prior to obtaining the Requisite Stockholder Approval, the Company will not be permitted to settle any conversion of Notes with shares of its Common Stock if and to the extent the settlement of such conversion (together with all previous conversions of Notes (including, for the avoidance of doubt, PIK Notes)) would result in the issuance of greater than 63,726,348 shares of Common Stock (the “**Share Issuance Cap**”), subject to adjustment in the same manner and at the same time as the Conversion Rate pursuant to Section 14.04 to the extent required to comply with the share issuance limitation imposed by NYSE Listing Standard Rule 312.03(c). To the extent the Requisite Stockholder Approval has not been obtained and the Conversion Obligation due upon any conversion of Notes would otherwise result in the issuance of a number of shares of Common Stock greater than the Share Issuance Cap, the Company agrees it will not issue a number of shares of Common Stock greater than the Share Issuance Cap and will instead pay cash in an amount equal to the Last Reported Sale Price per share of Common Stock otherwise due. The Trustee shall have no obligation to monitor the Share Issuance Cap or any compliance therewith.

ARTICLE 15
REPURCHASE OF NOTES AT OPTION OF HOLDERS

Section 15.01. *Intentionally Omitted*.

Section 15.02. *Repurchase at Option of Holders Upon a Fundamental Change*. (a) If a Fundamental Change occurs at any time prior to the Maturity Date, each Holder shall have the right, at such Holder’s option, to require the Company to repurchase for cash all of such Holder’s Notes, or any portion thereof properly surrendered and not validly withdrawn pursuant to Section 15.03, on the date (the “**Fundamental Change Repurchase Date**”) specified by the Company that is not less than 20 Business Days or more than 35 Business Days following the date of the Fundamental Change Company Notice at a repurchase price equal to 100% of the principal amount thereof, *plus* accrued and unpaid cash interest thereon to, but excluding, the Fundamental Change Repurchase Date (the “**Fundamental Change Repurchase Price**”), unless the Fundamental Change Repurchase Date falls after a Regular Record Date but on or prior to the Interest Payment Date to which such Regular Record Date relates, in which case the Company shall instead pay the full amount of accrued and unpaid Cash Interest to Holders of record as of such Regular Record Date, and the Fundamental Change Repurchase Price shall be equal to 100% of the principal amount of Notes to be repurchased pursuant to this Article 15.

(b) Repurchases of Notes under this Section 15.02 shall be made, at the option of the Holder thereof, upon:

(i) delivery to the Paying Agent by a Holder of a duly completed notice (the “**Fundamental Change Repurchase Notice**”) in the form set forth in Attachment 2 to the Form of Note attached hereto as Exhibit A, if the Notes are Physical Notes, or in compliance with the Depositary’s procedures for surrendering interests in Global Notes, if the Notes are Global Notes, in each case on or before the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date; and

(ii) delivery of the Notes, if the Notes are Physical Notes, to the Paying Agent at any time after delivery of the Fundamental Change Repurchase Notice (together with all necessary endorsements for transfer) at the Corporate Trust Office of the Paying Agent, or book-entry transfer of the Notes, if the Notes are Global Notes, in compliance with the procedures of the Depositary, in each case such delivery being a condition to receipt by the Holder of the Fundamental Change Repurchase Price therefor.

The Fundamental Change Repurchase Notice in respect of any Physical Notes to be repurchased shall state:

(i) the certificate numbers of the Notes to be delivered for repurchase;

(ii) the portion of the principal amount of Notes to be repurchased; and

(iii) that the Notes are to be repurchased by the Company pursuant to the applicable provisions of the Notes and this Indenture.

If the Notes are Global Notes, to exercise the Fundamental Change repurchase right, Holders must surrender their Notes in accordance with applicable Depositary procedures.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Fundamental Change Repurchase Notice contemplated by this Section 15.02 shall have the right to withdraw, in whole or in part, such Fundamental Change Repurchase Notice at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 15.03.

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

(c) On or before the 20th Business Day after the occurrence of the effective date of a Fundamental Change, the Company shall provide to all Holders and the Trustee, the Conversion Agent (in the case of a Conversion Agent other than the Trustee) and the Paying Agent (in the case of a Paying Agent other than the Trustee) a written notice (the “**Fundamental Change Company Notice**”) of the occurrence of the effective date of the Fundamental Change and of the repurchase right at the option of the Holders arising as a result thereof. In the case of Physical Notes, such notice shall be by first class mail or, in the case of Global Notes, such notice shall be delivered in accordance with the applicable procedures of the Depositary. Each Fundamental Change Company Notice shall specify:

- (i) the events causing the Fundamental Change;
- (ii) the effective date of the Fundamental Change;
- (iii) the last date on which a Holder may exercise the repurchase right pursuant to this Article 15;
- (iv) the Fundamental Change Repurchase Price;
- (v) the Fundamental Change Repurchase Date;
- (vi) the name and address of the Paying Agent and the Conversion Agent, if applicable;
- (vii) if applicable, the Conversion Rate and any adjustments to the Conversion Rate as a result of such Fundamental Change (or related Make-Whole Fundamental Change);
- (viii) that the Notes with respect to which a Fundamental Change Repurchase Notice has been delivered by a Holder may be converted only if the Holder withdraws the Fundamental Change Repurchase Notice in accordance with the terms of this Indenture; and
- (ix) the procedures that Holders must follow to require the Company to repurchase their Notes.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holders' repurchase rights or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 15.02.

At the Company's request, given at least five days prior to the date the Fundamental Change Company Notice is to be sent (or such lesser amount of time as agreed to by the Trustee in its reasonable discretion), the Trustee shall give such notice in the Company's name and at the Company's expense; *provided, however*, that, in all cases, the text of such Fundamental Change Company Notice shall be prepared by the Company.

Simultaneously with providing such notice, the Company shall publish the information on its website or through such other public medium as it may use at that time.

(d) Notwithstanding the foregoing, no Notes may be repurchased by the Company on any date at the option of the Holders upon a Fundamental Change if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to such date (except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes). The Paying Agent will promptly return to the respective Holders thereof any Physical Notes held by it during the acceleration of the Notes (except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes), or any instructions for book-entry transfer of the Notes in compliance with the applicable procedures of the Depositary shall be deemed to have been cancelled, and, upon such return or cancellation, as the case may be, the Fundamental Change Repurchase Notice with respect thereto shall be deemed to have been withdrawn.

(e) Notwithstanding anything to the contrary in this Article 15, the Company shall not be required to repurchase, or to make an offer to repurchase, the Notes upon a Fundamental Change if a third party makes such an offer in the same manner, at the same time and otherwise in compliance with the requirements for an offer made by the Company as set forth in this Article 15 and such third party purchases all Notes properly surrendered and not validly withdrawn under its offer in the same manner, at the same time and otherwise in compliance with the requirements for an offer made by the Company as set forth above.

Section 15.03. *Withdrawal of Fundamental Change Repurchase Notice.* (a) A Fundamental Change Repurchase Notice may be withdrawn (in whole or in part) in respect of Physical Notes by means of a written notice of withdrawal received by the Paying Agent in accordance with this Section 15.03 at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date, specifying:

- (i) the principal amount of the Notes with respect to which such notice of withdrawal is being submitted,
- (ii) the certificate number of the Note in respect of which such notice of withdrawal is being submitted, and
- (iii) the principal amount, if any, of such Note that remains subject to the original Fundamental Change Repurchase Notice;

If the Notes are Global Notes, Holders may withdraw their Notes subject to repurchase at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date in accordance with the applicable procedures of the Depositary.

Section 15.04. *Deposit of Fundamental Change Repurchase Price.* (a) The Company will deposit with the Trustee (or other Paying Agent appointed by the Company, or if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 4.04) on or prior to 11:00 a.m., New York City time, on the Fundamental Change Repurchase Date an amount of money sufficient to repurchase all of the Notes to be repurchased at the appropriate Fundamental Change Repurchase Price. Subject to receipt of funds and/or Notes by the Trustee (or other Paying Agent appointed by the Company), payment for Notes surrendered for repurchase (and not validly withdrawn prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date) will be made on the later of (i) the Fundamental Change Repurchase Date (*provided* the Holder has satisfied the conditions in Section 15.02) and (ii) the time of book-entry transfer or the delivery of such Note to the Trustee (or other Paying Agent appointed by the Company) by the Holder thereof in the manner required by Section 15.02 by mailing checks for the amount payable to the Holders of such Notes entitled thereto as they shall appear in the Note Register; *provided, however*, that payments to the Depositary shall be made by wire transfer of immediately available funds to the account of the Depositary or its nominee. The Trustee shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Fundamental Change Repurchase Price.

(b) If by 11:00 a.m. New York City time, on the Fundamental Change Repurchase Date, the Trustee (or other Paying Agent appointed by the Company) holds money sufficient to pay the Fundamental Change Repurchase Price to be repurchased on such Fundamental Change Repurchase Date, then, with respect to the Notes that have been properly surrendered for repurchase and have not been validly withdrawn in accordance with the provisions of this Indenture, (i) such Notes will cease to be outstanding, (ii) interest will cease to accrue on such Notes on the Fundamental Change Repurchase Date (whether or not book-entry transfer of the Notes has been made or the Notes have been delivered to the Trustee or Paying Agent) and (iii) all other rights of the Holders with respect to such Notes will terminate on the Fundamental Change Repurchase Date (other than (x) the right to receive the Fundamental Change Repurchase Price and (y) if the Fundamental Change Repurchase Date falls after a Regular Record Date but on or prior to the related Interest Payment Date, the right of the Holder of record on such Regular Record Date to receive the full amount of accrued and unpaid interest to, but excluding, such Interest Payment Date).

(c) Upon surrender of a Note that is to be repurchased in part pursuant to Section 15.02, the Company shall execute and the Trustee shall authenticate and deliver to the Holder a new Note in an authorized denomination equal in principal amount to the unrepurchased portion of the Note surrendered.

Section 15.05. *Covenant to Comply with Applicable Laws Upon Repurchase of Notes.* In connection with any repurchase offer upon a Fundamental Change pursuant to this Article 15, the Company will, if required:

(a) comply with the tender offer rules under the Exchange Act that may then be applicable;

(b) file a Schedule TO or any other required schedule under the Exchange Act; and

(c) otherwise comply in all material respects with all federal and state securities laws in connection with any offer by the Company to repurchase the Notes;

in each case, so as to permit the rights and obligations under this Article 15 to be exercised in the time and in the manner specified in this Article 15. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Article 15 relating to the Company's obligations to repurchase the Notes upon a Fundamental Change, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under such provisions of this Article 15 by virtue of such conflict.

ARTICLE 16
FORCED CONVERSION

Section 16.01. *Forced Conversion.* The Notes shall not be redeemable by the Company. The Notes shall not be eligible for Forced Conversion prior to January 2, 2025. On or after January 2, 2025, the Company may force conversion (the “**Forced Conversion**”) of all, but not less than all, of the Notes, if the Last Reported Sale Price of the Common Stock has been at least 200% of the Conversion Price then in effect for at least 20 Trading Days (whether or not consecutive) during any 30 consecutive Trading Day period, the last of which 20 Trading Days is no more than 10 Trading Days before the date that the Company provides the Forced Conversion Notice in accordance with Section 16.02.

Section 16.02. *Notice of Forced Conversion.* (a) The Company may exercise its Forced Conversion right to force the conversion of all Notes pursuant to Section 16.01 by delivering or causing to be delivered a notice of such Forced Conversion (a “**Forced Conversion Notice**,” and the date that such Forced Conversion Notice is sent, the “**Forced Conversion Notice Date**”) that fixes a date for the conversion (the “**Forced Conversion Date**”) to Holders, the Trustee, the Conversion Agent and the Collateral Agent. The Forced Conversion Date shall function as a Conversion Date and will have the same effect as a duly complied with Conversion Date pursuant to Section 14.02(c) and Article 14. The Forced Conversion Notice shall specify a Forced Conversion Date that is not less than 45 nor more than 60 Trading Days after such Forced Conversion Notice Date; *provided, however*, that if the Company has elected to settle the Forced Conversion by Physical Settlement, then the Company may instead elect to choose a Forced Conversion Date that is a Business Day no more than 30, nor less than 5, calendar days after the Forced Conversion Notice Date.

(b) The Forced Conversion Notice, if delivered in the manner herein provided, shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice.

(c) The Forced Conversion Notice shall specify:

(i) the Forced Conversion Date;

(ii) that on the Forced Conversion Date, a Conversion Date pursuant to Section 14.02(c) shall be deemed to occur with respect to all Notes, and all Notes will be automatically converted for settlement in accordance with Section 14.02;

(iii) the Settlement Method that will apply to the Forced Conversion (and the Specified Dollar Amount, if applicable);

(iv) the Conversion Rate per \$1,000 principal amount of Notes;

(v) the date the Conversion Obligation is expected to be settled in accordance with Section 14.02(c);

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

(vii) that following the date the Forced Conversion is settled, this Indenture, the Guarantees, the Collateral Documents and the Notes shall cease to be of further effect pursuant to Article 3.

The Forced Conversion Notice shall be irrevocable.

Section 16.03. *Restrictions on Forced Conversion.* (a) The Company may not Force Conversion of the Notes on any date if the principal amount of the Notes has been accelerated in accordance with the terms of this Indenture, and such acceleration has not been rescinded, on or prior to the Forced Conversion Date.

(b) Settlement of the Forced Conversion will be subject to Section 14.14.

(c) The Company may only Force Conversion if the Forced Conversion Date will occur (i) if Cash Settlement or Combination Settlement applies to such Forced Conversion, prior to the 41st Scheduled Trading Day immediately preceding the Maturity Date, and (ii) if Physical Settlement applies to such Forced Conversion, prior to the 3rd Scheduled Trading Day immediately preceding the Maturity Date.

ARTICLE 17

MISCELLANEOUS PROVISIONS

Section 17.01. *Provisions Binding on Company's Successors.* All the covenants, stipulations, promises and agreements of the Company contained in this Indenture shall bind its successors and assigns whether so expressed or not.

Section 17.02. *Official Acts by Successor Corporation.* Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or Officer of the Company shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation or other entity that shall at the time be the lawful sole successor of the Company.

Section 17.03. *Addresses for Notices, Etc.* Any notice or demand that by any provision of this Indenture is required or permitted to be given or served by the Trustee, the Collateral Agent or by the Holders on the Company shall be deemed to have been sufficiently given or made, for all purposes if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed (until another address is filed by the Company with the Trustee) to fuboTV Inc., 1330 Avenue of the Americas, New York, New York, 10019, Attention: General Counsel. Any notice, direction, request or demand hereunder to or upon the Trustee and the Collateral Agent shall be deemed to have been sufficiently given or made, for all purposes, if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed to the Corporate Trust Office or sent electronically in PDF format.

The Trustee, by notice to the Company, may designate additional or different addresses for subsequent notices or communications.

Any notice or communication delivered or to be delivered to a Holder of Physical Notes shall be mailed to it by first class mail, postage prepaid, at its address as it appears on the Note Register and shall be sufficiently given to it if so mailed within the time prescribed. Any notice or communication delivered or to be delivered to a Holder of Global Notes shall be delivered in accordance with the applicable procedures of the Depositary and shall be sufficiently given to it if so delivered within the time prescribed. Notwithstanding any other provision of this Indenture or any Note, where this Indenture or any Note provides for notice of any event (including any Fundamental Change Company Notice) to a Holder of a Global Note (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depositary (or its designee) pursuant to the standing instructions from the Depositary or its designee, including by electronic mail in accordance with the Depositary's applicable procedures.

Failure to mail or deliver a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed or delivered, as the case may be, in the manner provided above, it is duly given, whether or not the addressee receives it.

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

Section 17.04. *Governing Law; Jurisdiction.* THIS INDENTURE AND EACH NOTE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS INDENTURE AND EACH NOTE, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

The Company irrevocably consents and agrees, for the benefit of the Holders from time to time of the Notes and the Trustee, that any legal action, suit or proceeding against it with respect to obligations, liabilities or any other matter arising out of or in connection with this Indenture or the Notes may be brought in the courts of the State of New York or the courts of the United States located in the Borough of Manhattan, New York City, New York and, until amounts due and to become due in respect of the Notes have been paid, hereby irrevocably consents and submits to the non-exclusive jurisdiction of each such court *in personam*, generally and unconditionally with respect to any action, suit or proceeding for itself in respect of its properties, assets and revenues.

The Company irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions, suits or proceedings arising out of or in connection with this Indenture brought in the courts of the State of New York or the courts of the United States located in the Borough of Manhattan, New York City, New York and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

Section 17.05. *Evidence of Compliance with Conditions Precedent; Certificates and Opinions of Counsel to Trustee.* Upon any application or demand by the Company to the Trustee or Collateral Agent to take any action under any of the provisions of this Indenture, the Company shall furnish to the Trustee or the Collateral Agent, as the case may be, an Officer's Certificate and, if requested, an Opinion of Counsel stating that such action is permitted by the terms of this Indenture and that all conditions precedent including any covenants compliance with such which constitutes a condition precedent to such action have been complied with; *provided* that no Opinion of Counsel shall be required to be delivered in connection with (1) the original issuance of Notes on the date hereof under this Indenture, (2) the issuance of PIK Notes and (3) the removal of the restricted CUSIP of the Restricted Securities to an unrestricted CUSIP pursuant to the applicable procedures of the Depositary following the Resale Restriction Termination Date, unless a new Note is to be issued; *provided further* that no Opinion of Counsel shall be required to be delivered in connection with a request by the Company that the Trustee deliver a notice to Holders under the Indenture where the Trustee receives an Officer's Certificate with respect to such notice. With respect to matters of fact, an Opinion of Counsel may rely on an Officer's Certificate or certificates of public officials.

Each Officer's Certificate and Opinion of Counsel provided for, by or on behalf of the Company in this Indenture and delivered to the Trustee or the Collateral Agent, as the case may be, with respect to compliance with this Indenture (other than the Officer's Certificates provided for in Section 4.08) shall include (a) a statement that the person signing such certificate is familiar with the requested action and this Indenture; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statement contained in such certificate is based; (c) a statement that, in the judgment of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed judgment as to whether or not such action is permitted by this Indenture; and (d) a statement as to whether or not, in the judgment of such person, such action is permitted by this Indenture and that all conditions precedent thereto have been complied with.

Section 17.06. *Legal Holidays.* In any case where any Interest Payment Date, Fundamental Change Repurchase Date, Forced Conversion Date or Maturity Date is not a Business Day, then any action to be taken on such date need not be taken on such date, but may be taken on the next succeeding Business Day with the same force and effect as if taken on such date, and no interest shall accrue in respect of the delay; *provided* that, solely for purposes of this Section 17.06, a day on which the applicable place of payment is authorized or required by law or executive order to close or be closed will be deemed not to be a Business Day.

Section 17.07. *Intentionally Omitted.*

Section 17.08. *Benefits of Indenture.* Nothing in this Indenture or in the Notes, expressed or implied, shall give to any Person, other than the Holders, the parties hereto, any Paying Agent, any Conversion Agent, any authenticating agent, any Note Registrar and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 17.09. *Table of Contents, Headings, Etc.* The table of contents and the titles and headings of the articles and sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 17.10. *Authenticating Agent.* The Trustee may appoint an authenticating agent that shall be authorized to act on its behalf and subject to its direction in the authentication and delivery of Notes in connection with the original issuance thereof and transfers and exchanges of Notes hereunder, including under Section 2.04, Section 2.05, Section 2.06, Section 2.07, Section 10.04 and Section 15.04 as fully to all intents and purposes as though the authenticating agent had been expressly authorized by this Indenture and those Sections to authenticate and deliver Notes. For all purposes of this Indenture, the authentication and delivery of Notes by the authenticating agent shall be deemed to be authentication and delivery of such Notes “by the Trustee” and a certificate of authentication executed on behalf of the Trustee by an authenticating agent shall be deemed to satisfy any requirement hereunder or in the Notes for the Trustee’s certificate of authentication. Such authenticating agent shall at all times be a Person eligible to serve as trustee hereunder pursuant to Section 7.08.

Any corporation or other entity into which any authenticating agent may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, consolidation or conversion to which any authenticating agent shall be a party, or any corporation or other entity succeeding to the corporate trust business of any authenticating agent, shall be the successor of the authenticating agent hereunder, if such successor corporation or other entity is otherwise eligible under this Section 17.10, without the execution or filing of any paper or any further act on the part of the parties hereto or the authenticating agent or such successor corporation or other entity.

Any authenticating agent may at any time resign by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time terminate the agency of any authenticating agent by giving written notice of termination to such authenticating agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any authenticating agent shall cease to be eligible under this Section, the Trustee may appoint a successor authenticating agent (which may be the Trustee), shall give written notice of such appointment to the Company and shall deliver notice of such appointment to all Holders.

The Company agrees to pay to the authenticating agent from time to time reasonable compensation for its services although the Company may terminate the authenticating agent, if it determines such agent’s fees to be unreasonable.

The provisions of Section 7.02, Section 7.03, Section 7.04, Section 8.03 and this Section 17.10 shall be applicable to any authenticating agent.

If an authenticating agent is appointed pursuant to this Section 17.10, the Notes may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

_____,
as Authenticating Agent, certifies that this is one of the Notes described
in the within-named Indenture.

By: _____
Authorized Signatory

Section 17.11. *Execution in Counterparts*. This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile, PDF or other electronic transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile, PDF or other electronic transmission shall constitute effective execution and delivery of this Indenture as to the other parties hereto shall be deemed to be their original signatures for all purposes.

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

Section 17.12. *Severability*. In the event any provision of this Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

Section 17.13. *Waiver of Jury Trial*. EACH OF THE COMPANY, THE GUARANTORS, THE HOLDERS (BY THEIR ACCEPTANCE OF THE NOTES), THE TRUSTEE AND THE COLLATERAL AGENT HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 17.14. *Force Majeure*. In no event shall the Trustee or the Collateral Agent be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, epidemics, pandemics, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that each of the Trustee and Collateral Agent shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 17.15. *Calculations*. Except as otherwise provided herein, the Company shall be responsible for making all calculations called for under the Notes. These calculations include, but are not limited to, determinations of the Stock Price, the Last Reported Sale Prices of the Common Stock, the Trading Prices of the Notes (for purposes of Section 14.01(b)(i)) the Daily VWAPs, the Daily Conversion Values, the Daily Settlement Amounts, accrued interest payable on the Notes and the Conversion Rate of the Notes. The Company shall make all these calculations in good faith and, absent manifest error, the Company's calculations shall be final and binding on Holders. The Company shall provide a schedule of its calculations to each of the Trustee and the Conversion Agent, and each of the Trustee and Conversion Agent is entitled to rely conclusively upon the accuracy of the Company's calculations without independent verification. The Trustee will forward the Company's calculations to any Holder of Notes upon the written request of that Holder at the sole cost and expense of the Company.

Section 17.16. *U.S.A. PATRIOT Act*. The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. PATRIOT Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. Patriot Act.

