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): **November 19, 2024**

Commission File Number: 1-35335

Groupon, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**27-0903295**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
35 West Wacker Drive **25th Floor** **Chicago** **Illinois**	**60601** (Zip Code)
(Address of principal executive offices)	**(773) 945-6801** (Registrant's telephone number, including area code)

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

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

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

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

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, par value $0.0001 per share	**GRPN**	**NASDAQ Global Select Market**

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 406 of the Securities Act of 1933 (230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (240.12b-2 of this chapter)

Emerging growth company ☐

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

Item 1.01. Entry into a Material Definitive Agreement.

Indenture and Convertible Senior Secured Notes due 2027

On November 19, 2024, Groupon Inc. (the "Company") issued $197,260,00 aggregate principal amount of its 6.25% Convertible Senior Secured Notes due 2027 (the "2027 Notes"), pursuant to an indenture, dated as of November 19, 2024 (the "2027 Notes Indenture"), among the Company, the guarantors named therein and U.S. Bank National Association, as trustee (in such capacity, the "Trustee") and as collateral agent (in such capacity, the "Collateral Agent"), consisting of (i) $176,260,000 aggregate principal amount of 2027 Notes issued in exchange for $176,260,000 aggregate principal amount of the Company's outstanding 1.125% Convertible Senior Notes due 2026 (the "2026 Notes") with a limited number of existing holders of the 2026 Notes who are either "institutional accredited investors" (within the meaning of Rule 501(a)(1), (2), (3) or (7) promulgated under the Securities Act of 1933, as amended (the "Securities Act")) and/or "qualified institutional buyers" (as defined in Rule 144A under the Securities Act) (such existing holders, the "Exchange Participants" and such exchange transactions, collectively, the "Exchange") and (ii) $21.0 million aggregate principal amount of 2027 Notes issued for gross cash proceeds of $20.0 million (representing an issue price of 95%) (the "Subscription" and, together with the Exchange, the "Transactions"). As previously disclosed, the Exchange and Subscription were effected pursuant to privately-negotiated agreements (the "Subscription Agreements" and, together with the Exchange Agreements, the "Agreements") with certain qualified investors who are institutional accredited investors and/or qualified institutional buyers (the "Purchasers").

The 2027 Notes were issued to the Exchange Participants in the Exchange and to the Purchasers in the Subscription in private placements in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act. The Company relied on this exemption from registration based in part on representations made by the Exchange Participants and the Purchasers in the Agreements.

The following is a brief description of the terms of the 2027 Notes and the 2027 Notes Indenture.

The 2027 Notes are senior, secured obligations of the Company, accrue interest at a rate of 6.25% per annum, payable semi-annually in arrears on each March 15 and September 15, commencing March 15, 2025, and will mature on March 15, 2027, unless earlier converted or repurchased. The initial conversion rate is 33.333 shares of the Company's common stock per $1,000 principal amount of 2027 Notes (equivalent to an initial conversion price of approximately $30.00 per share), subject to customary adjustments. If the Company undergoes a fundamental change (as defined in the 2027 Notes Indenture), holders of the 2027 Notes have the right to require the Company to repurchase for cash all or any portion of their 2027 Notes at a fundamental change repurchase price equal to 100% of the principal amount of the 2027 Notes to be repurchased, plus accrued and unpaid interest if any, to, but excluding, the fundamental change repurchase date. In addition, upon the occurrence of a make-whole fundamental change (as defined in the 2027 Notes Indenture), the Company will, in certain circumstances, increase the conversion rate by a number of additional shares for a holder that elects to convert its 2027 Notes in connection with such make-whole fundamental change.

The 2027 Notes are not redeemable by the Company.