ARTICLE 18

SECURITY AND COLLATERAL

Section 18.01. *Collateral Documents*. The due and punctual payment of the principal of, and cash interest (if any) on the Notes when and as the same shall be due and payable, whether on an Interest Payment Date, at maturity, by repurchase or otherwise, and performance of all other obligations of the Company and the Guarantors under this Indenture, shall be secured as provided in the Collateral Documents, which define the terms of the liens that secure such obligations. The Trustee, the Guarantors and the Company hereby acknowledge and agree that the Collateral Agent's security interest in the Collateral is for the benefit of the Holders, the Trustee and the Collateral Agent and pursuant to the terms of the Collateral Documents. Each Holder, by accepting a Note, consents and agrees to the terms of the Collateral Documents (including the provisions providing for the possession, use, release and foreclosure of Collateral), as the same may be in effect or may be amended from time to time in accordance with their terms and this Indenture, and irrevocably authorizes and directs the Collateral Agent (i) to enter into the Collateral Documents, binding the Holders to the terms thereof, (ii) to execute each document in connection with any Collateral Document expressed to be executed by Collateral Agent on its behalf and (iii) perform the duties and exercise the rights, powers, and discretions that are specifically given to it under the Collateral Documents or other documents to which the Collateral Agent is a party, together with any other incidental rights, power and discretions. Neither the Trustee nor the Collateral Agent nor any of their respective officers, directors, employees, attorneys or agents will be responsible or liable for the existence, genuineness, value or protection of any Collateral, for the legality, enforceability, effectiveness, or sufficiency of the Collateral Documents, for the creation, perfection, priority, sufficiency or protection of any lien, including not being responsible for payment of any taxes, charges or assessments upon the Collateral or otherwise as to the maintenance of the Collateral, or for any defect or deficiency as to any such matters, or for any failure to demand, collect, foreclose or realize upon or otherwise enforce any of the Liens or Collateral Documents or any delay in doing so. The Company shall deliver to the Collateral Agent and the Trustee copies of all documents required to be filed pursuant to the Collateral Documents, and will do or cause to be done all such acts and things as may be required by the next sentence of this Section 18.01, to assure and confirm to the Collateral Agent for the benefit of the Holders the security interest in the Collateral contemplated hereby, by the Collateral Documents or any part thereof, as from time to time constituted, so as to render the same available for the security and benefit of this Indenture and of the Notes secured hereby, according to the intent and purposes herein expressed. The Company and the Guarantors shall take any and all actions and make all filings (including the filing of UCC financing statements, continuation statements and amendments thereto) required to cause the Collateral Documents to create and maintain, as security for its obligations in favor of the Collateral Agent for the benefit of the Holders and the Trustee, a valid and enforceable perfected lien and security interest in and on all of the Collateral, subject to the terms of the Collateral Documents. Neither the Trustee nor the Collateral Agent shall have any responsibility or liability in connection with such actions and filings; provided that nothing in this sentence shall be construed to relieve the Trustee or the Collateral Agent from liability for its own grossly negligent action, its own grossly negligent failure to act or its own willful misconduct.

Section 18.02. *Release of Collateral.*

(a) Subject to clauses (b) and (c) below, the first priority liens on the Collateral will be automatically released with respect to the Notes and the Guarantees, and the Trustee and/or the Collateral Agent (subject to its receipt of an Officer's Certificate and Opinion of Counsel as provided below) shall execute documents evidencing such release reasonably requested by the Company, at the Company's sole cost and expense, under one or more of the following circumstances:

(i) in whole upon:

(A) payment in full of the principal of, together with accrued and unpaid interest on, and all other obligations on the Notes; or

(B) the satisfaction and discharge of this Indenture or following the completion of an Effective Discharge, in each case, as set forth under Article 3 hereof;

(ii) in part, as to any property that (a) is sold, transferred or otherwise disposed of (other than any lease or license) by the Company or a Guarantor (other than to the Company or a Guarantor) in a transaction permitted by this Indenture (including, as applicable, a Permitted Transfer) and the other Note Documents or (b) is owned or at any time acquired by a Guarantor that has been released from its Guarantee, concurrently with the release of such Guarantee;

(iii) in part, as to property that constitutes less than all or substantially all of the Collateral, with the consent of the holders of at least a majority in aggregate principal amount of the Notes then outstanding;

(iv) in part, as to property that becomes Excluded Assets (as defined in the Security Agreement); and

(v) in whole or in part as provided in Article 10 hereof.

(b) With respect to any release of Collateral, upon receipt of an Officer's Certificate and an Opinion of Counsel each stating that all conditions precedent under this Indenture and the Collateral Documents, if any, to such release have been complied with and that it is proper for the Trustee or Collateral Agent, as applicable, to execute and deliver the documents requested by the Company and the Guarantors in connection with such release, and any instruments of termination, satisfaction or release prepared by the Company, the Trustee or the Collateral Agent, as applicable, shall execute, deliver or acknowledge (at the Company's sole expense) such instruments or releases to evidence the release of any Collateral permitted to be released pursuant to this Indenture or the Collateral Documents, without recourse, representation or warranty by the Trustee or the Collateral Agent. Neither the Trustee nor the Collateral Agent shall be liable for any such release undertaken in reliance upon any such Officer's Certificate and Opinion of Counsel, and notwithstanding any term hereof or in any Collateral Document to the contrary, the Trustee and the Collateral Agent shall not be under any obligation to release any such Lien and security interest, or execute and deliver any such instrument of release, satisfaction or termination, unless and until it receives such Officer's Certificate and Opinion of Counsel.

(c) At any time when a Default or Event of Default has occurred and is continuing and the maturity of the Notes has been accelerated (whether by declaration or otherwise), no release of Collateral pursuant to the provisions of this Indenture or the Collateral Documents shall be effective as against the Holders, except as otherwise provided in the Collateral Documents.

Section 18.03. *Suits to Protect the Collateral.*

(a) Subject to the provisions of Article 7 hereof and the Collateral Documents, the Trustee, without the consent of the Holders, on behalf of the Holders, may or may direct the Collateral Agent to take all actions it determines in order to:

(i) enforce any of the terms of the Collateral Documents; and

(ii) collect and receive any and all amounts payable in respect of the obligations under the Notes.

(b) Subject to the provisions of the Collateral Documents, the Collateral Agent shall have power to institute and to maintain such suits and proceedings as the Collateral Agent may determine to prevent any impairment of the Collateral by any acts which may be unlawful or in violation of any of the Collateral Documents or this Indenture, and such suits and proceedings as the Collateral Agent may determine to preserve or protect its interests and the interests of the Holders in the Collateral. Nothing in this Section 18.03 shall be considered to impose any such duty or obligation to act on the part of the Collateral Agent and neither the Trustee nor the Collateral Agent shall be liable for any such impairment.

Section 18.04. *Collateral Agent; Authorization of Action to be Taken.*

(a) The Collateral Agent agrees that it will hold the security interests in the Collateral created under the Collateral Documents to which it is a party as contemplated by this Indenture, and any and all proceeds thereof, for the benefit of, the Secured Parties, without limiting the Collateral Agent's rights, including under this Section 18.04, to act in preservation of the security interest in the Collateral. The Collateral Agent is authorized and empowered to appoint one or more co-collateral agents as it deems necessary or appropriate; *provided, however*, that no collateral agent hereunder shall be personally liable by reason of any act or omission of any other collateral agent hereunder.

(b) The Collateral Agent shall not have any duties or obligations except those expressly set forth in this Indenture and the Collateral Documents to which it is a party, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, (1) the Collateral Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing and, without limiting the generality of the foregoing, the use of the term "agent" herein and in the Collateral Documents with reference to the Collateral Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law and instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties, (2) the Collateral Agent shall not have any duty to take any discretionary action or exercise any discretionary powers; *and, further*, the Collateral Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Collateral Agent to liability or that is contrary to this Indenture, the Collateral Documents or applicable laws, and (3) except as expressly set forth in the documents to which it is a party, the Collateral Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any the Company or any Guarantor that is communicated to or obtained by the Person serving as Collateral Agent in any capacity. The Collateral Agent shall not be liable for any action taken or not taken by it with the consent or at the request of Holders of a majority of aggregate principal amount of the Notes (or such other number or percentage of the Holders as shall be necessary, or as the Collateral Agent shall believe in good faith shall be necessary, under the circumstances) or in the absence of its own gross negligence or willful misconduct as determined by the final and non-appealable judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein. The Collateral Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until written notice thereof (stating that it is a "notice of default" and describing such Default or Event of Default) is given to a Responsible Officer of the Collateral Agent by the Company or any Holder. Except as directed by Holders of not less than 25.0% of the outstanding principal amount of the Notes, and only if indemnified to its satisfaction, the Collateral Agent will not be obligated:

(i) to act upon directions purported to be delivered to it by any Person;

(ii) to foreclose upon or otherwise enforce any lien created under the Collateral Documents; or

(iii) except as expressly provided in Section 18.02, to take any other action whatsoever with regard to any or all of the Collateral Documents or Collateral.

(c) In acting as Collateral Agent hereunder and under the Collateral Documents, the Collateral Agent shall be entitled to conclusively rely upon and enforce each and all of the rights, privileges, immunities, indemnities and benefits of the Trustee under Article 7; *provided* that any references in such Article 7 to “Trustee” shall be references to “Collateral Agent”.

(d) The Collateral Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person (whether or not such Person in fact meets the requirements set forth in this Indenture or the Collateral Documents for being the signatory, sender or authenticator thereof). The Collateral Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person (whether or not such Person in fact meets the requirements set forth in this Indenture and the Collateral Documents for being the maker thereof), and may act upon any such statement prior to receipt of written confirmation thereof and shall not incur any liability for relying thereon. The Collateral Agent may consult with legal counsel, independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Each Holder of Notes consents and agrees to the terms of each Collateral Document, as originally in effect and as amended, restated, amended and restated, supplemented or otherwise modified or replaced from time to time in accordance with its terms or the terms of this Indenture, authorizes and directs the Trustee and the Collateral Agent to enter into the Collateral Documents to which it is a party, authorizes and empowers the Trustee and the Collateral Agent to bind the Holders of Notes as set forth in the Collateral Documents to which it is party and to perform its obligations and exercise its rights and powers thereunder. Any request, demand, authorization, direction, notice, consent, waiver, approval, exercise of judgment or discretion, designation or other action provided or permitted by this Indenture to be given, taken or exercised by the Collateral Agent, shall be given, taken or exercised by the Collateral Agent at the direction of the Holders of a majority of aggregate principal amount of the Notes unless such action is otherwise permitted pursuant to this Indenture or the Collateral Documents (including, upon reliance of an Officer’s Certificate and/or Opinion of Counsel).

Section 18.05. *Authorization of Receipt of Funds by the Trustee Under the Collateral Documents.* The Collateral Agent is authorized to receive any funds for the benefit of the Holders distributed under the Collateral Documents and distribute the same to the Trustee who may make further distributions of such funds to the Holders according to the provisions of this Indenture.

[Remainder of page intentionally left blank]

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

FUBOTV INC., as the Company

By: /s/ David Gandler
Name: David Gandler
Title: Chief Executive Officer

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

By: /s/ David Jason
Name: David Jason
Title: Vice President

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as
Collateral Agent

By: /s/ David Jason
Name: David Jason
Title: Vice President

Edisn Inc., as Guarantor

By: /s/ David Gandler

Name: David Gandler

Title: Chief Executive Officer

fuboTV Media Inc., as Guarantor

By: /s/ David Gandler

Name: David Gandler

Title: Chief Executive Officer

Fubo Studios Inc., as Guarantor

By: /s/ David Gandler

Name: David Gandler

Title: Chief Executive Officer

Sports Rights Management, LLC, as Guarantor

By: /s/ David Gandler

Name: David Gandler

Title: Chief Executive Officer

[Signature Page to Indenture]

[FORM OF FACE OF NOTE]

[INCLUDE FOLLOWING LEGEND IF A GLOBAL NOTE]

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

[INCLUDE FOLLOWING LEGEND IF A RESTRICTED SECURITY]

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

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS A “QUALIFIED INSTITUTIONAL BUYER” (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT, AND

(2) AGREES FOR THE BENEFIT OF FUBOTV INC. (THE “COMPANY”) THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS THE LATEST OF (X) ONE YEAR AFTER THE DATE OF ORIGINAL ISSUANCE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 OR ANY SUCCESSOR PROVISION THERETO, (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW (AS DETERMINED IN GOOD FAITH BY THE COMPANY), AND (Z) THE DATE THE COMPANY RECEIVES NOTICE FROM A HOLDER REQUESTING THAT THE LEGEND BE REMOVED, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

OR
(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT,

(C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT OR ANY OTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

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

[INCLUDE FOLLOWING OID LEGEND IF APPLICABLE]

[THE FOLLOWING INFORMATION IS SUPPLIED SOLELY FOR U.S. FEDERAL INCOME TAX PURPOSES. THIS NOTE WAS ISSUED WITH ORIGINAL ISSUE DISCOUNT ("OID") WITHIN THE MEANING OF SECTION 1273 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"), AND THIS LEGEND IS REQUIRED BY SECTION 1275(c) OF THE CODE. UPON REQUEST, THE ISSUER WILL PROMPTLY MAKE AVAILABLE TO A HOLDER OF THIS NOTE INFORMATION REGARDING THE ISSUE PRICE, AMOUNT OF OID, ISSUE DATE AND YIELD TO MATURITY OF THE NOTES BY SUBMITTING A WRITTEN REQUEST FOR SUCH INFORMATION TO THE ISSUER AT FUBO TV, INC. 1290 AVENUE OF THE AMERICAS, NEW YORK, NEW YORK, 10020, ATTENTION: CHIEF LEGAL OFFICER.]

No. []

[Initially]¹ \$ [][CUSIP No. 35953D AC8]^{2 3}

FuboTV Inc., a corporation duly organized and validly existing under the laws of the State of Florida (the “**Company**,” which term includes any successor corporation or other entity under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to [CEDE & CO.]⁴ []⁵, or registered assigns, the principal sum [as set forth in the “Schedule of Exchanges of Notes” attached hereto]⁶ [of \$ []]⁷, which amount, taken together with the principal amounts of all other outstanding Notes, shall not, unless permitted by the Indenture, exceed \$177,506,000 in aggregate at any time (exclusive of any PIK Notes)[, in accordance with the rules and procedures of the Depository,]⁸ on February 15, 2029, and interest thereon as set forth below.

Subject to the Indenture and the following paragraph, this Note shall bear interest at the rate of either (i) 7.50% per year, if Cash Interest is paid, or (ii) 10.00% per year, if PIK Interest is paid, in each case from January 2, 2024, or from the most recent date to which interest has been paid or provided for to, but excluding, the next scheduled Interest Payment Date until February 15, 2029. Accrued interest on this Note shall be computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of the number of days actually elapsed in a 30-day month. Interest is payable in cash in the case of Cash Interest, or PIK Notes are issuable in the case of PIK Interest, in each case semi-annually in arrears on each February 15 and August 15, commencing on [February 15, 2024], to Holders of record at the close of business on the preceding February 1 and August 1 (whether or not such day is a Business Day), respectively. Additional Interest will be payable as set forth in Section 6.03 of the within-mentioned Indenture, and any reference to interest on, or in respect of, any Note therein shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to Section 6.03, and any express mention of the payment of Additional Interest in any provision therein shall not be construed as excluding Additional Interest in those provisions thereof where such express mention is not made.

^[1] Include if a global note.

^[2] This Note will be deemed to be identified by CUSIP No. 35953D AD6 from and after such time when the Company delivers, pursuant to Section 2.05(c) of the within-mentioned Indenture, written notice to the Trustee of the occurrence of the Resale Restriction Termination Date and the removal of the restrictive legend affixed to this Note in accordance with the applicable procedures of the Depository.

^[3] Include if a global note.

^[4] Include if a global note.

^[5] Include if a physical note.

^[6] Include if a global note.

^[7] Include if a physical note.

^[8] Include if a global note.

In the absence of a Default or Event of Default, the Company may determine to pay PIK Interest pursuant to Section 2.03, provided that the Company shall deliver a PIK Notice to the Trustee and the Holders not less than five (5) Business Days prior to the Interest Payment Date of the relevant Interest Period, which notice shall state that the total amount of interest to be paid on the Interest Payment Date in respect of such Interest Period will be paid via PIK Interest. Any PIK Interest on the Global Notes will increase the principal amount of the Global Notes by an amount equal to the amount of PIK Interest for the applicable period (rounded to the nearest whole dollar, with amounts of \$0.50 or more being rounded up). Any references to the principal amount of any Global Note herein shall mean the then current principal amount as increased by any PIK Interest, and references to accrued but unpaid interest shall not include any interest provided for as PIK Interest. Following an increase in the principal amount of the outstanding Global Notes as a result of PIK Interest, the Global Notes will bear interest on such increased principal amount from and after the date of such increase.

Any Defaulted Amounts shall accrue interest per annum at the rate borne by the Notes, from, and including, the relevant payment date to, but excluding, the date on which such Defaulted Amounts shall have been paid by the Company, at its election, in accordance with Section 2.03(d) of the Indenture.

The Company shall pay the principal of and Cash Interest on this Note, if and so long as such Note is a Global Note, in immediately available funds in lawful money of the United States at the time to the Depositary or its nominee, as the case may be, as the registered Holder of such Note. As provided in and subject to the provisions of the Indenture, the Company shall pay the principal of any Notes (other than Notes that are Global Notes) at the office or agency designated by the Company for that purpose. The Company has initially designated the Trustee as its Paying Agent and Note Registrar in respect of the Notes and its Corporate Trust Office located in the United States of America, as a place where Notes may be presented for payment or for registration of transfer and exchange.

The Company's obligations under this Note are fully and unconditionally guaranteed, jointly and severally, by the Guarantors from time to time party to the Indenture.

This Note will be secured by the Collateral. Reference is made to the Indenture and the Collateral Documents for terms relating to such security, including the release, termination and discharge thereof. The Company shall not be required to make any notation on this Note to reflect any grant of such security or any such release, termination or discharge.

Reference is made to the further provisions of this Note set forth on the reverse hereof, including, without limitation, provisions giving each of the Holder of this Note and the Company the right to convert this Note into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, on the terms and subject to the limitations set forth in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Note, and any claim, controversy or dispute arising under or related to this Note, shall be construed in accordance with and governed by the laws of the State of New York.

In the case of any conflict between this Note and the Indenture, the provisions of the Indenture shall control and govern.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed manually by the Trustee or a duly authorized authenticating agent under the Indenture.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed.

FUBOTV INC.

By: _____
Name: _____
Title: _____

Dated:

TRUSTEE’S CERTIFICATE OF AUTHENTICATION

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION
as Trustee, certifies that this is one of the Notes described
in the within-named Indenture.

By: _____
Authorized Signatory

[FORM OF REVERSE OF NOTE]

fuboTV Inc.
Convertible Senior Secured Notes due 2029

This Note is one of a duly authorized issue of Notes of the Company, designated as its Convertible Senior Secured Notes due 2029 (the “**Notes**”), initially limited to the aggregate principal amount of \$177,506,000 (exclusive of any PIK Notes) all issued or to be issued under and pursuant to an Indenture dated as of January 2, 2024 (the “**Indenture**”), between the Company, the Guarantors and U.S. Bank Trust Company, National Association, as Trustee (the “**Trustee**”) and Collateral Agent (the “**Collateral Agent**”), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Collateral Agent, the Company, the Guarantors and the Holders of the Notes. Additional Notes and PIK Notes may be issued, subject to certain conditions specified in the Indenture. Capitalized terms used in this Note and not defined in this Note shall have the respective meanings set forth in the Indenture.

In case certain Events of Default shall have occurred and be continuing, the principal of, and interest on, all Notes may be declared, by either the Trustee or Holders of at least 50% in aggregate principal amount of Notes then outstanding, and upon said declaration shall become, due and payable, in the manner, with the effect and subject to the conditions and certain exceptions set forth in the Indenture.

Subject to the terms and conditions of the Indenture, the Company will make all payments and deliveries in respect of the Fundamental Change Repurchase Price on the Fundamental Change Repurchase Date and the principal amount on the Maturity Date, as the case may be, to the Holder who surrenders a Note to a Paying Agent to collect such payments in respect of the Note. The Company will pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts.

The Indenture contains provisions permitting the Company and the Trustee in certain circumstances, without the consent of the Holders of the Notes, and in certain other circumstances, with the consent of the Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding, evidenced as in the Indenture provided, to execute supplemental indentures modifying the terms of the Indenture and the Notes as described therein. It is also provided in the Indenture that, subject to certain exceptions, the Holders of a majority in aggregate principal amount of the Notes at the time outstanding may on behalf of the Holders of all of the Notes waive any past Default or Event of Default under the Indenture and its consequences.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay or deliver, as the case may be, the principal (including the Fundamental Change Repurchase Price, if applicable) of, accrued and unpaid interest on, and the consideration due upon conversion of, this Note at the place, at the respective times, at the rate and in the lawful money herein prescribed.

The Notes are issuable in registered form without coupons in denominations of \$1,000 principal amount and integral multiples thereof (or denominations of \$1.00 and any integral multiple of \$1.00 in excess thereof after a PIK Payment). At the office or agency of the Company referred to on the face hereof, and in the manner and subject to the limitations provided in the Indenture, Notes may be exchanged for a like aggregate principal amount of Notes of other authorized denominations, without payment of any service charge but, if required by the Company or Trustee, with payment of a sum sufficient to cover any transfer or similar tax that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such exchange of Notes being different from the name of the Holder of the old Notes surrendered for such exchange.

The Company may force conversion of the Notes on or after January 2, 2025, in accordance with the terms and subject to the conditions specified in the Indenture. No sinking fund is provided for the Notes.

Upon the occurrence of a Fundamental Change, the Holder has the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes or any portion thereof on the Fundamental Change Repurchase Date at a price equal to the Fundamental Change Repurchase Price.

Subject to the provisions of the Indenture, the Holder hereof has the right, at its option, during certain periods and upon the occurrence of certain conditions specified in the Indenture, prior to the close of business on the second Scheduled Trading Day immediately preceding the Maturity Date, to convert any Notes or portion thereof, into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, at the Conversion Rate specified in the Indenture, as adjusted from time to time as provided in the Indenture.

Terms used in this Note and defined in the Indenture are used herein as therein defined.

ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM = as tenants in common

UNIF GIFT MIN ACT = Uniform Gifts to Minors Act

CUST = Custodian

TEN ENT = as tenants by the entireties

JT TEN = joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.

SCHEDULE OF EXCHANGES OF NOTES

fuboTV Inc.
Convertible Senior Secured Notes due 2029

The initial principal amount of this Global Note is _____ MILLION DOLLARS (\$[_____]). The following increases or decreases in this Global Note have been made:

[illegible]

[9] Include if a global note.

[FORM OF NOTICE OF CONVERSION]

To: fuboTV Inc.

To: U.S. Bank Trust Company, National Association
1 California Street, Suite 1000
San Francisco, CA 94111

Attention: D. Jason (fuboTV Inc. Convertible Senior Secured Notes due 2029)

The undersigned registered owner of this Note hereby exercises the option to convert this Note, or the portion hereof (that is \$1,000 principal amount (or if a PIK Payment has been made, \$1.00 principal amount) or an integral multiple thereof) below designated, into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, in accordance with the terms of the Indenture referred to in this Note, and directs that any cash payable and any shares of Common Stock issuable and deliverable upon such conversion, together with any cash for any fractional share, and any Notes representing any unconverted principal amount hereof, be issued and delivered to the registered Holder hereof unless a different name has been indicated below. If any shares of Common Stock or any portion of this Note not converted are to be issued in the name of a Person other than the undersigned, the undersigned will pay all documentary, stamp or similar issue or transfer taxes, if any in accordance with Section 14.02(d) and Section 14.02(e) of the Indenture. Any amount required to be paid to the undersigned on account of interest accompanies this Note. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

Dated: _____

Signature(s)

Signature Guarantee

Signature(s) must be guaranteed
by an eligible Guarantor Institution
(banks, stock brokers, savings and
loan associations and credit unions)
with membership in an approved
signature guarantee medallion program
pursuant to Securities and Exchange
Commission Rule 17Ad-15 if shares
of Common Stock are to be issued, or
Notes are to be delivered, other than
to and in the name of the registered holder.

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

(Name)

(Street Address)

(City, State and Zip Code)

Please print name and address

Principal amount to be converted (if less than all): \$ _____.00

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

Social Security or Other Taxpayer
Identification Number

[FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE]

To: fuboTV Inc.

To: U.S. Bank Trust Company, National Association
1 California Street, Suite 1000
San Francisco, CA 94111

Attention: D. Jason (fuboTV Inc. Convertible Senior Secured Notes due 2029)

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from fuboTV Inc. (the “**Company**”), as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Repurchase Date and requests and instructs the Company to pay to the registered holder hereof in accordance with Section 15.02 of the Indenture referred to in this Note (1) the entire principal amount of this Note, or the portion thereof (that is \$1,000 principal amount (or if a PIK Payment has been made, \$1.00 principal amount) or an integral multiple thereof) below designated, and (2) if such Fundamental Change Repurchase Date does not fall during the period after a Regular Record Date and on or prior to the Business Day immediately succeeding corresponding Interest Payment Date, accrued and unpaid interest, if any, thereon to, but excluding, such Fundamental Change Repurchase Date. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

In the case of Physical Notes, the certificate numbers of the Notes to be repurchased are as set forth below:

Dated: _____

Signature(s)

Social Security or Other Taxpayer
Identification Number

Principal amount to be repurchased (if less than all): \$_____.00

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

[FORM OF ASSIGNMENT AND TRANSFER]

To: fuboTV Inc.

To: U.S. Bank Trust Company, National Association

1 California Street, Suite 1000

San Francisco, CA 94111

Attention: D. Jason (fuboTV Inc. Convertible Senior Secured Notes due 2029)

For value received _____ hereby sell(s), assign(s) and transfer(s) unto _____ (Please insert social security or Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints _____ attorney to transfer the said Note on the books of the Company, with full power of substitution in the premises.

In connection with any transfer of the within Note occurring prior to the Resale Restriction

Termination Date, as defined in the Indenture governing such Note, the undersigned confirms that such Note is being transferred:

☐ To fuboTV Inc., or a subsidiary thereof; or

☐ Pursuant to a registration statement that has become or been declared effective under the Securities Act of 1933, as amended; or

☐ Pursuant to and in compliance with Rule 144A under the Securities Act of 1933, as amended; or

☐ Pursuant to and in compliance with Rule 144 under the Securities Act of 1933, as amended, or any other available exemption from the registration requirements of the Securities Act of 1933, as amended.

Dated: _____

Signature(s)

Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if Notes are to be delivered, other than to and in the name of the registered holder.

NOTICE: The signature on the assignment must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

fuboTV Inc.

Exchange Agreement

December 29, 2023

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EXCHANGE AGREEMENT

EXCHANGE AGREEMENT (this “**Agreement**”), dated as of December 29, 2023, among fuboTV Inc., a Florida corporation (the “**Company**”), Edisn Inc., a Delaware corporation, fuboTV Media Inc., a Delaware corporation, Fubo Studios Inc., a Delaware corporation and Sports Rights Management, LLC, a Delaware limited liability company, as guarantors (the “**Guarantors**”), and the undersigned investor (the “**Investor**”), on its own behalf and on behalf of each of the beneficial owners listed on Exhibit A hereto (each, an “**Account**”) for whom the Investor holds contractual and investment authority (each Account, including the Investor if it is exchanging Existing Notes in the Exchange (each, as defined below) on its own behalf, an “**Exchanging Investor**”). If there is only one Account or Exchanging Investor, then each reference thereto in this Agreement will be deemed to refer to such Account or Exchanging Investor, as applicable, in the singular, *mutatis mutandis*.

WHEREAS, the Company and each Exchanging Investor desire to engage in the Exchange on the terms and subject to the conditions set forth in this Agreement.

THEREFORE, the Company, the Investor and each Exchanging Investor agree as follows.

Section 1. DEFINITIONS.

“**Account**” has the meaning set forth in the first paragraph of this Agreement.

“**Affiliate**” means, with respect to a specified Person, any other Person, directly or indirectly Controlling or Controlled by or under direct or indirect common Control with such specified Person.

“**Agreement**” has the meaning set forth in the first paragraph of this Agreement.

“**Business Day**” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed.

“**Closing**” has the meaning set forth in **Section 3(b)(i)**.

“**Closing Date**” has the meaning set forth in **Section 3(b)(i)**.

“**Collateral Agent**” means U.S. Bank National Association, a national association, in its capacity as collateral agent under the New Notes Indenture.

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

“**Common Stock**” means the common stock, \$0.0001 par value per share, of the Company.

“**Company**” has the meaning set forth in the first paragraph of this Agreement.

“**Control**,” “**Controlling**” or “**Controlled**” means, as to a specified Person, the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise.

“**Conversion**” has the meaning set forth in **Section 4(i)**.

“**Conversion Shares**” has the meaning set forth in **Section 4(i)**.

“**Covered SEC Filings**” has the meaning set forth in **Section 4(p)**.

“**DTC**” means The Depository Trust Company.

“**DWAC**” means DTC’s Deposit and Withdrawal at Custodian program.

“**DWAC Withdrawal**” has the meaning set forth in **Section 3(b)(iii)(1)**.

“**Exchange**” has the meaning set forth in **Section 3(a)**.

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

“**Exchange Consideration**” means, with respect to the Existing Notes of any Exchanging Investor to be exchanged in the Exchange, New Notes (and the Guarantees thereof), which New Notes have an aggregate principal amount equal to the sum of (x) 85% of the principal amount of such Existing Notes to be exchanged and (y) accrued but unpaid interest on such Existing Notes up to, but excluding, the Closing Date, rounded to the nearest \$1,000.

“**Existing Indenture**” means that certain Indenture, dated as of February 2, 2021, between the Company and the Existing Notes Trustee, relating to the Existing Notes.

“**Existing Notes**” means the Company’s 3.25% Convertible Senior Notes due 2026 issued pursuant to the Existing Indenture.

“**Existing Notes Trustee**” means U.S. Bank National Association, a national banking association, in its capacity as trustee under the Existing Indenture.

“**Guarantee**” means the guarantee of the New Notes by each Guarantor, as set forth in the New Notes Indenture.

“**Guarantors**” has the meaning set forth in the first paragraph of this Agreement.

“**HSR Act**” has the meaning set forth in **Section 4(j)**.

“**Indemnified Party**” has the meaning set forth in **Section 8(a)**.

“**IRS**” means the Internal Revenue Service.

“Indemnifying Party” has the meaning set forth in **Section 8(c)**.

“Investor” has the meaning set forth in the first paragraph of this Agreement.

“Liens” means any mortgages, liens, pledges, charges, security interests, encumbrances, title retention agreements, options, preemptive rights, equity or other adverse claims.

“Losses” has the meaning set forth in **Section 8(a)**.

“Material Adverse Change” has the meaning set forth in **Section 4(v)**.

“New Notes” means the Company’s Convertible Senior Secured Notes due 2029.

“New Notes DWAC Deposit” has the meaning set forth in **Section 3(b)(iii)(2)**.

“New Notes Indenture” means an Indenture, to be dated as of the Closing Date, among the Company, the Guarantors the New Notes Trustee and the Collateral Agent, which Indenture is substantially in the form set forth as Exhibit C hereto.

“New Notes Trustee” means U.S. Bank National Association, a national association, in its capacity as trustee under the New Notes Indenture.

“New Securities” has the meaning set forth in **Section 7**.

“Person” means any natural person, corporation, company, limited liability company, trust, joint venture, association, company, partnership, governmental authority or other entity.

“PJT Partners” means PJT Partners, LP.

“Proceeding” has the meaning set forth in **Section 8(c)**.

“Registration Rights Agreement” means that certain Registration Rights Agreement, to be dated and entered into as of the Closing Date, between the Company and the Exchanging Investor, which Registration Rights Agreement shall be in the form set forth as Exhibit D hereto.

“SEC” means the Securities and Exchange Commission.

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

“Third Party Claim” has the meaning set forth in **Section 8(a)**.

“Truist” means Truist Securities, Inc.

“Trust Indenture Act” means the Trust Indenture Act of 1939, as amended.

Section 2. RULES OF CONSTRUCTION. For purposes of this Agreement:

- (a) “or” is not exclusive;
- (b) “including” means “including without limitation”;
- (c) “will” expresses a command;
- (d) words in the singular include the plural and words in the plural include the singular, unless the context requires otherwise;
- (e) “herein,” “hereof” and other words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision of this Agreement, unless the context requires otherwise;
- (f) references to currency mean the lawful currency of the United States of America, unless the context requires otherwise; and
- (g) the exhibits, schedules and other attachments to this Agreement are deemed to form part of this Agreement.

Section 3. THE EXCHANGE

(a) *Generally*. Subject to the other terms of this Agreement, the parties hereto agree that, at the Closing, each of the Investor and each other Exchanging Investor, if any, will exchange, with the Company, the aggregate principal amount of Existing Notes, CUSIP No. 35953D AB0, set forth in Exhibit A hereto that it beneficially owns for Exchange Consideration in the amount corresponding to such principal amount of Existing Notes (the “**Exchange**”).

(b) *The Closing*.

(i) *Closing Date and Location*. The closing of the Exchange (the “**Closing**”) will take place at the offices of Latham & Watkins LLP, 1271 Avenue of the Americas, New York, New York 10020, at 10:00 a.m., New York City time, on the later of (1) January 2, 2024; (2) such date on which the conditions to Closing set forth in **Section 6** are satisfied or waived; and (3) such other time and place as the Company and the Investor may agree (such later date, the “**Closing Date**”).

(ii) *Conveyance of Title; Release of Claims*. Subject to the other terms and conditions of this Agreement, the Investor hereby, for itself and on behalf of each Exchanging Investor, agrees, in each case at and as of the Closing, (i) to sell, assign and transfer to the Company, all right, title and interest in such portion of the Existing Notes as indicated on Exhibit A hereto, in exchange for the sale, assignment and transfer by the Company to such Exchanging Investor of the Exchange Consideration, in the amount corresponding to such principal amount of the Existing Notes and (ii) to waive any and all other rights with respect to such Existing Notes and the Existing Indenture and releases and discharges the Company from any and all claims, whether now known or unknown, the Investor and any other Exchanging Investor may now have, or may have in the future, arising out of, or related to, such Existing Notes, including any claims arising from any existing or past defaults under the Existing Indenture, or any claims that the Investor or any Exchanging Investor is entitled to receive additional, special or default interest with respect to the Existing Notes, but excluding any claims arising out of, or related to, this Agreement, the New Notes, the New Notes Indenture, the Guarantees, the Security Documents, the Registration Rights Agreement and any transactions contemplated hereby or thereby. Subject to the other terms and conditions of this Agreement, the Company and each of the Guarantors hereby agree, in each case at and as of the Closing, (i) to sell, assign and transfer to each of the Exchanging Investors the Exchange Consideration, in exchange for the sale, assignment and transfer by such Exchanging Investor to the Company of such portion of the Existing Notes as indicated on Exhibit A hereto, in the amount corresponding to such principal amount of the Existing Notes and (ii) to waive any and all other rights against the Investor and each Exchanging Investor with respect to such Existing Notes and the Existing Indenture and to release and discharge the Investor and each Exchanging Investor from any and all claims, whether now known or unknown, the Company and any Guarantor may now have, or may have in the future, arising out of, or related to, such Existing Notes, including any claims arising from any existing or past defaults under the Existing Indenture, but excluding any claims arising out of, or related to, this Agreement, the New Notes, the New Notes Indenture, the Guarantees, the Security Documents, the Registration Rights Agreement and any transactions contemplated hereby or thereby.

(iii) *Delivery of Existing Notes and Exchange Consideration.*

(1) *DWAC Withdrawal.* Subject to satisfaction of the applicable conditions precedent specified in this Agreement, at or prior to 9:30 a.m., New York City time, on the Closing Date, the Investor agrees to direct the eligible DTC participant through which each Exchanging Investor holds a beneficial interest in the Existing Notes to submit a DWAC withdrawal instruction (the “**DWAC Withdrawal**”) to the Existing Notes Trustee for the aggregate principal amount of the Existing Notes to be exchanged by such Exchanging Investor pursuant to this Agreement.

(2) *New Notes DWAC Deposit.* DTC will act as securities depository for the New Notes. Subject to satisfaction of the applicable conditions precedent specified in this Agreement, at or prior to 9:30 a.m. New York City time on the Closing Date, the Investor agrees to direct an eligible DTC participant to submit, separately for each Exchanging Investor, a DWAC deposit instruction (the “**New Notes DWAC Deposit**”) to the New Notes Trustee, for the aggregate principal amount of New Notes that such Exchanging Investor is entitled to receive pursuant to this Agreement, or comply with such other settlement procedures mutually agreed in writing by the Investor and the Company.

(3) *Delivery of Exchange Consideration.* The Exchange Consideration will not be delivered until a valid DWAC Withdrawal of the Existing Notes has been received and accepted by the Existing Notes Trustee. If the Closing does not occur, then any Existing Notes submitted for DWAC Withdrawal will be returned to the DTC participant that submitted the DWAC Withdrawal instruction in accordance with the procedures of DTC. On the Closing Date, subject to satisfaction of the conditions precedent specified in this Agreement, and the prior receipt of a valid DWAC Withdrawal conforming with the aggregate principal amount of the Existing Notes to be exchanged by each Exchanging Investor a valid New Notes DWAC Deposit conforming with the aggregate principal amount of the New Notes to be issued to such Exchanging Investor in the Exchange, the Company will execute such New Notes, and direct the New Notes Trustee to authenticate and, by acceptance of the New Notes DWAC Deposit, deliver, such New Notes (or comply with such other settlement procedures mutually agreed in writing by the Company and the New Notes Trustee), in each case to the DTC account specified on Exhibit A to this Agreement.

(4) *Acknowledgment of DWAC Posting Expiration; Delivery Instructions.* **Each of the Investor and each other Exchanging Investor, if any, acknowledges that each of the DWAC Withdrawal and the New Notes DWAC Deposit must be posted on the Closing Date and that if it is posted before the Closing Date, then it will expire unaccepted and must be resubmitted on the Closing Date.** For the convenience of each Exchanging Investor, attached hereto as Exhibit B is a summary of the delivery instructions that must be followed to settle the Exchange through DTC.

(5) *Delay of Closing.* If (A) the Existing Notes Trustee is unable to locate the DWAC Withdrawal or (B) the New Notes Trustee is unable to locate the New Notes DWAC Deposit or (C) such DWAC Withdrawal does not conform to the Existing Notes to be exchanged in the Exchange or such New Notes DWAC Deposit does not conform to the New Notes to be issued in the Exchange, then the Company will promptly notify the Investor. If, because of the occurrence of an event described in **clause (A), (B), or (C)** of the preceding sentence, the New Notes are not delivered on the Closing Date, then such New Notes will be delivered on the first business day following the Closing Date (or as soon as reasonably practicable thereafter) on which all applicable conditions set forth in **clauses (A), (B) or (C)** of the first sentence of this paragraph have been cured.

Section 4. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANY AND THE GUARANTORS

Each of the Company and the Guarantors represents and warrants to the Exchanging Investors, effective as of the date hereof and as of the Closing, and covenants that:

(a) *Due Formation, Valid Existence and Good Standing; Power to Perform Obligations.* The Company is duly formed, validly existing and in good standing under the laws of the State of Florida, with full power and authority to conduct its business as it is currently being conducted and to own its assets and with qualification to do business in each jurisdiction in which the character of its properties or the nature of its business requires such qualification. Each Guarantor is duly formed, validly existing and in good standing under the laws of the jurisdiction of its organization, with full power and authority to conduct its business as it is currently being conducted and to own its assets and with qualification to do business in each jurisdiction in which the character of its properties or the nature of its business requires such qualification. Each of the Company and the Guarantors has full power and authority to consummate the Exchange and to executed and deliver, and perform its obligations under, this Agreement, the New Notes Indenture and the New Notes.

(b) *Delivery Free of Liens.* Upon the Company's delivery of the New Notes to any Exchanging Investor pursuant to the Exchange, such Exchanging Investor will acquire good, marketable and unencumbered title to the New Notes, free and clear of all Liens created by the Company or otherwise relating to any obligation of the Company.

(c) *Listing of Common Stock.* At or before the Closing, the Company will have submitted to the New York Stock Exchange a Supplemental Listing Application with respect to the Conversion Shares. The Company will use its commercially reasonable efforts to maintain the listing of the Conversion Shares on the New York Stock Exchange for so long as the Common Stock is then so listed.

(d) *Securities Act Matters.* Assuming the accuracy of the representations and warranties of the Investor set forth in Sections 5(i) and 5(o), made on behalf of itself and the Exchanging Investors, the offer and sale of the New Notes in the manner contemplated by this Agreement will be exempt from the registration requirements of the Securities Act.

(e) *Enforceability of New Notes.* Each New Note to be issued pursuant to this Agreement has been duly and validly authorized by the Company and, as of the Closing, will have been duly and validly executed and delivered by the Company and, when issued and delivered in exchange for Existing Notes in the manner provided for in this Agreement and executed and authenticated in the manner provided for in the New Notes Indenture by the New Notes Trustee, will be duly and validly issued, executed and delivered, will constitute a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws affecting creditors' rights generally or by equitable principles relating to enforceability, including principles of commercial reasonableness, good faith and fair dealing, regardless of whether enforcement is sought in a proceeding at law or in equity, and will be entitled to the benefits of, and be in the form contemplated by, the New Notes Indenture.

(f) *Enforceability of New Note Guarantees* The Guarantees of each Guarantor have been duly and validly authorized by such Guarantor and, assuming the due authorization, execution and delivery of the New Notes Indenture by the New Notes Trustee, when the New Notes are executed by the Company, authenticated by the New Notes Trustee and delivered in exchange for the Existing Notes in the manner provided for in this Agreement, such Guarantees will be duly and validly issued, will constitute a valid and binding obligation of such Guarantor, enforceable against such Guarantor in accordance with their terms, except as enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws affecting creditors' rights generally or by equitable principles relating to enforceability, including principles of commercial reasonableness, good faith and fair dealing, regardless of whether enforcement is sought in a proceeding at law or in equity, and will be entitled to the benefits of the New Notes Indenture.

(g) *Enforceability of New Notes Indenture.* The New Notes Indenture has been duly and validly authorized by the Company and each of the Guarantors and, as of the Closing, will have been duly and validly executed and delivered by the Company and each of the Guarantors, and assuming the due authorization, execution and delivery of the New Notes Indenture by the New Notes Trustee, will constitute a valid and binding obligation of the Company and each of the Guarantors, enforceable against the Company and each of the Guarantors in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws affecting creditors' rights generally or by equitable principles relating to enforceability, including principles of commercial reasonableness, good faith and fair dealing, regardless of whether enforcement is sought in a proceeding at law or in equity.

(h) *Security Documents.* Each of the Security Documents has been duly and validly authorized, executed and delivered by each of the Company and the Guarantors party thereto and, assuming the due authorization, execution and delivery of each Security Documents by each other Person party thereto, will constitute a valid and binding obligation of each of the Company and the Guarantors party thereto, enforceable against each of the Company and the Guarantors party thereto in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws affecting creditors' rights generally or by equitable principles relating to enforceability, including principles of commercial reasonableness, good faith and fair dealing, regardless of whether enforcement is sought in a proceeding at law or in equity. The provisions of the Security Agreement (as such term is defined in the New Notes Indenture, the "**Security Agreement**") create legal and valid Liens on all the Collateral (as defined in the Security Agreement) in favor of the Collateral Agent, for the benefit of the Secured Parties (as defined in the Security Agreement), and so long as such filings and other actions required to be taken hereby, by the New Notes Indenture or by the applicable Security Documents, have been taken, such Liens constitute perfected and continuing Liens on the Collateral (to the extent that a Lien thereon can be perfected by the foregoing actions), securing the Secured Obligations (as defined in the Security Agreement), enforceable against the Company and the each of the Guarantors party thereto subject only to Liens permitted by the New Notes Indenture.

(i) *Common Stock Issuable Upon Conversion of New Notes.* Subject to the terms of the New Notes Indenture, the New Notes will be convertible into shares of Common Stock, cash or a combination of shares of Common Stock and cash, at the Company's election (the "**Conversion**"). The Company has duly authorized and reserved a number of shares of Common Stock for issuance upon conversion of the New Notes equal to the initial maximum number of such shares issuable upon conversion (assuming (i) "Physical Settlement" of the New Notes upon conversion and the maximum increase to the "Conversion Rate" in connection with any "Make-Whole Fundamental Change" and (each, as defined in the New Notes Indenture) applies and (ii) assuming all interest payments required to be made pursuant to the New Notes Indenture are paid-in-kind as permitted thereunder) (the "**Conversion Shares**"), and, when such Conversion Shares are issued upon conversion of the New Notes in accordance with the terms of the New Notes and the New Notes Indenture, such Conversion Shares will be validly issued, fully paid and non-assessable, and the issuance of any such Conversion Shares will not be subject to any preemptive or similar rights.

(j) *Commercially Reasonable Efforts In Connection With Conversion of New Notes.* Upon the Investor's written request, the Company shall use commercially reasonable efforts to take all steps as may be necessary to obtain all waiting period expirations or terminations, consents, clearances, waivers, licenses, registrations, permits, authorizations, orders and approvals necessary, proper or advisable to be obtained from any third party and/or any governmental entity in connection with the Conversion as promptly as practicable after the date of such written request. In furtherance and not in limitation of the foregoing, upon written request of the Investor, the Company agrees to make an appropriate filing of a Notification and Report Form pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder (the "**HSR Act**") with respect to the Conversion, as promptly as practicable following a written request from the Investor, and in any event within ten (10) Business Days after such a request (unless a later date is mutually agreed between the Company and the Investor), and to supply as promptly as practicable any additional information and documentary materials that may be requested pursuant to the HSR Act and to use commercially reasonable efforts to take all other actions necessary to cause the expiration or termination of the applicable waiting periods under the HSR Act as soon as practicable.