If by November 20, 2025, the Company has failed to either (i) pledge all of its equity interests (the "SumUp Equity") in SumUp Holdings, S.a.r.l, a limited liability company incorporated and existing under the laws of Grand Duchy of Luxembourg ("SumUp"), as collateral for the 2027 Notes (the "SumUp Equity Pledge"), (ii) transfer all of the SumUp Equity to a direct wholly owned subsidiary that is a Guarantor (as defined below) and pledge all of its equity interests in said Guarantor (the "SumUp Guarantor") as collateral for the 2027 Notes (the "SumUp Guarantor Equity Pledge"), or (iii) sell at least 66.6% of the SumUp Equity which the Company owns, directly or indirectly, and cause such proceeds to be deposited into an account that is subject to a first priority perfected lien for the benefit of U.S. Bank Trust Company, National Association, as collateral agent, under a deposit account control agreement (the "Equity Sale and Proceeds Collateralization"), the 2027 Notes will accrue additional interest of 2.5% per annum, payable at the same time as the regular interest.

The additional interest will cease to accrue immediately upon the earlier of (i) the Equity Pledge, (ii) the SumUp Guarantor Equity Pledge or (iii) the Equity Sale and Proceeds Collateralization.

Prior to the close of business on the business day immediately preceding December 15, 2026, the 2027 Notes will be convertible only under the following circumstances: (1) during any calendar quarter commencing after the calendar quarter ending on December 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) in a 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 on each applicable trading day; (2) during the five business-day period after any five consecutive trading-day period in which the trading price per $1,000 principal amount of 2027 Notes for such trading day was less than 98% of the product of the last reported sale price of the Common Stock and the conversion rate on each such trading day; or (3) upon the occurrence of specified corporate events, including a fundamental change. On or after December 15, 2026, until the close of business on the second scheduled trading day immediately preceding the maturity date, holders of the 2027 Notes may convert all or any portion of their 2027 Notes regardless of the foregoing conditions.

Pursuant to the 2027 Notes Indenture, the Company is entitled to not effect any conversion that will result in any holder thereof, together with any Attribution Parties (as defined in the 2027 Notes Indenture), beneficially owning more than 9.9% of the Company's Common Stock (the "Exchange Cap"), after giving effect to such conversion. The Company's obligation to deliver any shares of Common Stock that will result in any holder thereof to exceed the Exchange Cap (the "Excess Shares") is not extinguished and is suspended until such holder advises the Company in writing that it may receive the Excess Shares without exceeding the Exchange Cap.

The 2027 Notes will be fully and unconditionally guaranteed by certain material wholly owned domestic subsidiaries of the Company (the "Guarantors"), subject to the terms of the 2027 Notes Indenture. The 2027 Notes and related guarantees will be secured on a first-priority basis by liens on substantially all of the assets of the Company and the Guarantors (subject to certain exceptions and permitted liens).

The 2027 Notes Indenture contains customary terms and conditions as well as various affirmative and negative covenants that, among other things, may restrict the ability of the Company and its subsidiaries to incur additional indebtedness, pay dividends, repurchase stock, prepay junior or unsecured indebtedness or make certain investments. In addition the 2027 Notes Indenture contains limitations on the Company's and its subsidiaries' ability to dispose of certain assets, and, in certain circumstances, requires the Company to make an offer to repurchase the 2027 Notes using proceeds from certain asset sales at a price of par plus accrued and unpaid interest, and a premium equal to the lesser of all remaining interest on the 2027 Notes or one year of accrued interest on the 2027 Notes.

The 2027 Notes Indenture contains customary provisions relating to the occurrence of "Events of Default" (as defined in the 2027 Notes Indenture), which include the following: (i) certain payment defaults on the 2027 Notes (which, in the case of a default in the payment of interest on the 2027 Notes, will be subject to a 30-day cure period); (ii) the Company's failure to send certain notices under the 2027 Notes Indenture within specified periods of time; (iii) the Company's failure to comply with certain covenants in the 2027 Notes Indenture relating to the Company's ability to consolidate with or merge with or into, or sell, lease or otherwise transfer, in one transaction or a series of transactions, all or substantially all of the assets of the Company and its subsidiaries, taken as a whole, to another person; (iv) a default by the Company in its other obligations or agreements under the 2027 Notes Indenture or the 2027 Notes if such default is not cured or waived within 60 days after notice is given in accordance with the 2027 Notes Indenture; (v) certain defaults by the Company or any of its significant subsidiaries with respect to indebtedness for borrowed money of at least $35.0 million; (vi) a final judgment for payment of at least $35.0 million in the aggregate rendered against the Company or any significant subsidiary, which judgment is not discharged or stayed within 60 days after (a) the date on which the right to appeal thereof has expired if no such appeal has commenced, or (b) the date on which all rights to appeal have been extinguished; and (vii) certain events of bankruptcy, insolvency and reorganization involving the Company or any of its significant subsidiaries.