(k) *Trust Indenture Act.* Assuming the accuracy of the representations and warranties of the Investor set forth in Sections 5(i) and 5(o), made on behalf of itself and the Exchanging Investors, it is not necessary to qualify the New Notes Indenture under the Trust Indenture Act in connection with the Exchange.

(l) *Non-Contravention.* The execution and delivery by the Company and the Guarantors of, and the performance by the Company and the Guarantors of their respective obligations under, this Agreement, the New Notes Indenture, the New Notes, the Guarantees and the Security Documents, and the consummation of the transactions contemplated by this Agreement, the New Notes Indenture, the New Notes, the Guarantees and the Security Documents, will not (i) contravene any law, rule or regulation binding on the Company, any Guarantor or any of their respective subsidiaries or any judgment or order of any court or arbitrator or governmental or regulatory authority applicable to the Company, any Guarantor or any such subsidiary; (ii) constitute a breach or violation or result in a default under or give rise to a right of termination, cancellation or acceleration of any obligation under any loan agreement, mortgage, lease, franchise, permit, license, or other agreement or instrument to which the Company, any Guarantor or any of their respective subsidiaries is a party or any judgment, order, statute, law, ordinance, rule or regulation by which the Company or any Guarantor is bound; or (iii) constitute a breach or violation or result in a default under the organizational documents of the Company, any Guarantor or any of their respective subsidiaries, except, in the case of **clauses (i) and (ii)** above, for such contraventions, conflicts, violations or defaults that would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change.

(m) *No Consents.* No consent, approval, authorization, order, license, filing, registration or qualification of or with any court or governmental or regulatory authority is required for the execution and delivery by the Company and the Guarantors of, and the performance by the Company and the Guarantors of their respective obligations under, this Agreement, the New Notes Indenture, the New Notes, the Guarantees and the Security Documents, and the consummation of the transactions contemplated by this Agreement, the New Notes Indenture, the New Notes, the Guarantees and the Security Documents, except (i) such as have been obtained or made (or will, at the Closing, have been obtained or made), (ii) any filings as may be required under the Exchange Act and (iii) such as are expressly contemplated by the Security Documents in order to perfect the Liens granted thereunder.

(n) *Authorization, Execution and Delivery of This Agreement.* The execution and delivery of this Agreement, the New Notes Indenture, the New Notes, the Guarantees and the Security Documents and the consummation by the Company and the Guarantors of the transactions contemplated hereby and thereby, including, without limitation, the issuance of the New Notes, have been duly authorized, executed and delivered by the governing bodies of the Company and the Guarantors, respectively, and no further filing, consent, or authorization is required by the Company or any Guarantor. This Agreement has been duly executed and delivered by the Company and each Guarantor, and constitutes the legal, valid, and binding obligation of the Company and each Guarantor, enforceable against the Company and each Guarantor in accordance with its terms.

(o) *Investment Company Act.* Neither the Company nor any of the Guarantors is an open-end investment company, unit investment trust or a face-amount certificate company that is or is required to be registered under Section 8 of the United States Investment Company Act of 1940, as amended, and the rules and regulations of the SEC thereunder (collectively, the “**Investment Company Act**”), and, after giving effect to the transactions contemplated by this Agreement, none of them will be, required to register as an “investment company” or an entity “controlled” by an “investment company” within the meaning of the Investment Company Act of 1940, as amended, and the rules and regulations of the SEC thereunder.

(p) *Required Filings; Accuracy of Covered SEC Filings.* Since December 31, 2022, the Company has timely filed or furnished all documents required to be filed with or furnished to the SEC under the Exchange Act or the Securities Act, including those required to be filed with or furnished to the SEC under Section 13(a) or Section 15(d) of the Exchange Act (all documents filed or furnished during such period, including any amendments thereto, the “**Covered SEC Filings**”). As of their respective dates, the Covered SEC Filings (i) complied in all material respects with the requirements of the Securities Act or the Exchange Act, as applicable, and other applicable securities laws, and (ii) do not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that no representation is made in this clause (ii) with respect to any Covered SEC Filings which are furnished to the SEC and not filed under the Exchange Act or the Securities Act. The financial statements (including the related notes thereto) of the Company and its consolidated subsidiaries which are included in the Covered SEC filings present fairly, in all material respects, the consolidated financial position of the Company and its subsidiaries as of the dates indicated and the results of their operations, changes in stockholders’ equity and cash flows for the periods specified. Such financial statements have been prepared in conformity with generally accepted accounting principles as applied in the United States applied on a consistent basis throughout the periods involved, except as may be expressly stated in the related notes thereto. To the Company’s knowledge, no person who has been suspended or barred from being associated with a registered public accounting firm, or who has failed to comply with any sanction pursuant to Rule 5300 promulgated by the Public Company Accounting Oversight Board, has participated in or otherwise aided the preparation of, or audited, the financial statements, supporting schedules or other financial data in the Covered SEC filings.

(q) *Registration Rights Agreement.* On the Closing Date, the Company shall execute the Registration Rights Agreement.

(r) *Right of First Refusal With Regards to Certain Secured Indebtedness.* For so long as the Exchanging Investors hold at least \$100,000,000 aggregate principal amount of New Notes, prior to the incurrence by the Company or any of its wholly-owned subsidiaries of third-party indebtedness for borrowed money secured by any assets of the Company or its subsidiaries from any Person that is not an Exchanging Investor or as otherwise permitted below, the Company shall first offer the opportunity to purchase or lend such secured indebtedness to the Exchanging Investors by delivery of a written notice setting forth such offer and the terms and conditions of such indebtedness in reasonable detail. The Company shall identify to the Exchanging Investors in the written notice described in the preceding sentence the proposed lenders of such secured indebtedness (including the proposed “lead” lender) as of the time of such notice (it being understood that no such notice may be delivered until one or more proposed lenders has offered in writing (which may consist of a non-binding letter of intent or term sheet) to purchase or lend such secured indebtedness); provided, if the identity of such lenders is subject to a confidentiality undertaking and may not be disclosed to the Exchanging Investors, the notice shall include a representation with regard thereto. The Exchanging Investors shall have, for a period of seven (7) Business Days following the day such offer is made by the Company, the right to elect to provide up to the full aggregate principal amount of such secured indebtedness to be incurred (allocated among the Exchanging Investors as determined by such Exchanging Investors) on the terms, and subject to the conditions, set forth in such offer by delivering written notice of such election to the Company. If, following the expiration of such seven (7) Business Day period, none of the Exchanging Investors has elected to provide any portion of such indebtedness, the Company or its applicable subsidiaries may, during the period of forty-five (45) Business Days immediately following the expiration of such election period, incur such indebtedness from the lenders thereof (which lenders shall include the “lead” lender identified (or referred to) in the written notice by the Company to the Exchanging Investors described in the first sentence of this paragraph) on terms no more favorable to such lenders in any material respect than the terms set forth in such notice. Any such indebtedness not incurred during such forty-five (45)-Business-Day period (or any such indebtedness including more favorable terms in any material respect) shall thereafter be again subject to the rights of first refusal provided for in this Section 4(r). Notwithstanding the foregoing and for the avoidance of doubt, the following incurrences of indebtedness shall be excluded for purposes of this Section 4(r):

(i) intercompany indebtedness among or between any of the Company or any of its direct or indirect subsidiaries;

(ii) indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business;

(iii) indebtedness arising in connection with endorsement of instruments for deposit in the ordinary course of business;

(iv) indebtedness incurred to finance the payment of insurance premiums in the ordinary course of business;

(v) indebtedness of a Person acquired or assumed in connection with an acquisition or investment (provided that such indebtedness exists at the time such acquisition or investment is consummated and is not created in anticipation of such acquisition or similar investment);

(vi) indebtedness in respect of purchase money obligations and capital lease obligations incurred in the ordinary course of business (including any refinancings, refundings, renewals, exchanges or extensions of any or all indebtedness described in this clause so long as the aggregate principal amount of any such refinancing, refunding, renewal, exchange or extension indebtedness is not greater than the aggregate principal amount of the indebtedness being renewed, refinanced, refunded, exchanged or extended thereby, plus accrued and unpaid interest thereon);

(vii) indebtedness the proceeds of which are to be used to discharge the New Notes pursuant to Section 3.02 of the New Notes Indenture substantially concurrently with the incurrence of such indebtedness;

(viii) indebtedness of the Company arising from agreements providing for earnouts, escrows, holdbacks and other, similar deferred payment obligations, indemnification, adjustment of purchase price or other similar obligations;

(ix) indebtedness in respect of swap contracts, hedging agreements, and similar obligations, other than for speculative purposes;

(x) indebtedness to be incurred by any direct or indirect subsidiary of the Company that is not a Guarantor; and

(xi) all premiums (if any), interest (including post-petition interest), fees, expenses, indemnities, charges and additional or contingent interest on obligations described in clauses (i) through (x) above.

(s) *Offer to Participate With Regard to Certain Unsecured Indebtedness.* For so long as the Exchanging Investors hold at least \$100,000,000 aggregate principal amount of New Notes, prior to the incurrence by the Company or any of its wholly-owned subsidiaries of third-party unsecured indebtedness for borrowed money from any Person that is not an Exchanging Investor or as otherwise permitted below, the Company shall offer the opportunity to purchase or lend such unsecured indebtedness to the Exchanging Investors by delivery of a written notice setting forth such offer and the terms and conditions of such indebtedness in reasonable detail. The Exchanging Investors shall have, for a period of seven (7) Business Days following the day such offer is made by the Company, the right to elect to provide up to one-third of the aggregate principal amount of such unsecured indebtedness to be incurred (allocated among the Exchanging Investors as determined by such Exchanging Investors) on the terms, and subject to the conditions, set forth in such offer by delivering written notice of such election to the Company. If, following the expiration of such seven (7) Business Day period, none of the Exchanging Investors has elected to provide any portion of such indebtedness, the Company or its applicable subsidiaries may, during the period of forty-five (45) Business Days immediately following the expiration of such election period, incur such indebtedness on terms no more favorable to such lenders in any material respect than the terms set forth in such notice. Any such indebtedness not incurred during such forty-five (45)-Business-Day period (or any such indebtedness including more favorable terms in any material respect) shall thereafter be again subject to the participation rights provided for in this Section 4(s). Notwithstanding the foregoing and for the avoidance of doubt, the following incurrences of indebtedness shall be excluded for purposes of this Section 4(s):

(i) intercompany indebtedness among or between any of the Company or any of its direct or indirect subsidiaries;

(ii) indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business;

(iii) indebtedness arising in connection with endorsement of instruments for deposit in the ordinary course of business;

(iv) indebtedness incurred to finance the payment of insurance premiums in the ordinary course of business;

(v) indebtedness of a Person acquired or assumed in connection with an acquisition or investment (provided that such indebtedness exists at the time such acquisition or investment is consummated and is not created in anticipation of such acquisition or similar investment);

(vi) indebtedness in respect of purchase money obligations and capital lease obligations incurred in the ordinary course of business (including any refinancings, refundings, renewals, exchanges or extensions of any or all indebtedness described in this clause so long as the aggregate principal amount of any such refinancing, refunding, renewal, exchange or extension indebtedness is not greater than the aggregate principal amount of the indebtedness being renewed, refinanced, refunded, exchanged or extended thereby plus accrued and unpaid interest thereon);

(vii) indebtedness the proceeds of which are to be used to discharge the New Notes pursuant to Section 3.02 of the New Notes Indenture substantially concurrently with the incurrence of such indebtedness;

(viii) Indebtedness of the Company arising from agreements providing for earnouts, escrows, holdbacks and other, similar unsecured deferred payment obligations, indemnification, adjustment of purchase price or other similar obligations;

(ix) indebtedness in respect of swap contracts, hedging agreements, and similar obligations, other than for speculative purposes;

(x) indebtedness to be incurred by any direct or indirect subsidiary of the Company that is not a Guarantor; and

(xi) all premiums (if any), interest (including post-petition interest), fees, expenses, indemnities, charges and additional or contingent interest on obligations described in clauses (i) through (x) above.

(t) *Expenses.* On the Closing Date, the Company shall pay the reasonable and documented out-of-pocket costs and expenses incurred by the Investor and the Exchanging Investors in connection with the entrance into and performance of the obligations contemplated by this Agreement and by the Registration Rights Agreement, including the costs and disbursements of one (1) legal counsel to the Investor and the Exchanging Investors, in an amount not to exceed \$350,000.

(u) *Capitalization and Other Capital Stock Matters.* All of the issued and outstanding capital stock of the Company has been duly authorized and validly issued, is fully paid and nonassessable and has been issued in compliance with all federal and state securities laws. None of the outstanding capital stock was issued in violation of any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of the Company. There are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other rights to purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any capital stock of the Company or any of its subsidiaries other than those described in the Covered SEC Filings.

(v) *No Material Adverse Change.* Since December 31, 2022, (i) there has been no material adverse change, or any development that could be expected to result in a material adverse change, in the condition, financial or otherwise, or in the earnings, business, operations, operating results, assets, liabilities or prospects, whether or not arising from transactions in the ordinary course of business, of the Company and its subsidiaries, considered as one entity, or in the ability of the Company to consummate the transactions contemplated by this Agreement or perform its obligations hereunder (any such change being referred to herein as a “**Material Adverse Change**”); (ii) other than as contemplated by this Agreement, the Company and its subsidiaries, considered as one entity, have not incurred any material liability or obligation, indirect, direct or contingent, including without limitation any losses or interference with its business from fire, explosion, flood, earthquakes, accident or other calamity, whether or not covered by insurance, or from any strike, labor dispute or court or governmental action, order or decree, that are material, individually or in the aggregate, to the Company and its subsidiaries, considered as one entity, and have not entered into any material transactions not in the ordinary course of business; and (iii) there has not been any material decrease in the capital stock or any material increase in any short-term or long-term indebtedness of the Company or its subsidiaries and there has been no dividend or distribution of any kind declared, paid or made by the Company or, except for dividends paid to the Company or other subsidiaries, by any of the Company’s subsidiaries on any class of capital stock, or any repurchase or redemption by the Company or any of its subsidiaries of any class of capital stock.

(w) *Alternative Transactions.* Neither the Company nor any of the Guarantors is a party to any material contract, agreement, commitment, understanding or other obligation (written or oral) with any other person with respect to the Exchange or the purchase, sale, acquisition, repurchase, exchange or other disposition of any Existing Notes, in each case other than this Agreement and the transactions contemplated hereby; provided, that the foregoing shall not restrict the Company or any of the Guarantors from entering into any such material contract, commitment, understanding or other obligation (written or oral) following the date hereof that is not in violation of this Agreement and/or the New Notes Indenture.

(x) *No Disclosure of Material Non-Public Information.* The Company has not disclosed to the Investor or any Exchanging Investor any material non-public information with respect to the Company other than any such information that the Company shall publicly disclose via press release or Current Report on Form 8-K no later than 9:30 a.m. prevailing Eastern Time on the Business Day following the date of this Agreement.

Section 5. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE INVESTOR AND THE EXCHANGING INVESTORS. The Investor, for itself and on behalf of each Exchanging Investor, represents and warrants to the Company and the Guarantors, effective as of the date hereof and as of the Closing, and covenants that:

(a) *Due Formation, Valid Existence and Good Standing; Authorization, Execution and Delivery of This Agreement.* The Investor, for itself and on behalf of each Exchanging Investor, (i) is duly formed, validly existing and in good standing under the laws of the jurisdiction of its organization with full power and authority to exchange, sell, assign and transfer the Existing Notes to be exchanged pursuant to, and to enter into, this Agreement and perform all obligations required to be performed by the Investor or such Exchanging Investor under this Agreement; and (ii) has duly authorized, executed and delivered this Agreement.

(b) *Power to Perform Obligations and Bind Accounts; Survival of Authority.* If the Investor is exchanging any Existing Notes or acquiring any of the Exchange Consideration as a fiduciary or agent for one or more accounts (including any Accounts that are Exchanging Investors), then the Investor represents that it has (i) the requisite investment discretion with respect to each such account necessary to effect the Exchange; (ii) full power to make the representations, warranties and covenants set forth in this **Section 5** on behalf of such account; and (iii) contractual authority with respect to each such account. All authority conferred in this Agreement will survive the dissolution of the Investor, and any representation, warranty, undertaking and obligation of the Investor under this Agreement will be binding upon the trustees in bankruptcy, legal representatives, successors and assigns of the Investor.

(c) *Ownership of Existing Notes.* Each of the Exchanging Investors is and, immediately before the Closing, will be the beneficial owner of the Existing Notes set forth on Exhibit A.

(d) *[Reserved.]*

(e) *Passage of Good Title; No Liens.* When the Existing Notes are exchanged pursuant to this Agreement, the Company will acquire good, marketable and unencumbered title to the Existing Notes, free and clear of all Liens.

(f) *Non-Contravention.* The Exchange and the other transactions contemplated hereby to be performed by the Investor or any Exchanging Investor will not (i) contravene any law, rule or regulation binding on the Investor or such Exchanging Investor or any investment guideline or restriction applicable to the Investor or such Exchanging Investor; or (ii) constitute a breach or violation or result in a default under the organizational documents of the Investor or such Exchanging Investor or any material loan agreement, mortgage, lease or other agreement or instrument to which the Investor or such Exchanging Investor is a party or by which it is bound except for such conflicts, defaults, rights, or violations that would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Investor to perform its obligations hereunder.

(g) *Jurisdiction of Residence.* The Investor and each Exchanging Investor is a resident of the jurisdiction set forth on Exhibit A attached to this Agreement.

(h) *Acknowledgement of Risks; Investment Sophistication.* The Investor and each Exchanging Investor understands and accepts that the New Notes to be acquired in the Exchange involve risks. Each of the Investor and the Exchanging Investors has such knowledge, skill and experience in business, financial and investment matters that such person is capable of evaluating the merits and risks of the Exchange and an investment in the New Notes. For the avoidance of doubt without limiting the representations and warranties of the Company set forth in this Agreement, to the extent that the Exchanging Investor has deemed appropriate, each Exchanging Investor has made its own legal, tax, accounting and financial evaluation of the merits and risks of an investment in the New Notes and the consequences of the Exchange and this Agreement with the assistance of each Exchanging Investor's own professional advisors. Each Exchanging Investor has considered the suitability of the New Notes as an investment in light of its own circumstances and financial condition, and each of the Investor and the Exchanging Investor is able to bear the risks associated with an investment in the New Notes.

(i) *No View to Distribution; No Registration.* Each Exchanging Investor is acquiring the New Notes solely for such Exchanging Investor's own beneficial account, for investment purposes, and not with a view to, or for resale in connection with, any distribution of the New Notes in violation of the Securities Act. Each of the Investor and the Exchanging Investors understands that the offer and sale of the New Notes have not been registered under the Securities Act or any state securities laws by reason of specific exemptions under the provisions thereof that depend in part upon the investment intent of the Investor and the Exchanging Investors and the accuracy of certain of the representations made by the Investor, for itself and on behalf of each Exchanging Investor, in Sections 5(i) and 5(o) this Agreement. Each of the Investor and the Exchanging Investors understands that the Company and its agents are relying upon such representations for the purpose of determining whether the Exchange meets the requirements for such exemptions.

(j) *Information Provided.* The Investor and each Exchanging Investor acknowledges that no person has been authorized to give any information or to make any representation concerning the Company or the Exchange other than as contained in this Agreement and the Covered SEC Filings. The Company takes no responsibility for, and provides no assurance as to the reliability of, any other information that others may provide to the Investor or any Exchanging Investor.

(k) *No Investment, Tax or Other Advice.* For the avoidance of doubt without limiting the representations and warranties of the Company set forth in this Agreement, the Investor confirms that it and each Exchanging Investor is not relying on any statement (written or oral), representation or warranty made by, or on behalf of, the Company, PJT Partners, Truist or any of their respective Affiliates or agents as investment, tax or other advice or as a recommendation to participate in the Exchange and receive the Exchange Consideration in exchange for Existing Notes. The Investor confirms that it and each Exchanging Investor has not relied on any statement (written or oral) of the Company, PJT Partners, Truist or any of their respective Affiliates or agents as to the terms of the New Notes, other than as set forth in this Agreement. Neither the Company, PJT Partners, Truist nor any of their respective Affiliates or agents is acting or has acted as an advisor to the Investor or any Exchanging Investor in deciding whether to participate in the Exchange and to exchange Existing Notes for the Exchange Consideration.

(l) *Investment Decision Matters.* For the avoidance of doubt without limiting the representations and warranties of the Company set forth in this Agreement, in deciding to participate in the Exchange, each of the Investor and the Exchanging Investors is not relying on the advice or recommendations of the Company, PJT Partners, Truist, or their respective Affiliates or agents, and has made its own independent decision that the terms of the Exchange and the investment in the New Notes are suitable and appropriate for it.

(m) *Due Diligence.* Each of the Investor and the Exchanging Investors has had the opportunity to conduct its own investigation of the Company and the New Notes. Each of the Investor and the Exchanging Investors has had access to the Covered SEC Filings and such other information concerning the Company and the New Notes it deems necessary to enable it to make an informed investment decision concerning the Exchange. Each of the Investor and the Exchanging Investors has been offered the opportunity to ask questions of the Company as it deems necessary to enable it to make an informed investment decision concerning the Exchange. For the avoidance of doubt, nothing in this Agreement limits the representations and warranties of the Company set forth in this Agreement.

(n) *No Regulatory Agency Recommendation or Approval.* Each of the Investor and the Exchanging Investors understands that no federal or state agency has passed upon the merits or risks of an investment in the New Notes or made any recommendation or endorsement, or made any finding or determination concerning the fairness or advisability, of such investment or the consequences of the Exchange and this Agreement.

(o) *Qualified Institutional Buyer Status.* Each Exchanging Investor and each account for which it is acting is a “qualified institutional buyer” as defined in Rule 144A under the Securities Act. Each of the Investor and the Exchanging Investors agrees to use commercially reasonable efforts to furnish any additional information reasonably requested by the Company to assure compliance with applicable U.S. federal and state securities laws in connection with the Exchange.

(p) *Mutual Negotiation.* The Investor acknowledges that the terms of the Exchange have been mutually negotiated between the Investor and the Company. The Investor was given a meaningful opportunity to negotiate the terms of the Exchange. The Investor had a sufficient amount of time to consider whether to participate in the Exchange, and neither the Company, PJT Partners nor Truist, nor any of their respective Affiliates or agents, has placed any pressure on the Investor to respond to the opportunity to participate in the Exchange. The Investor’s and each Exchanging Investor’s participation in the Exchange was not conditioned by the Company on the Investor or any Exchanging Investor’s exchange of a minimum principal amount of Existing Notes for the Exchange Consideration.

(q) *Financial Adviser Fee.* The Investor acknowledges that it and each Exchanging Investor understands that the Company intends to pay to each of PJT Partners and Truist a reasonable fee in respect of the Exchange.

(r) [Reserved].

(s) *New York Stock Exchange Matters.* Neither the Investor nor any Exchanging Investor has an ownership interest equal to or greater than either 5% of the number of shares of Common Stock of the Company or 5% of the voting power outstanding of the Company, in each case, before the initial issuance of the securities issued in the Exchange.

(t) *Settlement Instructions.* No later than one (1) business day after the date hereof, the Investor agrees to deliver to the Company settlement instructions substantially in the form of Exhibit A attached to this Agreement for each of the Exchanging Investors.

(u) *Wall-Cross Matters.* The Investor acknowledges and agrees that it and each Exchanging Investor has not transacted in any securities of the Company since November 6, 2023 through the date hereof. Solely for purposes of this **Section 5(u)**, subject to the Investor's compliance with its obligations under U.S. federal securities laws and the Investor's internal policies, (i) "Investor" will not include any employees or Affiliates of the Investor that are effectively walled off by appropriate "Fire Wall" information barriers approved by the Investor's legal or compliance department; and (ii) the foregoing representations and covenants of this **Section 5(u)** will not apply to any transaction by or on behalf of an account that was effected without the advice or participation of, or such account's receipt of information regarding the transactions contemplated hereby provided by, the Investor.

(v) *No Reliance on PJT Partners or Truist; Related Matters.* The Investor acknowledges and agrees that neither PJT Partners nor Truist has acted as a financial advisor or fiduciary to the Investor or any Exchanging Investor and that PJT Partners and Truist and their respective directors, officers, employees, representatives and controlling persons have no responsibility for making, and have not made, any independent investigation of the information contained herein or in the Company's SEC filings and make no representation or warranty to the Investor or any Exchanging Investor, express or implied, with respect to the Company, the Existing Notes or the Exchange Consideration or the accuracy, completeness or adequacy of the information provided to the Investor or any Exchanging Investor or any other publicly available information.

(w) *Restrictions on Transfer; Trading Restrictions.* The Investor acknowledges and agrees that, solely to the extent it holds any New Notes, for a period of one year following the date of this Agreement, it and each Exchanging Investor and their respective Affiliates shall not offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, purchase financial instruments (including prepaid variable forward contracts, equity swaps, collars and exchange funds), or otherwise engage in transactions, that are designed to hedge or offset any decrease in the market value of the Common Stock held, directly or indirectly, by the Investor or the Exchanging Investor, or otherwise transfer or dispose of, directly or indirectly, any New Notes or shares of Common Stock; provided, that beginning on the date that is 180 days following the date of this Agreement, the Investor and the Exchanging Investor and their respective Affiliates may (i) make sales of out-of-the-money call options and (ii) sell or otherwise transfer or dispose of, directly or indirectly, any New Notes or shares of Common Stock. For the avoidance of doubt, the restrictions set forth in this Section 5(w) shall not apply to the Existing Notes or any securities convertible into or exercisable or exchangeable for Common Stock (other than the New Notes).

Section 6. CONDITIONS TO OBLIGATIONS OF THE PARTIES.

(a) *Conditions to the Company's Obligations.* The obligation of the Company to deliver the Exchange Consideration is subject to the satisfaction at or prior to the Closing of each of the following conditions precedent: (i) the representations, warranties and covenants of the Investor, for itself and on behalf of the Exchanging Investors, in **Section 5** hereof are true and correct as of the Closing in all respects with the same effect as though such representations and warranties had been made as of the Closing; (ii) all covenants and agreements of the Investor or any Exchanging Investor in **Section 5** to be performed at or before the Closing have been performed; (iii) the conditions precedent set forth in **Section 3(b)(iii)(3)** and the receipt by the Company of a valid DWAC Withdrawal and New Notes DWAC Deposit, in each case conforming to the requirements set forth in this Agreement; and (iv) delivery by each Exchanging Investor of the documentation required by **Section 9** hereof.

(b) *Conditions to the Investor's Obligations.* The obligation of the Investor, on behalf of the Exchanging Investors, to deliver (or cause to be delivered) the Existing Notes is subject to the satisfaction at or prior to the Closing of each of the following conditions precedent: (i) the representations, warranties and covenants of the Company in **Section 4** are true and correct as of the Closing in all respects with the same effect as though such representations and warranties had been made as of the Closing; (ii) all covenants and agreements of the Company in **Section 4** to be performed at or before the Closing have been performed, (iii) the Company shall have paid in full the fees and expenses payable pursuant to Section 4(t); (iv) the Company and the Guarantors shall have delivered to the Investor, Collateral Agent and/or New Notes Trustee, as applicable: (A) the New Indenture, duly executed and delivered by the Company, the Guarantors, the New Notes Trustee and the Collateral Agent; (B) one or more global certificates representing the New Notes duly issued, executed and delivered by the Company to the New Notes Trustee as custodian of DTC, in the name of Cede & Co., and duly authenticated by the New Notes Trustee; (C) customary security documentation (including, without limitation, the Security Agreement, intellectual property security agreements in form suitable for filing with the United States Patent and Trademark Office and/or the United States Copyright Office, as applicable) in form and substance reasonably acceptable to the Investor and duly executed and delivered by each of the Company and the Guarantors party thereto and the Collateral Agent (collectively, the "Security Documents"), as well as (1) certificates representing the capital stock or promissory notes pledged pursuant to the Security Documents, accompanied by undated stock or note powers executed in blank, or satisfactory evidence that such certificates, promissory notes and related powers were delivered to the Collateral Agent, (2) proper financing statements, duly prepared for filing under the Uniform Commercial Code of all relevant jurisdictions of incorporation or formation of the Company and each Guarantor and (3) completed lien searches, dated on or as of a recent date before the Closing, listing all effective financing statements filed in the relevant jurisdictions of the Company and each Guarantor's jurisdiction of incorporation or formation that name the Company or any Guarantor as debtor, together with copies of such financing statements, and not evidencing any Liens not permitted by the New Notes Indenture, (D) a written opinion addressed to the Exchanging Investors and dated as of the Closing Date of Latham & Watkins LLP, counsel for the Company and the Guarantors, in the form attached hereto as Exhibit E, and of Holland & Knight LLP, Florida counsel to the Company, in the form attached hereto as Exhibit F, in each case relating to this Agreement, the New Notes Indenture, the New Notes, the Guarantees and the Security Documents, (E) a customary secretary's certificate in respect of the Company and each Guarantor, dated as of the Closing Date and (F) such other certificates and documents as the Investor may reasonably request; and (v) the Company shall have entered into the Registration Rights Agreement substantially simultaneous with the consummation of the transactions contemplated by this Agreement.

(c) *General Closing Conditions.* The obligation of the Company to deliver the Exchange Consideration, and of the Investor, on behalf of the Exchanging Investors, to deliver (or cause to be delivered) the Existing Notes, as applicable, are subject to the satisfaction at the Closing of the following conditions:

(i) no governmental authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, judgment, decree, injunction or other order (whether temporary, preliminary or permanent) that is in effect and precludes consummation of the transactions contemplated hereby and by the New Notes Indenture and the New Notes, and no statute, rule, regulation, order, injunction or decree shall have been enacted, entered, promulgated or enforced by any governmental authority that prohibits or makes illegal this Agreement, the New Notes Indenture and the New Notes or the transactions contemplated hereby or thereby; and

(ii) there shall be no pending litigation, action, proceeding, or investigation that purports to affect the legality, validity or enforceability of this Agreement, the New Notes Indenture and the New Notes.

Section 7. PREEMPTIVE RIGHTS WITH REGARD TO CERTAIN EQUITY SECURITIES.

(a) For so long as the Investor and all Exchanging Investors hold, collectively, at least \$100,000,000 aggregate principal amount of New Notes, in connection with any offering or sale or issuance by the Company or any of its subsidiaries of Common Stock or other equity securities of the Company or securities convertible into or exchangeable or exercisable for Common Stock or other equity securities of the Company not otherwise described in Section 7(e) below, and in each case to any Person that is not the Company or a wholly-owned subsidiary of the Company (collectively, “**New Securities**”), the Exchanging Investor shall have the first right to purchase or otherwise acquire, at the same price and on the same terms as are offered to any such Person, up to that portion of New Securities which equals the proportion (such amount, the “**Pro Rata Share**”) that the Common Stock then held by the Exchanging Investor (including all shares of Common Stock then issuable (directly or indirectly) upon conversion and/or exercise, as applicable, of the Existing Notes and the New Notes) bears to the total Common Stock of the Company then outstanding (assuming full conversion and/or exercise, as applicable, of all Existing Notes and New Notes).

(b) If the Company or any of its subsidiaries proposes to offer or sell or issue any New Securities, it shall give the Exchanging Investor a written notice of its intention, which notice shall include a description of the New Securities, the number of such New Securities proposed to be so offered, sold or issued and the price and the other terms and conditions upon which the Company or such subsidiary, as the case may be, proposes to do the same. The Notifying Investor shall have seven (7) Business Days from the giving of such notice to agree to purchase all or a portion of its Pro Rata Share of all the New Securities proposed to be offered or sold or issued for the price and upon the terms and subject to the conditions specified in such notice (which notice shall, for the avoidance of doubt, comply with this Section 7) by giving written notice to the Company and stating therein the quantity of New Securities to be purchased. The Exchanging Investor shall be entitled to apportion the preemptive rights hereby granted to it in such proportions as it deems appropriate, among (i) itself, (ii) its Affiliates and (iii) its beneficial interest holders, such as limited partners, members or any other Person having “beneficial ownership,” as such term is defined in Rule 13d-3 promulgated under the Exchange Act, of such Exchanging Investor.

(c) If the Exchanging Investor fails to exercise in full its preemptive rights as set forth in this Section 7, the Company or such subsidiary, as the case may be, shall have 45 days, beginning after the expiration of the seven (7) Business Day period referred to in Section 7(b) to sell the New Securities in respect of which the Exchanging Investors’ rights of first offer were not exercised, at the same or a greater price, and upon such terms and subject to such conditions (other than price) that are no more favorable in any material respect to the purchasers thereof than those specified in the Company’s notice to the Exchanging Investor pursuant to this Section 7. If the Company or such subsidiary, as the case may be, has not sold such New Securities within such 45-day period, the right provided hereunder shall be deemed to be revived and the Company and its subsidiaries shall not thereafter issue or sell any such New Securities to any Person without first offering such securities to the Exchanging Investor in accordance with this Section 7. The election by the Exchanging Investor not to exercise its preemptive rights hereunder in any one instance shall not affect its right as to any future preemptive rights hereunder.

(d) If any wholly-owned subsidiary of the Company conducts a widely marketed public offering of equity securities of such subsidiary for cash made pursuant to one or more registration statements of such subsidiary effective under the Securities Act, the Company and such subsidiary shall use commercially reasonable efforts to provide the Exchanging Investor with the right to purchase its Pro Rata Share of such equity securities in any such widely marketed public offering.

(e) The following offerings, issuances or sales, as the case may be, shall not be included in the definition of “New Securities:”

(i) widely marketed public offerings of equity securities of the Company for cash made pursuant to one or more registration statements of the Company effective under the Securities Act, provided, that the Company shall use commercially reasonable efforts to provide the Exchanging Investor with the right to purchase its Pro Rata Share of such equity securities in any such widely marketed public offering (other than any offering or sale made pursuant to “at-the-market” sales programs, including that certain Sales Agreement, dated as of August 4, 2022, between the Company and the agents identified therein);

(ii) issuances or sales of equity securities to employees, officers, managers, directors, consultants or other service providers of the Company or any of its subsidiaries pursuant to any employee benefit, incentive, compensation or similar plans or arrangements of, or any other compensation, employment, appointment or retention arrangement with, the Company or any of its subsidiaries, in each case, that is approved by the Board of Directors;

(iii) any equity securities issuable as consideration (and not, for the avoidance of doubt, as financing arrangements) for the acquisition by the Company or any of its Subsidiaries of another business entity or interest therein (including, without limitation, a joint venture or strategic alliance), whether by merger, stock purchase, purchase of substantially all the assets or other business combination or investment, including equity securities that are issued as payment of a bona fide transaction fee to third party brokers or other service providers who provided services in sourcing, advising and/or facilitating such acquisition;

(iv) any equity securities of the Company issued to all stockholders of the Company not for consideration as a pro rata dividend or distribution on the Common Stock for which there is an adjustment to the Conversion Rate of the New Notes in accordance with the New Notes Indenture;

(v) any equity securities issuable to third party lessors or other commercial counterparties, in each case, in connection with bona fide business transactions (provided, that (i) such business transaction does not involve the raising of capital and (ii) the Board of Directors of the Company has determined that such business transaction is on arms' length terms);

(vi) issuances of equity securities as an "equity kicker" to a third-party lender in connection with any debt financing of the Company or its subsidiaries which the Board of Directors of the Company determines is on arms-length terms;

(vii) issuances or sales of Common Stock upon exercise, conversion or exchange of Existing Notes or New Notes; and

(viii) any equity securities issued to a third party in connection with a joint venture or strategic partnership that is approved by the Board of Directors of the Company.

Section 8. LIMITED INDEMNIFICATION.

(a) *Limited Indemnification.* The Company agrees to indemnify the Investor, each Exchanging Investor, their respective Affiliates, and their respective equityholders, directors, officers, employees, agents, members, partners, managers, advisors (and any other Persons with a functionally equivalent role notwithstanding a lack of such title or any other title) (each, a "**Indemnified Party**" and, collectively, the "**Indemnified Parties**") from and against any losses, claims, damages, expenses or liabilities, and hold each of them harmless against, any and all actions, suits, proceedings (including any investigations, litigation or inquiries), demands, and causes of action, and, in connection therewith, promptly upon demand, pay or reimburse each of them for all costs, losses, claims, damages or liabilities of any kind or nature whatsoever (including the reasonable and documented fees and disbursements of counsel and all other reasonable and documented expenses incurred in connection with investigating, defending or preparing to defend any such matter that may be incurred by them or asserted against or involve any of them) (collectively, "**Losses**"), as a result of, relating to, arising out of, or resulting from any Third-Party Claim. As used herein, "**Third Party Claim**" means any action, suit or proceeding asserted against an Indemnified Party by a third party (including, for these purposes, any creditors of the Company, or committee thereof, whether directly or derivatively, and, in the event of an insolvency proceeding, the Company in its capacity as debtor-in-possession, any debtor-in-possession successor to the Company, or any trustee of the Company in connection with an insolvency proceeding) that is not affiliated in any way with an Indemnified Party (other than, if applicable, the Company or any of its subsidiaries in any applicable capacity) alleging that this Agreement, the New Notes, the New Notes Indenture, the Guarantees, the Security Documents (and the liens provide for therein) and any transactions contemplated hereby or thereby (including the Exchange) are invalid, illegal, avoidable or unenforceable under any applicable law. The Indemnified Parties are intended third-party beneficiaries of this Section 8.

(b) *Limitation on Indemnity.* Notwithstanding the foregoing, the Company shall not be required to indemnify or hold harmless any Indemnified Party to the extent of any Losses that are finally determined by a court of competent jurisdiction to have resulted from, in whole or in part, the actions of such Indemnified Party (other than actions in accordance with or further to this Agreement, the New Notes, the New Notes Indenture, the Guarantees, the Security Documents and the transactions contemplated hereby and thereby). To the extent that the Company has provided indemnification pursuant to this Section 8 prior to any such determination by a court of competent jurisdiction, each Indemnified Party so determined to have suffered such non-indemnifiable Losses shall promptly refund to the Company, by wire transfer of immediately available funds, any amounts so advanced by the Company.

(c) *Indemnification Procedures.*

(i) *Notice of Proceedings.* If any claim, action, suit or proceeding (each, a “**Proceeding**”) is made or commenced against any Indemnified Party in respect of which indemnity is or may be sought from the Company (in such capacity, the “**Indemnifying Party**”) pursuant to Section 8(a), then such Indemnified Party will promptly notify such Indemnifying Party in writing of such Proceeding; *provided, however*, that the failure to so notify such Indemnifying Party will not relieve such Indemnifying Party from any liability that it may have to such Indemnified Party or otherwise, except to the extent that such Indemnifying Party is materially prejudiced in its ability to defend such action by such failure.

(ii) *Defense of Proceedings; Employment of Counsel.* Subject to the next sentence, upon its receipt of the notice referred to in **Section 8(c)(i)** in respect of a Proceeding, the Indemnifying Party will have the right, exercisable by giving written notice to the Indemnified Party as promptly as reasonably practicable after the receipt of written notice from such Indemnified Party of such claim or proceeding, to assume, at the Indemnifying Party’s expense, the defense of such Proceeding, including the employment of counsel reasonably satisfactory to the Indemnified Party and payment of all fees and expenses. Such Indemnified Party will also have the right to participate in the defense of any such Proceeding, and to employ its own counsel in such Proceeding at such Indemnified Party’s expense; *provided, however*, that such Indemnifying Party will be responsible for, and pay as incurred, the reasonable and documented fees and expenses of such counsel if (1) such Indemnifying Party authorized, in writing, the employment of such counsel in connection with the defense of such Proceeding; (2) such Indemnifying Party fails, within thirty (30) days after its receipt of the notice referred to in Section 8(c)(i), to employ counsel to defend such Proceeding; or (3) such Indemnified Party reasonably concludes that there may be (x) defenses available to such Indemnified Party that are different from, in addition to, or in conflict with, those available to such Indemnifying Party or (y) a conflict of interest between the Indemnified Party and the Indemnifying Party with respect to such claim (in which case of this clause (3), such Indemnifying Party will not have the right to direct the defense of such Proceeding on behalf of such Indemnified Party). Notwithstanding anything to the contrary in this **Section 8(c)(ii)**, in no event will any Indemnifying Party be liable for the fees or expenses of more than one separate counsel (in addition to any local counsel) in any one Proceeding or series of related Proceedings in the same jurisdiction representing the Indemnified Parties who are party to such Proceeding.

(iii) *Settlements of Proceedings.* An Indemnifying Party will not be liable pursuant to Section 8(a) or this Section 8(c) for any settlement of any Proceeding except as provided in the next sentence. If any Proceeding is settled, then the Indemnifying Party will indemnify and hold harmless each Indemnified Party that is subject to such settlement from and against any Losses incurred by such Indemnified Party by reason of such settlement, if:

(1) such Indemnifying Party effected, or otherwise provided its written consent to, such settlement (such consent not to be unreasonably withheld, conditioned or delayed); or

(2) (A) such Indemnified Party has requested such Indemnifying Party to reimburse such Indemnified Party for any fees and expenses of counsel as contemplated by Section 8(c)(ii); (B) such settlement is entered into more than sixty (60) days after such Indemnifying Party has received such request; (C) such Indemnifying Party has not fully reimbursed such Indemnified Party in accordance with such request before the date of such settlement; and (D) such Indemnified Party has given such Indemnifying Party at least thirty (30) days' prior notice of its intention to settle.

The Indemnifying Party will not effect any settlement of or consent to entry of any judgment in any Proceeding without the prior written consent of the applicable Indemnified Parties, unless such settlement (1) includes an unconditional release of such Indemnified Parties from all liability on the claims that are the subject matter of such Proceeding; (2) does not include an admission of fault or culpability or a failure to act by or on behalf of such Indemnified Parties; (3) does not purport to bind the Indemnified Parties to perform or refrain from performing any act (excluding any provision providing for the payment of money by the Indemnified Parties, which, for the avoidance of doubt, will be subject to the indemnity provided in the second sentence of this Section 8(c)(iii)), and (4) is settled solely for cash for which such Indemnified Parties would be entitled to, and receive, indemnification hereunder, and in a manner that would not violate the Indenture.

Section 9. TAX MATTERS. The Investor shall, and shall cause the other Exchanging Investors to, on or prior to the Closing Date, (a) if such Person is a United States person for U.S. federal income tax purposes, provide the Company with a properly completed and executed IRS Form W-9 and (b) if such Person is not a United States person for U.S. federal income tax purposes, provide the Company with a properly completed and executed IRS Form W-8 (with any required attachments). Each Investor (and each Exchanging Investor) hereby represents to exemption from any U.S. federal withholding on interest payments and to any U.S. backup and FATCA withholding and if such Investor or Exchanging Investor is claiming portfolio interest exemption, to satisfaction of the requirements under Section 871(h) or 881(c) (as applicable) of the Code.

Section 10. MISCELLANEOUS.

(a) *Waiver; Amendment.* Neither this Agreement nor any provisions hereof may be amended, waived, modified, changed, discharged or terminated except by an instrument in writing, signed by the party against whom any waiver, change, discharge or termination is sought.

(b) *Assignability.* Neither this Agreement nor any right, remedy, obligation or liability arising hereunder or by reason hereof will be assignable by either the Company or any Guarantor, on the one hand, or the Investor or any Exchanging Investor, on the other hand, without the prior written consent of the other party.

(c) *Further Instruments and Acts.* Each of the parties to this Agreement agrees to execute and deliver such further agreements, certificates, instruments and documents as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby, and do such further acts as may be reasonably necessary or proper to more effectively carry out the purposes of this Agreement.

(d) *Waiver of Jury Trial.* EACH OF THE COMPANY, THE GUARANTORS, THE INVESTOR AND THE EXCHANGING INVESTORS IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY).

(e) *Governing Law; Jurisdiction.* This Agreement will be governed by and construed in accordance with the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the state of New York or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the state of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the city of New York, borough of Manhattan, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action, or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action, or proceeding is brought in an inconvenient forum or that the venue of such suit, action, or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action, or proceeding by mailing a copy thereof to such party at the address for such notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law.

(f) *Section and Other Headings.* The section and other headings contained in this Agreement are for reference purposes only and will not affect the meaning or interpretation of this Agreement.

(g) *Counterparts.* This Agreement may be executed in any number of counterparts, each of which when so executed and delivered will be deemed to be an original and all of which together will be deemed to be one and the same agreement. Delivery of an executed signature page to this Agreement by facsimile or other electronic transmission (including pdf format) will be effective as delivery of a manually executed counterpart hereof.

(h) *Notices.* All notices and other communications to the Company or any Guarantor provided for herein will be in writing and will be deemed to have been duly given if delivered personally or sent by nationally recognized overnight courier service or by registered or certified mail, return receipt requested, postage prepaid to the following addresses (or such other address as either party may have hereafter specified by notice in writing to the other): (i) if to the Company or any Guarantor, fuboTV Inc., 1290 Avenue of the Americas, 9th Floor, New York, New York 10104, Attention: Chief Legal Officer, with a copy to Latham & Watkins LLP, 1271 Avenue of the Americas, New York, New York 10020, Attention: Gregory P. Rodgers; and (ii) if to the Investor or any Exchanging Investor, the address provided on the signature page hereto of the Investor, with a copy to Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York 10019, Attention: Joshua A. Feltman and Victor Goldfeld.

(i) *Binding Effect.* The provisions of this Agreement will be binding upon and accrue to the benefit of the parties hereto and the Exchanging Investors and their respective heirs, legal representatives, successors and permitted assigns.

(j) *Notification of Changes.* Each party covenants and agrees to notify the other party upon the occurrence of any event prior to the Closing that would cause any representation, warranty, or covenant of the first party (in the case of the Investor, made on behalf of itself and each Exchanging Investor), contained in this Agreement to be false or incorrect.