The foregoing description is qualified in its entirety by reference to the full and complete terms of the 2027 Notes Indenture and the Form of 6.25% Convertible Senior Notes due 2027, copies of which are attached as Exhibits 4.1 and 4.2, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

Security Agreement

On November 19, 2024, the Company, the Guarantors that may from time to time be a party thereto and the Collateral Agent entered into a Security Agreement relating to the 2027 Notes (the "Security Agreement").

Pursuant to the Security Agreement, the 2027 Notes will be secured by a first priority security interest in substantially all of the assets of the Company and any Guarantors, subject to certain exceptions and permitted liens.

The description of the Security Agreement is qualified in its entirety by reference to the full and complete terms of the Security Agreement, a copy of which is filed as Exhibit 10.1 hereto and incorporated herein by reference.

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

The information set forth under "Indenture and Convertible Senior Secured Notes due 2027" in Item 1.01 is incorporated by reference into this Item 2.03.

Item 3.02. Unregistered Sales of Equity Securities.

The information set forth in Item 1.01 above is incorporated by reference into this Item 3.02.

Item 9.01. Financial Statements and Exhibits.

(d) *Exhibits*.

Exhibit Number		Description
4.1		Indenture, dated as of November 19, 2024, between Groupon, Inc. and U.S. Bank National Association, as trustee
4.2		Form of 6.25% Convertible Senior Note due 2027 (included in Exhibit 4.1)
10.1		Security Agreement, dated as of November 19, 2024, among Groupon, Inc., the Guarantors that may from time to time be a party thereto and U.S. Bank National Association, as collateral agent
104		Cover Page Interactive Data File (embedded as Inline XBRL document)

SIGNATURES

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

GROUPON, INC.

Date: November 19, 2024

By: /s/ Jiri Ponrt
Name: Jiri Ponrt
Title: Chief Financial Officer

EXECUTION VERSION

GROUPON, INC.,

THE GUARANTORS PARTY HERETO

AND

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,

as Trustee and Collateral Agent

INDENTURE

Dated as of November 19, 2024

6.25% Convertible Senior Secured Notes due 2027

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EXHIBIT

Exhibit A Form of Note

Exhibit B-1 Form of Permitted Junior Lien Intercreditor Agreement
Exhibit B-2 Form of Permitted Pari Passu Intercreditor Agreement
Exhibit C Form of Supplemental Indenture

INDENTURE dated as of November 19, 2024 among GROUPON, INC., a Delaware corporation, as issuer (the "**Company**," as more fully set forth in Section 1.01), the Guarantors (as defined herein), and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association organized under the laws of the United States, as trustee (the "**Trustee**," as more fully set forth in Section 1.01) and collateral agent (in such capacity, the "**Collateral Agent**", as more fully set forth in Section 1.01).

W I T N E S S E T H:

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the issuance of its 6.25% Convertible Senior Secured Notes due 2027 (the "**Notes**"), initially in an aggregate principal amount not to exceed $197,260,000 (as increased by an amount equal to the aggregate principal amount of any Additional Notes), and in order to provide the terms and conditions upon which the Notes are to be authenticated, issued and delivered, the Company and 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, when executed by the Company and 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 all acts and things necessary to make this Indenture, when executed by the Company, the Guarantors, the Trustee and the Collateral Agent 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 are, and are to be, authenticated, issued and delivered, and in consideration of the premises and of the purchase and acceptance of the Notes by the Holders thereof, the Company and the Guarantors covenant and agree with the Trustee and Collateral Agent for the equal and proportionate benefit of the respective Holders from time to time of the Notes (except as otherwise provided below), as follows:

Article 1
DEFINITIONS

Section 1.1 *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 4.06(d) Section 4.06(e), Section 4.14 and Section 6.03, as applicable.