(k) *Severability.* If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

(l) *Entire Agreement.* This Agreement, including all Exhibits hereto, the Registration Rights Agreement and the New Notes Indenture constitute the entire agreement of the parties hereto with respect to the specific subject matter covered hereby, and supersede in their entirety all other agreements or understandings between or among the parties with respect to such specific subject matter.

(m) *Reliance by PJT Partners and Truist; Third Party Beneficiary.* PJT Partners and Truist, each acting as financial advisor to the Company, may rely on each representation and warranty of the Company and the Guarantors herein and of the Investor, made on behalf of itself and each Exchanging Investor, set forth in Section 5 (h), (i), (j), (k), (l), (m), (o), (p), (q), and (v), or pursuant to the terms hereof with the same force and effect as if such representation or warranty were made directly to PJT Partners and Truist, severally and not jointly. Each of PJT Partners and Truist will be a third-party beneficiary of this Agreement to the extent provided in this Section 10(m).

(n) *Additional Documentation.* Each of the parties shall, upon request, use commercially reasonable efforts to execute and deliver, for itself (and, in the case of the Investor, on behalf of any Exchanging Investor), any additional documents that the Company, the Existing Notes Trustee, the New Notes Trustee, the Collateral Agent or the Investor may reasonably request to complete the Exchange.

[The Remainder of This Page Intentionally Left Blank; Signature Pages Follow]

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

Investor:

Mudrick Distressed Opportunity SIF Master Fund, L.P.

Legal Name

By: /s/ John O'Callaghan

Name: John O'Callaghan

Title: General Counsel & Chief Compliance Officer

Aggregate Principal Amount of Existing Notes to be Exchanged by All Exchanging Investors (**must be an integral multiple of \$1,000**):

\$ 205,835,000

[Signature Page to Exchange Agreement]

FUBOTV INC.

By: /s/ David Gandler
Name: David Gandler
Title: Chief Financial Officer

EDISN INC.

By: /s/ David Gandler
Name: David Gandler
Title: Chief Financial Officer

FUBOTV MEDIA INC.

By: /s/ David Gandler
Name: David Gandler
Title: Chief Financial Officer

FUBO STUDIOS INC.

By: /s/ David Gandler
Name: David Gandler
Title: Chief Financial Officer

SPORTS RIGHTS MANAGEMENT LLC

By: /s/ David Gandler
Name: David Gandler
Title: Chief Financial Officer

[Signature Page to Exchange Agreement]

FOR IMMEDIATE RELEASE**FUBO CLOSES EXCHANGE OF \$205.8 MILLION EXISTING 3.25%
CONVERTIBLE SENIOR NOTES DUE 2026 FOR CONVERTIBLE
SENIOR SECURED NOTES DUE 2029****Transaction Reduces Fubo's Debt by \$28.3 Million**

NEW YORK – JANUARY 2, 2024 – FuboTV Inc. (d/b/a Fubo) (NYSE: FUBO), the leading sports-first live TV streaming platform, today announced that it has closed a privately negotiated exchange with Mudrick Capital Management, L.P. and certain of its affiliates and related funds (collectively, “Mudrick”), a holder of its 3.25% convertible senior notes due 2026 (the “Existing Convertible Notes”) pursuant to which Mudrick exchanged (the “Exchange”) \$205,835,000 in aggregate principal amount of the Existing Convertible Notes for \$177,506,000 in aggregate principal amount of Fubo’s new convertible senior secured notes due 2029 (the “New Convertible Notes”).

“Today’s Exchange represents continued proactive management of Fubo’s capital structure and improves the flexibility of our balance sheet,” said David Gandler, co-founder and CEO, Fubo. “Furthermore, we have reduced our debt outstanding by approximately \$28.3 million and have significantly extended a meaningful portion of our debt maturities out to 2029, from 2026. We are pleased to have accomplished these important objectives for our shareholders.”

Upon completion of the Exchange, the aggregate principal amount of the Existing Convertible Notes outstanding is \$191,665,000, and the aggregate principal amount of the New Convertible Notes outstanding is \$177,506,000. As of the closing of the Exchange, all of the New Convertible Notes were held by Mudrick. Fubo did not receive any cash proceeds from the issuance of the New Convertible Notes.

PJT Partners and Truist Securities served as financial advisors to Fubo in connection with the Exchange.

The Exchange has not been, and will not be, registered under the Securities Act of 1933, as amended (the “Securities Act”), or any other securities laws, and the New Convertible Notes and the shares of Fubo common stock issuable upon conversion of the New Convertible Notes will not be offered or sold except pursuant to an effective registration statement or pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act. This press release does not constitute an offer to sell, or the solicitation of an offer to buy, the New Convertible Notes or any shares of common stock issuable upon conversion of the New Convertible Notes.

For additional information, please refer to the 8-K filed with the U.S. Securities and Exchange Commission and available on Fubo's [investor relations website](#).

About Fubo

With a global mission to aggregate the best in TV, including premium sports, news and entertainment content, through a single app, FuboTV Inc. (d/b/a Fubo) (NYSE: FUBO) aims to transcend the industry's current TV model. The company operates Fubo in the U.S., Canada and Spain and Molotov in France.

In the U.S., Fubo is a sports-first cable TV replacement product that aggregates more than 300 live sports, news and entertainment networks and is the only live TV streaming platform with every Nielsen-rated sports channel (source: Nielsen Total Viewers, 2022). Leveraging Fubo's proprietary data and technology platform optimized for live TV and sports viewership, subscribers can engage with the content they are watching through an intuitive and personalized streaming experience. Fubo has continuously pushed the boundaries of live TV streaming. It was the first virtual MVPD to launch 4K streaming and MultiView, which it did years ahead of its peers.

Learn more at <https://fubo.tv>

Forward-Looking Statements

This press release includes forward-looking statements. Forward-looking statements represent Fubo's current expectations regarding future events and are subject to known and unknown risks and uncertainties that could cause actual results to differ materially from those implied by the forward-looking statements. Among those risks and uncertainties are market conditions and risks relating to Fubo's business, including those described in periodic reports that Fubo files from time to time with the SEC. The forward-looking statements included in this press release speak only as of the date of this press release, and Fubo does not undertake to update the statements included in this press release for subsequent developments, except as may be required by law.

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fuboTV Inc.

Registration Rights Agreement

January 2, 2024

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Registration Rights Agreement

REGISTRATION RIGHTS AGREEMENT, dated as of January 2, 2024, between fuboTV Inc., a Florida corporation (the “**Company**”), and the Investors signatory hereto (collectively, the “**Investors**”).

WHEREAS, the execution and delivery of this Agreement is a condition to the closing of the transactions contemplated by the Exchange Agreement (as defined in **Section 1**).

THEREFORE, each party to this Agreement agrees as follows.

Section 1. DEFINITIONS.

“**Affiliate**” has the meaning set forth in Rule 144 under the Securities Act.

“**Agreement**” means this Registration Rights Agreement, as amended or supplemented from time to time.

“**As-Converted Convertible Senior Secured Notes Ownership Percentage**” means, with respect to any Holder(s) as of any time, a fraction (a) whose numerator is the aggregate number of Registrable Underlying Securities owned, or issuable upon conversion of Registrable Convertible Notes owned, by such Holder(s) as of such time; and (b) whose denominator is the aggregate number of Registrable Underlying Securities that are then outstanding or are issuable upon conversion of all Registrable Convertible Notes then outstanding. Solely for purposes of this definition, Convertible Senior Secured Notes or Registrable Underlying Securities owned by the Company or any of its controlled Affiliates will be deemed not to be outstanding.

“**Blackout Commencement Notice**” has the meaning set forth in **Section 4(a)(i)**.

“**Blackout Event**” has the meaning set forth in **Section 4(a)**.

“**Blackout Period**” has the meaning set forth in **Section 4(a)(iv)**.

“**Blackout Termination Notice**” has the meaning set forth in **Section 4(a)(iv)**.

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

“**Common Stock**” means the common stock, \$0.0001 par value per share, of the Company.

“**Company**” means fuboTV Inc., a Florida corporation.

“**Company Indemnified Person**” mean each of the following Persons: (a) the Company; (b) any Affiliate of the Company; (c) any partner, director, officer, member, stockholder, employee, advisor or other representative of the Company or its Affiliates; (d) each Person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act; and (e) each successor of the foregoing Persons.

“Company Registration Expenses” means all fees and expenses arising from or incident to the registration of Registrable Securities in compliance with this Agreement (regardless of whether the General Resale Registration Statement is filed or becomes effective under the Securities Act), including the following, to the extent applicable: (a) registration, qualification or filing fees of the SEC, the New York Stock Exchange, the Financial Industry Regulatory Authority, Inc. or state securities or “blue sky” regulatory agencies; (b) fees incurred in connection with the listing, or the maintaining of any listing, of any Registrable Securities on any national securities exchange or inter-dealer quotation system; (c) the fees, charges, expenses and disbursements of counsel for the Company or of any independent accounting firm for the Company; (d) the costs and disbursements of Designated Holder Counsel, in an amount not to exceed \$25,000 plus the amount, if any, by which the \$350,000 expense cap set forth in Section 4(t) of the Exchange Agreement exceeds the expenses reimbursed thereunder; and (e) all expenses of preparing or assisting in preparing, word processing, printing and distributing any General Resale Registration Statement, any prospectus, any free writing prospectus and any amendments or supplements thereto, and any agreements and other documents relating to the performance of and compliance with this Agreement.

“Convertible Senior Secured Notes” means the Company’s Convertible Senior Secured Notes due 2029.

“Depository” means The Depository Trust Company or any other entity acting as securities depository for any of the Registrable Securities.

“Designated Holder Counsel” means Wachtell, Lipton, Rosen & Katz.

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

“Exchange Agreement” means that certain Exchange Agreement, dated as of December 29, 2023, between the Company, the Investors and the other parties named therein.

“Form S-3” means Form S-3 under the Securities Act, or any successor form thereto.

“General Resale Registration Statement” means each registration statement under the Securities Act that is filed pursuant to **Section 3** for the purposes set forth therein.

“General Resale Registration Statement Documents” means any General Resale Registration Statement, all pre- and post-effective amendments thereto, the related prospectus (including any preliminary prospectus), all supplements to such prospectus (including any preliminary prospectus supplements), the documents incorporated by reference in any of the foregoing and each related “issuer free writing prospectus” (as defined in Rule 433 under the Securities Act).

“General Resale Registration Statement Effectiveness Deadline Date” means the date that is one hundred and eighty (180) days after the Initial Issue Date.

“General Resale Registration Statement Effectiveness Period” means the period that (a) begins on, and includes, the earlier of (i) the General Resale Registration Statement Effectiveness Deadline Date; and (ii) the first date the General Resale Registration Statement is effective under the Securities Act; and (b) ends on the date when there are no longer any Registrable Securities.

“Holder” means, subject to Section 10, any Person that beneficially owns any Registrable Securities. For these purposes, a Person will be deemed to beneficially own any Registrable Securities issuable upon conversion of any other securities beneficially owned by such person. For the avoidance of doubt, each Investor party hereto shall be a Holder for so long as such Investor beneficially owns any Registrable Securities.

“Holder Confidentiality Party” has the meaning set forth in **Section 7(d)(i)**.

“Holder Indemnified Person” mean each of the following Persons: (a) any Notice Holder; (b) any Affiliate of any Notice Holder; (c) any partner, director, officer, member, stockholder, employee, advisor or other representative of any Notice Holder or its Affiliates; (d) each Person, if any, who controls any Notice Holder within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act; and (e) each successor of the foregoing Persons.

“Holder Information” means, with respect to any Holder, any information furnished in writing by or on behalf of such Holder to the Company expressly for use in any General Resale Registration Statement Document (including information in any Notice and Questionnaire delivered by such Holder to the Company).

“Indemnified Person” means any Company Indemnified Person or Holder Indemnified Person.

“Indemnifying Party” has the meaning set forth in **Section 8(c)(i)**.

“Indenture” means the Indenture, dated as of the Issue Date, among the Company, the guarantors party thereto and U.S. Bank National Association, a national association, as trustee and as collateral agent, as the same may be amended from time to time in accordance with the terms thereof.

“Initial Notice and Questionnaire Deadline Date” means the date that is ten (10) calendar days before the first date that the relevant General Resale Registration Statement becomes effective under the Securities Act.

“Investors” has the meaning set forth in the first paragraph of this Agreement.

“Issue Date” has the meaning set forth in the Indenture.

“**Loss**” means any loss, damage, expense, liability or claim (including reasonable costs and expenses of investigating, preparing or defending, and reasonable attorney’s fees and disbursements in connection with, the same, and the cost of enforcing any right to indemnification under this Agreement).

“**Make-Whole Fundamental Change**” has the meaning set forth in the Indenture.

“**Material Disclosure Defect**” has the following meaning with respect to any document: (a) if such document is of the type as to which the provisions of Section 11 of the Securities Act are applicable, that such document contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and (b) in all other cases, that such document includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

“**Notice and Questionnaire**” means a duly completed and executed Notice and Questionnaire substantially in the form set forth in **Exhibit A**.

“**Notice Holder**” means, subject to Section 10, a Holder that has delivered a Notice and Questionnaire to the Company.

“**Person**” or “**person**” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or other agency or political subdivision thereof. Any division or series of a limited liability company, limited partnership or trust will constitute a separate “person” under this Agreement.

“**Proceeding**” has the meaning set forth in **Section 8(c)(i)**.

“**Registrable Convertible Notes**” means:

(a) the Convertible Senior Secured Notes; and

(b) any securities issued, distributed or otherwise delivered with respect to the Convertible Senior Secured Notes whether upon any stock dividend, combination or split or other similar event or otherwise;

provided, however, that a security described in **clause (a)** or **(b)** above will cease to be a Registrable Convertible Note upon the earliest to occur of the following events:

(x) such security ceases to be outstanding; and

(y) such security is sold or otherwise transferred in a transaction (including, for the avoidance of doubt, a transaction that is registered under the Securities Act) following which such security ceases to be a “restricted security” (as defined in Rule 144) and may be resold by the transferee without any limitation as to volume or manner of sale and without the need for current public information required by Rule 144(c)(1).

“**Registrable Securities**” means the Registrable Convertible Notes and the Registrable Underlying Securities.

“**Registrable Underlying Securities**” means:

(a) the Common Stock issuable (including following a Make-Whole Fundamental Change) upon conversion of the Convertible Senior Secured Notes or which are otherwise acquired by a Holder; and

(b) any securities issued, distributed or otherwise delivered with respect to any security referred to in **clause (a)** above upon any stock dividend, combination or split or other similar event;

provided, however, that a security described in **clause (a)** or **(b)** above will cease to be a Registrable Underlying Security upon the earliest to occur of the following events:

(y) such security ceases to be outstanding; and

(z) such security is sold or otherwise transferred in a transaction (including, for the avoidance of doubt, a transaction that is registered under the Securities Act) following which such security ceases to be a “restricted security” (as defined in Rule 144) and may be resold by the transferee without any limitation as to volume or manner of sale and without the need for current public information required by Rule 144(c)(1).

“**Resale Restriction Termination Date**” has the meaning set forth in the Indenture.

“**Rule 144**” means Rule 144 under the Securities Act (or any successor rule thereto).

“**Rule 415**” means Rule 415 under the Securities Act (or any successor rule thereto).

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

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

“**Selling Expenses**” means any (i) underwriting fees, discounts, selling commissions and stock transfer taxes incurred by the Holder and (ii) legal expenses of the Holder not included within the definition of Company Registration Expenses, in each case, incurred by the Holder in connection with the sale of Registrable Securities registered by the Holder pursuant to the General Resale Registration Statement.

“**Specified Courts**” has the meaning set forth in **Section 11(e)**.

Section 2. RULES OF CONSTRUCTION. For purposes of this Agreement:

(a) “or” is not exclusive;

(b) “including” means “including without limitation”;

(c) “will” expresses a command;

(d) words in the singular include the plural and in the plural include the singular, unless the context requires otherwise;

(e) “herein,” “hereof” and other words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision of this Agreement, unless the context requires otherwise;

(f) references to currency mean the lawful currency of the United States of America, unless the context requires otherwise; and

(g) the exhibits, schedules and other attachments to this Agreement are deemed to form part of this Agreement.

Section 3. GENERAL RESALE REGISTRATION STATEMENT.

(a) *Filing and Effectiveness of General Resale Registration Statement.* The Company will (i) prepare and file, no later than ten (10) Business Days following the filing of the Company’s annual report on Form 10-K for the fiscal year ended December 31, 2023, a General Resale Registration Statement with the SEC; and (ii) use commercially reasonable efforts to cause such General Resale Registration Statement to (x) become effective under the Securities Act as soon as reasonably practicable, and in any event no later than the General Resale Registration Statement Effectiveness Deadline Date; and (y) remain continuously effective, and unless there is Blackout Period in effect in accordance with **Section 4**, usable for the resale or other transfer of Registrable Securities, under the Securities Act throughout the General Resale Registration Statement Effectiveness Period.

(b) *Contents of and Requirements for General Resale Registration Statement.* The Company will cause the General Resale Registration Statement to satisfy the following requirements:

(i) *Registration for Continuous Resale by Holders Under Rule 415.* The General Resale Registration Statement will register, under the Securities Act, the offer and resale, from time to time on a continuous basis under Rule 415, of Registrable Securities by the Holders thereof as provided in **Sections 3(b)(ii)** and **3(c)**.

(ii) *Selling Securityholder Information.* When it first becomes effective under the Securities Act, the General Resale Registration Statement will cover resales of Registrable Securities of Notice Holders identified in all Notice and Questionnaires delivered to the Company on or before the Initial Notice and Questionnaire Deadline Date. Thereafter, the General Resale Registration Statement will cover resales of Registrable Securities of Notice Holders as provided in **Section 3(c)**.

(iii) *Plan of Distribution.* The General Resale Registration Statement will provide for a plan of distribution in customary form (and reasonably satisfactory to the Holders) for resale registration statements of the type contemplated by this Agreement, including coverage for market transactions on a national securities exchange, privately negotiated transactions, transactions through broker-dealers acting as agent or principal and transactions directly on or through an electronic communication network, a “dark pool” or any similar market venue; *provided, however*, that in no event will any such plan of distribution include an underwritten public offering by one or more registered broker-dealers (as the term “underwritten public offering” is commonly understood, which for clarity does not include a transaction that does not involve the purchase by such broker-dealer of securities with a view to public resale thereby, but which transaction may be treated similarly to an underwritten public offering in terms of the procedures to be followed thereby as a matter of law or customary practice (a “**Broker-Assisted Transaction**”)) without the Company’s prior consent (which may be granted, with or without conditions, or withheld in its sole and absolute discretion).

(iv) *Form S-3.* If the resales contemplated by the General Resale Registration Statement are then eligible to be registered by the Company on Form S-3, then the General Resale Registration Statement will be on such Form S-3. From and after the date hereof until the Registration Termination Date, the Company will use its commercially reasonable efforts to maintain eligibility to be able to file and use a General Resale Registration Statement on Form S-3 (or any successor form thereto). During such period of time from and after the General Resale Registration Statement Effectiveness Deadline Date that the Company ceases to be eligible to file or use a General Resale Registration Statement on Form S-3 (or any successor form thereto), upon the written request of any Holder, the Company shall file as promptly as reasonably practicable (and in any event without 30 calendar days) a General Resale Registration Statement on Form S-1 (or any successor form) under the Securities Act covering the Registrable Securities of the requesting party or parties, as applicable, and cause such General Resale Registration Statement to be declared effective pursuant to the Securities Act as soon as reasonably practicable after the filing thereof. When the Company regains the ability to file a General Resale Registration Statement on Form S-3 covering the Registrable Securities, it shall as promptly as reasonably practicably do so or post-effectively amend the General Resale Registration Statement on Form S-1 to be a registration statement on Form S-3. If any General Resale Registration Statement ceases to be effective under the Securities Act for any reason at any time while Registrable Securities are still outstanding, the Company shall use commercially reasonable efforts to as promptly as is reasonably practicable cause such General Resale Registration Statement to again become effective under the Securities Act (including obtaining the prompt withdrawal of any order suspending the effectiveness of such General Resale Registration Statement), and shall use commercially reasonable efforts to as promptly as is reasonably practicable amend such General Resale Registration Statement in a manner reasonably expected to result in the withdrawal of any order suspending the effectiveness of such General Resale Registration Statement or file an additional registration statement as a General Resale Registration Statement (a “**Subsequent Resale Registration**”) registering the resale from time to time by the Holder thereof of all securities that are Registrable Securities as of the time of such filing. If a Subsequent Resale Registration is filed, the Company shall use commercially reasonable efforts to cause such Subsequent Resale Registration to become effective under the Securities Act as promptly as is reasonably practicable after the filing thereof. Any such Subsequent Resale Registration shall be on Form S-3 to the extent that the Company is eligible to use such form. Otherwise, such Subsequent Resale Registration shall be on Form S-1.

(c) *Obligation to Make Filings to Name Additional Notice Holders.* If any Holder delivers a Notice and Questionnaire to the Company after the Initial Notice and Questionnaire Deadline Date, then, subject to **Section 4** and the other provisions of this **Section 3(c)**, the Company will make such filing(s) with the SEC (including, if applicable, (w) a post-effective amendment, (x) a prospectus supplement, (y) any document that will be incorporated by reference in the General Resale Registration Statement upon its filing or (z) a new General Resale Registration Statement, provided that the Company will effect such filing by means of a prospectus supplement or a document referred to in the preceding **clause (y)** instead of a post-effective amendment or a new General Resale Registration Statement, if reasonably practicable and then permitted by the rules of the SEC) so as to enable such Holder to sell or otherwise transfer such Holder's Registrable Securities identified in such Notice and Questionnaire pursuant to the applicable General Resale Registration Statement and the related prospectus and, if applicable, prospectus supplement in accordance with the plan of distribution set forth therein. Subject to the next sentence, the Company will make such filing(s) as follows: (i) within thirty (30) calendar days after the date of such delivery (or, if such Notice and Questionnaire is delivered before the initial effective date of the General Resale Registration Statement or during a Blackout Period, such effective date or the last day of such Blackout Period, respectively), if a new General Resale Registration Statement is required (and the Company will use commercially reasonable efforts to cause such new General Resale Registration Statement to become effective under the Securities Act as soon as reasonably practicable); and (ii) in all other cases, within fifteen (15) calendar days after the date of such delivery (or, if such Notice and Questionnaire is delivered before the initial effective date of the General Resale Registration Statement or during a Blackout Period, such effective date or the last day of such Blackout Period, respectively). Notwithstanding anything to the contrary in this **Section 3(c)**, the Company will in no event be required pursuant to this **Section 3(c)** to file more than one (1) new General Resale Registration Statement within any six (6) month period or more than one (1) other filing in any three (3) month period.

(d) *Filing of New General Resale Registration Statement; Designation of Existing Registration Statement.* To the extent the Company deems doing so to be desirable or necessary to satisfy its obligations under this Agreement or to comply with applicable law (including, if applicable, to comply with Rule 415(a)(5)), the Company may file one or more new General Resale Registration Statements or designate an existing registration statement of the Company to constitute a General Resale Registration Statement for purposes of this Agreement, *provided* that each such new General Resale Registration Statement or existing registration statement satisfies the requirements of this Agreement. Each reference in this Agreement to the General Resale Registration Statement will, if applicable, be deemed to include each such new General Resale Registration Statement or existing registration statement, if any, *mutatis mutandis*. In addition, the first date any such existing registration statement is amended or supplemented to permit the offer and resale of Registrable Securities in the manner contemplated by this Agreement will be deemed, for purposes of **Sections 5(b)** and **5(e)** and any related definitions, to be the initial filing date of such existing registration statement, and the first date such amended or supplemented existing registration statement is effective under the Securities Act and permits such the offers and resales will be deemed, for purposes of **Sections 3(b)(ii)**, **3(c)** and **5(e)** and any related definitions, to be the initial effective date of such existing registration statement.

(e) *Where SEC Rules Do Not Require Naming Selling Securityholders.* Notwithstanding anything to the contrary in this **Section 3**, if the applicable rules under the Securities Act, or interpretations thereof published by the staff of the SEC, are amended so as to permit Holders to resell their Registrable Securities pursuant to the General Resale Registration Statement without being named as a selling securityholder therein or in any related prospectus or prospectus supplement, then the Company may, at its election, amend any applicable General Resale Registration Statement Documents to identify the Holders generically in accordance with such rules and interpretations, in which event the Company will no longer have any obligation thereafter make any filings pursuant to **Section 3(c)** to the extent such filings are not necessary to permit any Holder to sell its Registrable Securities pursuant to the General Resale Registration Statement.

Section 4. BLACKOUT PERIODS.

(a) *Generally.* Notwithstanding anything to the contrary in this Agreement, but subject to **Section 4(b)**, if there occurs or exists any pending corporate development, filing with the SEC or any other event, and, in each case, the Company determines, acting in good faith and on the advice of legal counsel, that (1) the failure to publicly disclose material non-public information regarding such development, filing or other event would cause the prospectus, as of its date, to contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, and (2) the Company has a bona fide business purpose for keeping such information confidential such that it would be appropriate to suspend the availability of the General Resale Registration Statement (a “**Blackout Event**”), then:

(i) the Company will promptly send notice (a “**Blackout Commencement Notice**”) to each Notice Holder of such suspension (without setting forth therein any material non-public information, and including, to the extent reasonably practicable, an approximation of the anticipated length of such suspension);

(ii) the Company’s obligations under **Section 3** or otherwise to make the General Resale Registration Statement available for use by the Holders for resale of the Registrable Securities, including and any related obligations of the Company under **Section 5**, will be suspended until the related Blackout Period has terminated;

(iii) upon its receipt of such Blackout Commencement Notice, each Notice Holder agrees to comply with its obligations set forth in **Section 7(c)**; and

(iv) upon the Company’s determination, acting in good faith and on the advice of legal counsel, that there no longer is a Blackout Event occurring, the Company will promptly send notice to each Notice Holder (a “**Blackout Termination Notice**,” and the period from, and including, the date the Company sends such Blackout Commencement Notice to, and including, the date the Company sends such Blackout Termination Notice, a “**Blackout Period**”) to each Notice Holder of the termination of such suspension (without setting forth any material non-public information).

(b) *Limitation on Blackout Periods.* No single Blackout Period can extend beyond ninety (90) calendar days, and the total number of calendar days in all Blackout Periods cannot exceed an aggregate of one hundred eighty (180) calendar days in any period of twelve (12) full calendar months.

Section 5. CERTAIN REGISTRATION AND RELATED PROCEDURES.

(a) *Compliance with Registration Obligations and Securities Act; SEC Staff Comments.* Subject to **Section 4**, the Company will make such filings with the SEC as may be necessary to comply with its obligations under **Section 3** and to cause the General Resale Registration Statement to comply with the Securities Act and other applicable law, including, if applicable, the filing of any General Resale Registration Statement Documents to comply with Section 10(a)(3) of the Securities Act and Rule 3-12 of Regulation S-X under the Securities Act, to amend the General Resale Registration Statement to cause the same to be on a form for which the Company and the transactions contemplated thereby are eligible, and to address any comments received from the staff of the SEC. The Company will otherwise comply in all material respects with the Securities Act and other applicable law in the discharge of its obligations under **Section 3**.

(b) *Opportunity for Review by Notice Holders.* The Company will provide each Notice Holder and Designated Holder Counsel with a reasonable opportunity to review and comment on draft copies of the initial filing of the General Resale Registration Statement, each pre-effective and post-effective amendment thereto, and each related prospectus supplement, at least three (3) Business Days before the same is filed with the SEC, and the Company will give effect to reasonable comments timely received by it from such Notice Holders; *provided, however*, that in the case of a prospectus supplement that solely supplements or amends selling securityholder information and is filed pursuant to Rule 424(b)(7) under the Securities Act (or any successor rule), the Company need provide such opportunity only to those Notice Holders named therein.

(c) *Blue Sky Qualification.* The Company will use commercially reasonable efforts to qualify the offer and sale of Registrable Securities in the manner contemplated by the General Resale Registration Statement under the securities or “blue sky” laws of those jurisdictions within the United States as the Notice Holders may reasonably request and to maintain such qualification, once obtained, during the General Resale Registration Statement Effectiveness Period, and the Company will use commercially reasonable efforts to cooperate with such Notice Holders in connection with the same, except, in each case, to the extent such qualification is not required in connection with such offer and sale (including as a result of preemption by federal law pursuant to Section 18 of the Securities Act (or any successor provision)); *provided, however*, that the Company will not be required to (i) qualify generally to do business in any jurisdiction where it is not then so qualified; (ii) take any action that would subject it to general service of process in suits (other than those arising out of the offer or sale of Registrable Securities or in connection with this Agreement) in any jurisdiction where it is not then so subject; or (iii) take any action that would subject it to taxation in any jurisdiction where it is not then so subject.

(d) *Prevention and Lifting of Suspension Orders.* The Company will use commercially reasonable efforts to prevent the issuance (or, if issued, to obtain the withdrawal as promptly as practicable) of any order suspending the effectiveness of the General Resale Registration Statement under the Securities Act or suspending any qualification referred to in **Section 5(c)**.

(e) *Notices of Certain Events.* The Company will provide notice of the following events to each Notice Holder and Designated Holder Counsel as soon as reasonably practicable:

(i) the filing with the SEC of the General Resale Registration Statement, any pre- or post-effective amendment thereto or any related prospectus, prospectus supplement or “issuer free writing prospectus” (as defined in Rule 433 under the Securities Act);

(ii) the effectiveness under the Securities Act, of the General Resale Registration Statement or any amendment thereto;

(iii) the receipt, by the Company, of any request by the staff of the SEC or any other governmental authority for any amendment or supplement to the General Resale Registration Statement;

(iv) the issuance, by the SEC or any other governmental authority, of any stop order suspending the effectiveness of the General Resale Registration Statement or the receipt, by the Company, of any written notice that proceedings for such purpose have been initiated;

(v) the receipt, by the Company, of any written notice (x) of the suspension of the qualification or exemption from qualification of the offer and sale of the Registrable Securities in any jurisdiction; or (y) that proceedings for such purpose have been initiated;

(vi) the withdrawal or lifting of any suspension referred to in **clause (iv)** or **(v)** above; and

(vii) that the Company has determined that the use of the General Resale Registration Statement must be suspended (which notice may, at the Company’s discretion, state that it constitutes a Blackout Commencement Notice) as a result of the occurrence of any event that causes any of the General Resale Registration Statement Documents to have a Material Disclosure Defect or to cease to comply with applicable law;

provided, however, that (x) the Company need not provide any such notice during a Blackout Period; and (y) in no event will this **Section 5(e)** require the Company to, and notwithstanding anything in this Agreement to the contrary, in no event will the Company, provide any information that it in good faith determines would constitute material non-public information.

(f) *Remediation of Material Disclosure Defects.* Subject to **Section 4**, the Company will, as promptly as practicable after determining that any General Resale Registration Statement Document contains a Material Disclosure Defect, prepare and file with the SEC (and, if applicable, use commercially reasonable efforts to cause the same to become effective under the Securities Act as promptly as practicable) such appropriate additional General Resale Registration Statement Document(s) so as to cause the applicable General Resale Registration Statement Document(s) to thereafter not contain any Material Disclosure Defect.

(g) *Listing of Registrable Securities.* The Company will use commercially reasonable efforts to maintain the listing of the Common Stock on the New York Stock Exchange.

(h) *Provision of Copies of the Prospectus.* At its expense, the Company will provide, to Notice Holders, such number of copies of the General Resale Registration Statement, each amendment and supplement thereto, any prospectus relating to the General Resale Registration Statement or any related prospectus supplement or “issuer free writing prospectus” (as defined in Rule 433 under the Securities Act), and all exhibits and other documents filed therewith, as such Notice Holders may reasonably request; *provided, however*, that the Company need not provide any document pursuant to this **Section 5(h)** that is publicly available on the SEC’s EDGAR system (or any successor thereto).

(i) *Holders Cannot Be Identified as Underwriters Without Consent.* The Company will not expressly name or identify any Holder as an “underwriter” in any General Resale Registration Statement Document without such Holder’s prior written consent (which may be granted, with or without conditions, or withheld in its sole and absolute discretion); *provided, however*, that nothing in this **Section 5(i)** will require the consent of any Holder in connection with the inclusion in any General Resale Registration Statement Document of customary language, without specifically naming any Holder, that selling securityholders may in certain circumstances be considered to be underwriters under federal securities laws; *provided, further*, that, in the event the SEC has delivered a written instruction to the Company that any Holder be expressly named or identified as an underwriter in any General Resale Registration Statement Document, and such Holder fails to provide written consent to being named or identified as such, the rights of such Holder under this Agreement to use such General Resale Registration Statement Document will be suspended until it provides such consent. If, and for so long as, any Notice Holder that is required (either upon the reasonable advice of counsel for the Company or by the staff of the SEC) to be expressly named or identified as an “underwriter” in any Resale Registration Statement Document does not provide its written consent to being named as such, then, notwithstanding anything to the contrary in this Agreement, the Company’s failure to include such Notice Holder or its Registrable Securities in any Resale Registration Statement Document will not constitute a breach of the Company’s obligations under this Agreement.

(j) *Due Diligence Matters.* Upon reasonable notice and at reasonable times during normal business hours, the Company will make available for inspection, by a representative of each Notice Holder and attorneys or accountants retained by such Notice Holder, customary due diligence information, *provided however*, that such inspection and information will, to the greatest extent reasonably practicable, be coordinated on behalf of all Notice Holders and the other parties entitled thereto by the Designated Holder Counsel. Any information provided pursuant to this **Section 5(j)** (the “**Confidential Information**”) will be subject to **Section 7(d)** to the extent set forth therein. Without limiting the generality of the foregoing, in the case of any Broker-Assisted Transaction, the Company and its directors, officers, employees, independent accountants and other representatives will use commercially reasonable efforts to provide such documents, information and assistance and take such other actions as are reasonably requested by the Notice Holder in connection therewith.

(k) *Earnings Statement; Rule 144.* The Company will use commercially reasonable efforts to comply with its reporting obligations under Section 13(a) or 15(d) of the Exchange Act in such manner, as contemplated under Rule 158 under the Securities Act, so as to make generally available to its securityholders an earnings statement covering the twelve (12) month period referred to in Section 11(a) of the Securities Act, as it relates to the General Resale Registration Statement, in the manner contemplated by, and otherwise in compliance with, such Section 11(a). With a view to making available to the Holder the benefits of Rule 144 promulgated under the Securities Act, the Company covenants that it will (x) make and keep available such information as is necessary to make Rule 144 available with respect to resales of the Registrable Securities under the Securities Act, at all times, (y) file with the SEC in a timely manner all reports and other documents required of the Company under the Exchange Act and (z) take such further action as the Holder may reasonably request, all to the extent required from time to time to enable it to sell Registrable Securities without registration under the Securities Act pursuant to the exemption provided by Rule 144 promulgated under the Securities Act, as such rule may be amended from time to time. Upon the reasonable request of the Holder, the Company will deliver to it a written statement as to whether it has complied with such requirements, and, if not, the specific reasons for non-compliance.

(l) *Settlement of Transfers and De-Legending.* The Company will use commercially reasonable efforts to cause its transfer agent (or any other securities custodian for any Registrable Securities) to cooperate in connection with the settlement of any transfer of Registrable Securities (whether pursuant to the General Resale Registration Statement or pursuant to Rule 144 or otherwise), including through the applicable Depositary, and deliver to such transfer agent and/or registrar such customary forms, legal opinions from its outside or in-house legal counsel, agreements and other documentation as such transfer agent and/or registrar may reasonably request. If any Registrable Securities (whether represented by a certificate or in book-entry form) bear notations or a legend referring to transfer restrictions under the Securities Act, then the Company will, if such transfer restrictions are no longer applicable or otherwise appropriate, promptly cause such restrictions to be removed (including, in the case of book-entry Registrable Securities, through appropriate notations on the books of the Company's transfer agent, and, in the case of certificated Registrable Securities, through reissuance in the form of one or more certificates not bearing such a legend).

Section 6. EXPENSES. All Company Registration Expenses will be borne by the Company. All Selling Expenses incurred by the Holder in connection with the sale of Registrable Securities registered by the Holder pursuant to the General Resale Registration Statement will be borne by the Holder.

Section 7. CERTAIN AGREEMENTS AND REPRESENTATIONS OF THE HOLDERS.

(a) *Provision of Information.* Each Holder represents that the information included in any such Notice and Questionnaire is accurate and complete in all material respects and covenants, during the term of this Agreement, to promptly provide notice to the Company if any such information thereafter ceases to be accurate and complete in all material respects at any time while the General Resale Registration Statement remains effective. Each Holder authorizes the Company to assume the accuracy and completeness of all information contained in the most recent Notice and Questionnaire executed and delivered by such Holder. Each Holder will (i) provide, as soon as reasonably practicable, such other information necessary to effectuate the proposed disposition as the Company may reasonably request in connection with the performance of the Company's obligations under this Agreement; and (ii) promptly notify the Company upon becoming aware that any information relating to such Holder and included in any General Resale Registration Statement Document contains a Material Disclosure Defect.

(b) *Use of Offering Materials.* Each Holder agrees that, without the prior written consent of the Company, it will not offer or sell any Registrable Securities pursuant to the General Resale Registration Statement by means of any written communication other than the latest prospectus or prospectus supplement provided to such Holder by the Company (or on file on SEC's EDGAR system (or any successor thereto)) relating to the General Resale Registration Statement, and any related "issuer free writing prospectus" (as defined in Rule 433 under the Securities Act) authorized for such use by the Company.

(c) *Covenants Relating to Blackout Periods.* Each Holder agrees that, upon its receipt of a Blackout Commencement Notice, such Holder will (i) not effect any sale or other transfer of Registrable Securities pursuant to the General Resale Registration Statement, and will not distribute any General Resale Registration Statement Document, until such Holder has received a subsequent Blackout Termination Notice; and (ii) treat as Confidential Information, to the extent required in accordance with **Section 7(d)**, its receipt of such Blackout Commencement Notice and Blackout Termination Notice and any information contained therein in accordance with this Agreement.

(d) *Confidentiality.*

(i) *Covenant to Maintain Confidentiality of Confidential Information.* Subject to **Section 7(d)(ii)**, each Holder will, and will direct its partners, directors, officers, members, stockholders, employees, advisors (including legal accountants, attorneys and financial advisors) and other representatives (collectively, the "**Holder Confidentiality Parties**") to, keep confidential, and not use for any purposes other than those contemplated by this Agreement, the Confidential Information. *Permitted Disclosures.* **Section 7(d)(i)** will not apply to: any information to the extent (and only to the extent) such information:

(A) is or has been publicly disclosed other than by a Holder Confidentiality Party in breach of a duty of this Section 7(d); or

(B) was in the possession of a Holder Confidentiality Party prior to its disclosure by the Company, provided that the source of such information was not known to such Holder Confidentiality Party to be bound by an obligation of confidentiality to the Company with respect to such information; or

(C) was or has become known, on a non-confidential basis, to the applicable Holder Confidentiality Party (other than by or through a person known by such Holder Confidentiality Party to be bound by a contractual duty of confidentiality with respect to such information) before, or independently of, the disclosure thereof by, or on behalf of, the Company to such Holder Confidentiality Party; and

(2) the disclosure of any Confidential Information to the extent (and only to the extent):

(A) required by law, legal process, court order or the rules and regulations of any applicable regulatory or self-regulatory authority, *provided* that, to the extent permitted by law and reasonably practicable, the applicable Holder Confidentiality Party has first given the Company written notice of the proposed disclosure and, if requested by the Company, use commercially reasonable efforts to cooperate in good faith with the Company (at the Company's cost and expense) to seek to obtain a protective order or other remedy in respect of such disclosure; or

(B) made by any Holder, in connection with its performance of this Agreement, to such of its Affiliates and its and their respective directors, officers, employees, partners, managers, members, consultants, auditors, advisors (including legal accountants, attorneys and financial advisors) and other representatives who need to know such information in connection with the matters contemplated by this Agreement and that are bound by a duty of confidentiality that is substantially similar in scope to that set forth in this **Section 7(d)**.

Section 8. INDEMNIFICATION AND CONTRIBUTION.

(a) *Indemnification by the Company.* The Company will indemnify, defend and hold harmless each Holder Indemnified Person from and against (and will reimburse such Holder Indemnified Person, as incurred, for) any Losses that, jointly or severally, such Holder Indemnified Person may incur under the Securities Act, the Exchange Act, the common law or otherwise, insofar as such Losses arise out of or are based on any Material Disclosure Defect or alleged Material Disclosure Defect in any General Resale Registration Statement Document; *provided, however*, that the Company will have no obligations under this **Section 8(a)** in respect of any Losses insofar as such Losses arise out of or are based on (i) any sale by such Holder, pursuant to the General Resale Registration Statement, of Registrable Securities during a Blackout Period in breach of such Holder's covenant set forth in Section 4(a)(iii); or (ii) any Material Disclosure Defect or alleged Material Disclosure Defect included in any General Resale Registration Statement Document, which Material Disclosure Defect or alleged Material Disclosure Defect is included therein in reliance upon and in conformity with the Holder Information of such Holder.

(b) *Indemnification by Notice Holders.* Each Notice Holder, severally and not jointly, will indemnify, defend and hold harmless each Company Indemnified Person from and against (and will reimburse such Company Indemnified Person, as incurred, for) any Losses that, jointly or severally, such Company Indemnified Person may incur under the Securities Act, the Exchange Act, the common law or otherwise, insofar as such Losses arise out of or are based on any Material Disclosure Defect or alleged Material Disclosure Defect included in any General Resale Registration Statement Document, which Material Disclosure Defect or alleged Material Disclosure Defect is included therein in reliance upon and in conformity with the Holder Information of such Holder; *provided, however*, that in no event will the liability of any Holder pursuant to this **Section 8(b)** exceed a dollar amount equal to the net proceeds received by such Holder from the sale of the Registrable Securities (after deducting underwriters' discounts and commissions) giving rise to the related indemnification obligation under this **Section 8(b)**; *provided, further*, that the Holder shall not be liable in any case to the extent that prior to the filing of the General Resale Registration Statement giving rise to the indemnification obligation under this **Section 8(b)**, or any amendment thereof or supplement thereto, it has furnished in writing to the Company, information expressly for use in, and within a reasonable period of time prior to the effectiveness of such General Resale Registration Statement, or any amendment thereof or supplement thereto which corrected or made not misleading information previously provided to the Company.

(c) *Indemnification Procedures.*

(i) *Notice of Proceedings.* If any claim, action, suit or proceeding (each, a "**Proceeding**") is made or commenced against any Indemnified Person in respect of which indemnity is or may be sought from any Person (in such capacity, the "**Indemnifying Party**") pursuant to **Section 8(a)** or **Section 8(b)**, then such Indemnified Person will promptly notify such Indemnifying Party in writing of such Proceeding; *provided, however*, that the failure to so notify such Indemnifying Party will not relieve such Indemnifying Party from any liability that it may have to such Indemnified Person or otherwise, except to the extent that such Indemnifying Party is materially prejudiced in its ability to defend such action by such failure.

(ii) *Defense of Proceedings; Employment of Counsel.* Subject to the next sentence, upon its receipt of the notice referred to in **Section 8(c)(i)** in respect of a Proceeding, the Indemnifying Party will have the right, exercisable by giving written notice to the Indemnified Party as promptly as reasonably practicable after the receipt of written notice from such Indemnified Party of such claim or proceeding, to assume, at the Indemnifying Party's expense, the defense of such Proceeding, including the employment of counsel reasonably satisfactory to the Indemnified Person and payment of all fees and expenses. Such Indemnified Person will also have the right to participate in the defense of any such Proceeding, and to employ its own counsel in such Proceeding at such Indemnified Person's expense; *provided, however*, that such Indemnifying Party will be responsible for, and pay as incurred, the reasonable and documented fees and expenses of such counsel if (1) such Indemnifying Party authorized, in writing, the employment of such counsel in connection with the defense of such Proceeding; (2) such Indemnifying Party fails, within thirty (30) days after its receipt of the notice referred to in **Section 8(c)(i)**, to employ counsel to defend such Proceeding; or (3) such Indemnified Person reasonably concludes that there may be (x) defenses available to such Indemnified Person that are different from, in addition to, or in conflict with, those available to such Indemnifying Party or (y) a conflict of interest between the Indemnified Party and the Indemnifying Party with respect to such claim (in which case of this **clause (3)**, such Indemnifying Party will not have the right to direct the defense of such Proceeding on behalf of such Indemnified Person). Notwithstanding anything to the contrary in this **Section 8(c)(ii)**, in no event will any Indemnifying Party be liable for the fees or expenses of more than one separate counsel (in addition to any local counsel) in any one Proceeding or series of related Proceedings in the same jurisdiction representing the Indemnified Person(s) who are parties to such Proceeding.

(iii) *Settlements of Proceedings*. An Indemnifying Party will not be liable pursuant to **Section 8(a)** or **Section 8(b)**, as applicable, or this **Section 8(c)** for any settlement of any Proceeding except as provided in the next sentence. If any Proceeding is settled, then the Indemnifying Party will indemnify and hold harmless each Indemnified Person that is subject to such settlement from and against any Losses incurred by such Indemnified Person by reason of such settlement, if:

(1) such Indemnifying Party effected, or otherwise provided its written consent to, such settlement (such consent not to be unreasonably withheld, conditioned or delayed); or

(2) (A) such Indemnified Person has requested such Indemnifying Party to reimburse such Indemnified Person for any fees and expenses of counsel as contemplated by **Section 8(c)(ii)**; (B) such settlement is entered into more than sixty (60) days after such Indemnifying Party has received such request; (C) such Indemnifying Party has not fully reimbursed such Indemnified Person in accordance with such request before the date of such settlement; and (D) such Indemnified Person has given such Indemnifying Party at least thirty (30) days' prior notice of its intention to settle.

The Indemnifying Party will not effect any settlement of or consent to entry of any judgment in any Proceeding without the prior written consent of the applicable Indemnified Person(s), unless such settlement (1) includes an unconditional release of such Indemnified Person(s) from all liability on the claims that are the subject matter of such Proceeding; (2) does not include an admission of fault or culpability or a failure to act by or on behalf of such Indemnified Person(s); (3) does not purport to bind the Indemnified Persons(s) to perform or refrain from performing any act (excluding any provision providing for the payment of money by the Indemnified Persons(s), which, for the avoidance of doubt, will be subject to the indemnity provided in the second sentence of this Section 8(c)(iii)), and (4) is settled solely for cash for which such Indemnified Person(s) would be entitled to, and receive, indemnification hereunder.

(d) *Contribution Where Indemnification Not Available*. If the indemnification provided for in this **Section 8** is unavailable to any Indemnified Person, or is insufficient to hold any Indemnified Person harmless, in respect of any Losses referred to in the preceding provisions of this **Section 8**, then each applicable Indemnifying Party, severally and not jointly, will contribute to the amount paid or payable by such Indemnified Person as a result of such Losses in such proportion as is appropriate to reflect the relative fault of the Company, on the one hand, and of the Holders, on the other hand, in connection with the statements or omissions, or the actions or non-actions, as applicable, that resulted in such Losses, as well as other relevant equitable considerations. The relative fault of the Company, on the one hand, and of the Holders, on the other hand, will be determined by reference to, among other things, whether any applicable Material Disclosure Defect or alleged Material Disclosure Defect, or any relevant action or non-action, as applicable, relates to information supplied, or was taken or made, as applicable, by the Company or by the Holders and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such Material Disclosure Defect or alleged Material Disclosure Defect, or such action or non-action, as applicable. The amount paid or payable by an Indemnified Person as a result of any Losses referred to in this **Section 8(d)** will include any legal or other fees or expenses reasonably incurred by such Indemnified Person in connection with investigating, preparing to defend or defending the related Proceeding.

The Company and the Holders agree that it would not be just and equitable if contribution pursuant to this **Section 8(d)** were determined by pro rata allocation (even if the Holders were treated as one Person for such purpose) or by any other allocation method that does not take account of the equitable considerations referred to in the preceding paragraph. Notwithstanding anything to the contrary in the preceding paragraph, no Holder will be required to contribute any amount in excess of the amount by which the net proceeds received by such Holder from the sale of the Registrable Securities (after deducting underwriters' discounts and commissions) giving rise to the contribution obligation under this Section 8(d) exceeds the amount of any damage that such Holder has otherwise been required to pay by reason of the relevant Material Disclosure Defect or alleged Material Disclosure Defect, or the relevant action or non-action, as applicable. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. The Holders' obligations to contribute pursuant to this **Section 8(d)** are several and not joint.

(e) *Remedies Not Exclusive.* The remedies provided for in this **Section 8** are not exclusive and will not limit, and will be in addition to, any rights or remedies that may otherwise be available to any Indemnified Person at law or in equity.

(f) *Survival.* The indemnity and contribution provisions contained in this Section 8 shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of any Holder, any Person controlling any Holder or the Company, its officers or directors or any Person controlling the Company, (iii) acceptance of any of the Registrable Securities and (iv) any or transfer sale of Registrable Securities pursuant to a General Resale Registration Statement or otherwise.

Section 9. TERMINATION OF REGISTRATION RIGHTS. Notwithstanding anything to the contrary in this Agreement, upon the earlier of (x) the Resale Restriction Termination Date or (y) the first date on which no Registrable Securities are outstanding, (i) the Company's obligations under **Section 3**, and any related obligations of the Company under **Section 5**, will terminate (and, for the avoidance of doubt, the Company will thereafter have no obligation to file, keep effective or usable, or amend or make and other filings with respect to, the General Resale Registration Statement or any other General Resale Registration Statement Document), and (ii) the obligations of the Holders in this Agreement (other than under **Section 8**) will terminate.

Section 10. SUBSEQUENT HOLDERS. Each Person that acquires any Registrable Securities from any Holder will, to the extent such securities continue to constitute Registrable Securities in the hands of such Person, become a Holder until such time as such person thereafter ceases to satisfy the definition of such term; *provided, however*, that such Person will not be entitled to the benefits of or subject to any obligations under this Agreement (and will be deemed not to be a Holder or a Notice Holder) unless such Person executes and delivers a Notice and Questionnaire to the Company agreeing to be bound by the terms of this Agreement.

Section 11. MISCELLANEOUS.

(a) *Notices.* The Company will send all notices or communications to any Holder pursuant to this Agreement either (a) in writing by first class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery, to such Holder's address as set forth in the latest Notice and Questionnaire of such Notice Holder delivered to the Company (or, if such Holder has not delivered any Notice and Questionnaire, as set forth in the Company's registrar); or (b) by email to the email address specified in such Notice and Questionnaire (which email will be deemed to constitute notice in writing for purposes of this Agreement).

Any notice or communication by any Holder to the Company will be deemed to have been duly given if in writing by first class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery, to offices of the Company at the following address (or at such other address as may be hereafter specified by notice to the Holders by the Company):

fuboTV Inc.
1290 Avenue of the Americas
New York, NY 10104
Attention: John Janedis, Chief Financial Officer

with a copy (which will not constitute notice) to:

Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020
Attention: Greg Rodgers

(b) *Amendments and Waivers.* This Agreement, or any provision of this Agreement, may be amended, modified, waived or superseded only by a written instrument that is executed by the Company and by one or more Holders whose aggregate As-Converted Convertible Senior Secured Notes Ownership Percentage exceeds fifty percent (50%), and any such amendment, modification, waiver or supersession so executed will be binding upon the Company and all Holders; *provided, however*, that a waiver with respect to any particular Holder's rights under this Agreement will be effective as to such Holder if reflected in a written instrument executed by such Holder, *provided* such waiver does not adversely affect the rights of any other Holder.

For purposes of determining whether any such amendment, modification, waiver or supersession is executed by Holders of the requisite number of securities, the Company may, absent manifest error, conclusively rely on information contained in its registrar or in any Notice and Questionnaire.

No delay on the part of any party in exercising any right, power or privilege pursuant to this Agreement will operate as a waiver thereof, and no waiver, or single or partial exercise of, any such right, power or privilege will preclude any other or further exercise thereof or the exercise of any other right, power or privilege pursuant to this Agreement.

(c) *Third Party Beneficiaries.* Subject to **Section 11**, this Agreement will be binding on, inure to the benefit of and be enforceable by, each Holder and its successors and assigns.

(d) *Governing Law; Waiver of Jury Trial.* THIS AGREEMENT, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT, WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. EACH OF THE COMPANY AND EACH HOLDER (BY ITS EXECUTION AND DELIVERY OF THIS AGREEMENT, A JOINDER TO THIS AGREEMENT OR A NOTICE AND QUESTIONNAIRE) IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

(e) *Submission to Jurisdiction.* Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated by this Agreement may be instituted in the federal courts of the United States of America located in the City of New York or the courts of the State of New York, in each case located in the City of New York (collectively, the “**Specified Courts**”), and each of the Company and each Holder irrevocably submits to the non-exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail (to the extent allowed under any applicable statute or rule of court) to the address of the relevant party set forth in **Section 11(a)** will be effective service of process for any such suit, action or proceeding brought in any such court. Each of the Company and each Holder (by its execution and delivery of this Agreement, a joinder to this Agreement or a Notice and Questionnaire) irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or other proceeding in the Specified Courts and irrevocably and unconditionally waives and agrees not to plead or claim any such suit, action or other proceeding has been brought in an inconvenient forum.

(f) *No Adverse Interpretation of Other Agreements.* This Agreement may not be used to interpret any other agreement of the Company or its subsidiaries or of any other Person, and no such agreement may be used to interpret this Agreement.

(g) *Successors.* All agreements of the Company in this Agreement will bind its successors.

(h) *Severability.* If any provision of this Agreement is invalid, illegal or unenforceable, then the validity, legality and enforceability of the remaining provisions of this Agreement will not in any way be affected or impaired thereby.

(i) *Counterparts.* The parties may sign any number of copies of this Agreement. Each signed copy will be an original, and all of them together represent the same agreement. Delivery of an executed counterpart of this Agreement by facsimile, electronically in portable document format or in any other format will be effective as delivery of a manually executed counterpart.

(j) *Table of Contents, Headings, Etc.* The table of contents and the headings of the Sections and Subsections of this Agreement have been inserted for convenience of reference only, are not to be considered a part of this Agreement and will in no way modify or restrict any of the terms or provisions of this Agreement.

(k) *Entire Agreement.* This Agreement, including **Exhibit A**, the Exchange Agreement and the Indenture constitute the entire agreement of the parties with respect to the specific subject matter of this Agreement and supersede in their entirety all other agreements or understandings (whether written or oral) between or among the parties with respect to such specific subject matter; *provided, however*, that any existing confidentiality agreements between the Company and any Holder will continue in full force and effect. The Company represents and warrants that it has not entered into, and agrees that it will not enter into, any agreement that violates any of the rights granted to the Investor or the Holders under this Agreement.

(l) *Specific Performance.* The Company (a) agrees that any failure by it to comply with its obligations under this Agreement may result in material irreparable injury to the Holders for which there is no adequate remedy at law, and, that upon any such failure, any Holder may obtain such relief as may be required to specifically enforce the Company’s obligations under this Agreement; and (b) hereby waives the defense in any action for specific performance that a remedy at law would be adequate.

[The Remainder of This Page Intentionally Left Blank; Signature Page Follows]

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

FUBOTV INC.

By: /s/ David Gandler

Name: David Gandler

Title: Chief Executive Officer

[Signature Page to Registration Rights Agreement]

MUDRICK DISTRESSED OPPORTUNITY SIF MASTER FUND, L.P.

By: /s/ John O'Callaghan

Name: John O'Callaghan

Title: General Counsel & Chief Compliance Officer

BLACKWELL PARTNERS LLC - SERIES A

By: /s/ John O'Callaghan

Name: John O'Callaghan

Title: General Counsel & Chief Compliance Officer

BOSTON PATRIOT BATTERY MARCH ST LLC

By: /s/ John O'Callaghan

Name: John O'Callaghan

Title: General Counsel & Chief Compliance Officer

MUDRICK CAV MASTER, LP

By: /s/ John O'Callaghan

Name: John O'Callaghan

Title: General Counsel & Chief Compliance Officer

MUDRICK DISTRESSED OPPORTUNITY 2020 DISLOCATION FUND,
L.P.

By: /s/ John O'Callaghan

Name: John O'Callaghan

Title: General Counsel & Chief Compliance Officer

MUDRICK DISTRESSED OPPORTUNITY DRAWDOWN FUND II SC, L.P.

By: /s/ John O'Callaghan

Name: John O'Callaghan

Title: General Counsel & Chief Compliance Officer

[Signature Page to Registration Rights Agreement]

FORM OF NOTICE AND QUESTIONNAIRE

The undersigned (the “**Selling Securityholder**”) beneficial holder of Convertible Senior Secured Notes due 2029 (the “**Convertible Senior Secured Notes**”) of fuboTV Inc., a Florida corporation (the “**Company**”), or the Company’s common stock, \$0.0001 par value per share (the “**Common Stock**”), or other Registrable Securities (as defined in the Registration Rights Agreement referred to below) understands that the Company has filed, or intends to file, with the Securities and Exchange Commission (the “**SEC**”) a registration statement (the “**Registration Statement**”) under the Securities Act of 1933, as amended (the “**Securities Act**”) to register the resale of Registrable Securities, in accordance with the terms of the Registration Rights Agreement, dated as of January 2, 2024 (the “**Registration Rights Agreement**”), between the Company and the securityholders named therein. The Company will provide a copy of the Registration Rights Agreement upon request at the address set forth below. All capitalized terms used in this Notice and Questionnaire without definition have the respective meanings given to them in the Registration Rights Agreement.

To sell or otherwise dispose of any Registrable Securities pursuant to the Registration Statement, the beneficial owner of those Registrable Securities generally must be named as a selling securityholder in the related prospectus, deliver a prospectus to the purchasers of the Registrable Securities and be bound by those provisions of the Registration Rights Agreement applicable to such beneficial owner (including certain indemnification provisions, as described below). Beneficial owners that do not complete this Notice and Questionnaire and deliver it to the Company as provided below will not be named as selling securityholders in the prospectus and will not be permitted to sell any Registrable Securities pursuant to the Registration Statement. Beneficial owners are encouraged to complete and deliver this Notice and Questionnaire as soon as possible.

Certain legal consequences arise from being named as a selling securityholder in the Registration Statement and the related prospectus. Accordingly, registered holders and beneficial owners of Registrable Securities should consult their legal counsel regarding the consequences of being named or not being named as a selling securityholder in the Registration Statement and the related prospectus.

NOTICE

By signing and returning this Notice and Questionnaire, the Selling Securityholder:

- notifies the Company of its intention to potentially sell or otherwise dispose of Registrable Securities beneficially owned by it and listed below in Item 3 (except as otherwise specified under such Item 3) pursuant to the Registration Statement; and
- agrees to be bound by the terms and conditions of this Notice and Questionnaire and the terms of the Registration Rights Agreement applicable to Notice Holders (including Section 8 thereof).

The Selling Securityholder hereby provides the following information to the Company and represents and warrants that such information is accurate and complete:

QUESTIONNAIRE

1. Selling Securityholder Information:

(a) Full legal name of the Selling Securityholder:

(b) If the Registrable Securities listed in Item 3 below are held in certificated form and not “in street name,” state the full legal name of the registered holder through which the Registrable Securities listed in Item 3 below are held:

(c) If the Registrable Securities listed in Item 3 below are held “in street name,” state the full legal name of the Depository Trust Company participant through which the Registrable Securities listed in Item 3 below are held:

(d) Taxpayer identification or social security number of the Selling Securityholder:

2. Address and Contact Information for Notices to the Selling Securityholder:

Telephone: _____

Fax: _____

Email Address: _____

Contact Person: _____

3. Beneficial Ownership of Convertible Senior Secured Notes and Common Stock Issued Upon Conversion of Convertible Senior Secured Notes:

Check each of the following that applies to the Selling Securityholder.

- ☐ The Selling Securityholder owns Convertible Senior Secured Notes:

Number of Shares: _____

CUSIP No(s). (If Any): _____

- ☐ The Selling Securityholder owns shares of Common Stock that were issued upon conversion of the Convertible Senior Secured Notes:

Number of Shares: _____

CUSIP No(s). (If Any): _____

4. Beneficial Ownership of Other Securities of the Company:

Except as set forth below in this Item 4, the Selling Securityholder is not the beneficial or registered owner of any securities of the Company other than the securities listed in Item 3 above.

Type and amount of other securities beneficially owned by the Selling Securityholder:

Title of Security	Amount Beneficially Owned	CUSIP No(s). (If Any)
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5. Relationships with the Company:

- (a) Has the Selling Securityholder or any of its affiliates, officers, directors or principal equity holders (owners of 5% or more of the equity securities of the Selling Securityholder) held any position or office or had any other material relationship with the Company (or its predecessors or affiliates) during the past three years?

☐ Yes.

☐ No.

- (b) If the response to (a) above is "Yes," then please state the nature and duration of the relationship with the Company:

6. Plan of Distribution:

Check the following box confirming the intended plan of distribution of the Registrable Securities:

- ☐ The Selling Securityholder (including its donees and pledgees) does not intend to distribute the Registrable Securities listed in Item 3 above pursuant to the Shelf Resale Registration Statement except as follows (if at all):

The Registrable Securities may be sold from time to time directly by the Selling Securityholder or, alternatively, through underwriters, broker-dealers or agents. If the Registrable Securities are sold through broker-dealers or agents, the Selling Securityholder will be responsible for underwriting discounts or commissions or agents' commissions. The Registrable Securities may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of sale, at varying prices determined at the time of sale or at negotiated prices. Such sales may be effected in transactions (which may involve block transactions) (1) on any national securities exchange or quotation service on which the Registrable Securities may be listed or quoted at the time of sale; (2) in the over-the-counter market; (3) otherwise than on such exchanges or services or in the over-the-counter market; (4) directly on or through an electronic communication network, a "dark pool" or any similar market venue or (5) through the writing of options. In connection with sales of the Registrable Securities or otherwise, the Selling Securityholder may enter into hedging transactions with broker-dealers, which may in turn engage in short sales of the Registrable Securities in the course of the hedging positions they assume. The Selling Securityholder may also sell Registrable Securities short and deliver Registrable Securities to close out short positions or loan or pledge Registrable Securities to broker-dealers that in turn may sell such securities. Notwithstanding anything to the contrary, in no event will the methods of distribution violate the proviso to Section 3(b)(iii) of the Agreement.

7. Broker-Dealers and Their Affiliates:

The Company may have to identify the Selling Securityholder as an underwriter in the Registration Statement or related prospectus if:

- the Selling Securityholder is a broker-dealer and did not receive the Registrable Securities as compensation for underwriting activities or investment banking services or as investment securities; or
- the Selling Securityholder is an affiliate of a broker-dealer and either (1) did not acquire the Registrable Securities in the ordinary course of business; or (2) at the time of its purchase of the Registrable Securities, had an agreement or understanding, directly or indirectly, with any person to distribute the Registrable Securities.

Persons identified as underwriters in the Registration Statement or related prospectus may be subject to additional potential liabilities under the Securities Act and should consult their legal counsel before submitting this Notice and Questionnaire.

(a) Is the Selling Securityholder a broker-dealer registered pursuant to Section 15 of the Exchange Act?

☐ Yes.

☐ No.

(b) If the response to (a) above is “No,” is the Selling Securityholder an “affiliate” of a broker-dealer that is registered pursuant to Section 15 of the Exchange Act?

☐ Yes.

☐ No.

For the purposes of this Item 7(b), an “affiliate” of a registered broker-dealer includes any company that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such broker-dealer.

(c) Did the Selling Securityholder acquire the securities listed in Item 3 above in the ordinary course of business?

☐ Yes.

☐ No.

(d) At the time of the Selling Securityholder’s purchase of the securities listed in Item 3 above, did the Selling Securityholder have any agreements or understandings, directly or indirectly, with any person to distribute the securities?

☐ Yes.

☐ No.

(e) If the response to (d) above is “Yes,” then please describe such agreements or understandings:

(f) Did the Selling Securityholder receive the securities listed in Item 3 above as compensation for underwriting activities or investment banking services or as investment securities?

☐ Yes.

☐ No.

(g) If the response to (f) above is “Yes,” then please describe the circumstances:

8. Nature of Beneficial Ownership:

The purpose of this section is to identify the ultimate natural person(s) or publicly held entity(ies) that exercise(s) sole or shared voting or dispositive power over the Registrable Securities.

(a) Is the Selling Securityholder a natural person?

☐ Yes.

☐ No.

(b) Is the Selling Securityholder required to file, or is it a wholly owned subsidiary of an entity that is required to file, periodic and other reports (for example, Forms 10-K, 10-Q and 8-K) with the SEC pursuant to Section 13(a) or 15(d) of the Exchange Act?

☐ Yes.

☐ No.

(c) Is the Selling Securityholder an investment company, or a subsidiary of an investment company, registered under the Investment Company Act of 1940, as amended?

☐ Yes.

☐ No.

(d) If the Selling Securityholder is a subsidiary of such an investment company, please identify the investment company:

(e) Identify below the name of each natural person or entity that has sole or shared investment or voting control over the securities listed in Item 3 above:

PLEASE NOTE THAT THE SEC REQUIRES THAT THESE NATURAL PERSONS AND ENTITIES BE NAMED IN THE PROSPECTUS

9. Securities Received from Named Selling Securityholder:

(a) Did the Selling Securityholder receive the Registrable Securities listed above in Item 3 as a transferee from selling securityholder(s) previously identified in the Registration Statement?

☐ Yes.

☐ No.

(b) If the response to (a) above is “Yes,” then please answer the following two questions:

(i) Did the Selling Securityholder receive the Registrable Securities listed above in Item 3 from the named selling securityholder(s) prior to the effectiveness of the Registration Statement?

☐ Yes.

☐ No.

(ii) Identify below the names of the selling securityholder(s) from whom the Selling Securityholder received the Registrable Securities listed above in Item 3 and the date on which such securities were received.

If more space is needed for responses, then please attach additional sheets of paper. Please indicate the Selling Securityholder’s name and the number of the item being responded to on each such additional sheet of paper, and sign each such additional sheet of paper, before attaching it to this Notice and Questionnaire. The Selling Securityholder may be asked to answer additional questions depending on the responses to the above questions.

ACKNOWLEDGEMENTS

The Selling Securityholder acknowledges its obligation to comply with the provisions of the Exchange Act and the rules thereunder relating to stock manipulation, particularly Regulation M thereunder (or any successor rules or regulations), in connection with any offer or sale of Registrable Securities. The Selling Securityholder agrees that neither it nor any person acting on its behalf will engage in any transaction in violation of such provisions.

The Selling Securityholder acknowledges its obligations under the Registration Rights Agreement under certain circumstances to indemnify and hold harmless certain persons against certain liabilities as set forth therein.

Pursuant to the Registration Rights Agreement, the Company has agreed under certain circumstances to indemnify and hold harmless the Selling Securityholder and certain other persons against certain liabilities as set forth therein.

In accordance with the Selling Securityholder's obligation under Section 7(a) of the Registration Rights Agreement, the Selling Securityholder agrees to promptly provide notice to the Company if any of the information provided in this Notice and Questionnaire ceases to be accurate and complete in all material respects after the date of this Notice and Questionnaire at any time while the Registration Statement remains effective.

Notices to the Selling Securityholder relating to this Notice and Questionnaire or pursuant to the Registration Rights Agreement will be made by email, or in writing, at the email or physical address set forth in Item 2 above.

By signing below, the Selling Securityholder consents to the disclosure of the information contained in this Notice and Questionnaire in its answers to Items 1 through 9 and the inclusion of such information in the Registration Statement and the related prospectus. The Selling Securityholder understands that such information will be relied upon by the Company in connection with the preparation or amendment of the Registration Statement and the related prospectus to the extent required by law or SEC rule to be included therein.

[The Remainder of This Page Intentionally Left Blank; Signature Page Follows]

The Selling Securityholder has caused this Notice and Questionnaire to be executed and delivered either in person or by its duly authorized agent and thereby agrees to be entitled to the benefits of, and be subject to the indemnification and other obligations under, the Registration Rights Agreement.

Dated: _____

Legal Name of
Selling
Securityholder: _____

By: _____

Name: _____

Title: _____

PLEASE RETURN THE COMPLETED AND EXECUTED NOTICE
AND QUESTIONNAIRE TO FUBOTV INC. AT:

fuboTV Inc.
1290 Avenue of the Americas
New York, NY 10104
Attention: John Janedis, Chief Financial Officer
Email: jjanedis@fubo.tv