"**Additional Notes**" means any additional Notes issued subsequent to the date of this Indenture.

"**Additional Shares**" shall have the meaning specified in Section 15.03.

"**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.

"**Agreed Security Principles**" shall mean any grant of a Lien or provision of a guarantee by any Person that would: (a) result in any breach of corporate benefit, financial assistance, capital preservation, fraudulent preference, thin capitalization rules, retention of title claims or any other law or regulation (or analogous restriction) of the jurisdiction of organization of such Person; (b) result in any risk to the officers of such Person of contravention of their fiduciary duties and/or of civil or criminal liability under applicable laws; (c) result in costs (tax, administrative or otherwise) that are materially disproportionate to the benefit obtained by the beneficiaries of such Lien and/or guarantee; or (d) result in a breach of a material agreement binding on such Person (other than any material agreements between the Company or any Subsidiary on one hand, and the Company or any Subsidiary on the other) that may not be amended or otherwise modified using commercially reasonable efforts to avoid such breach.

"**Applicable Premium**" means with respect to any Note on any applicable repurchase date, as determined by the Company, an amount equal to the lesser of (x) the remaining interest due on such Notes through the Maturity Date (excluding accrued and unpaid interest to the repurchase date) or (y) one year of accrued interest (excluding accrued and unpaid interest to the repurchase date).

"**Asset Sale**" means:

(a) the sale, conveyance, transfer or other Disposition (whether in a single transaction or a series of related transactions) of property or assets of the Company or any Subsidiary; or

(b) the issuance or sale of Capital Stock (other than director's qualifying shares, shares or interests required to be held by foreign nationals or other third parties to the extent required by applicable law) of any Subsidiary (other than to the Company or a Wholly Owned Subsidiary), whether in a single transaction or a series of related transactions, in each case, *other than*:

(i) a sale, exchange or other Disposition of obsolete, damaged, unnecessary, unsuitable or worn out equipment, or other assets, in the ordinary course of business, or Dispositions of property no longer used, useful or economically practicable to maintain in the conduct of the business of the Company and its Subsidiaries, taken as a whole;

(ii) the sale, conveyance, lease or other Disposition of all or substantially all of the assets of the Company or any Guarantor in compliance with the provisions described under Article 12 or any Disposition that constitutes a Fundamental Change;

(iii) any Restricted Payment or a Permitted Investment that is permitted to be made, and is made, under Section 4.13;

(iv) any Disposition of assets or issuance or sale of Capital Stock of any Subsidiary, in a single transaction or series of related transactions, together with other Dispositions utilizing this clause (iv), with an aggregate Fair Market Value of less than $1,000,000;

(v) (i) Dispositions among the Company and its Subsidiaries that are Guarantors or by any Subsidiary to the Company or any Guarantor and (ii) Dispositions among Subsidiaries which are not Guarantors;

(vi) any settlement of or payment in respect of any property or casualty insurance claim or any condemnation proceeding relating to any property or assets of the Company or any of its Subsidiaries;

(vii) any sale or Disposition deemed to occur in connection with the granting or creation of any Lien permitted under this Indenture;

(viii) the licensing or sub-licensing of general intangibles other than Intellectual Property in the ordinary course of business;

(ix) the sale, lease, assignment, license or sublease of inventory, equipment, accounts receivable or other current assets held for sale in the ordinary course of business, and Dispositions of accounts receivable in connection with the collection or compromise thereof;

(x) the lease, assignment, license, sublicense or sublease of any real or personal property in the ordinary course of business;

(xi) any exchange of assets for Related Business Assets (including a combination of Related Business Assets and a de minimis amount of cash or Cash Equivalents) of comparable or greater Fair Market Value, as determined in good faith by the Company;

(xiii) non-exclusive licenses, sublicenses or cross-licenses of Intellectual Property in the ordinary course of business and consistent with past practices;

(xiv) the surrender or waiver of contract rights or settlement, release or surrender of a contract, tort or other litigation claim in the ordinary course of business;

(xv) (i) Dispositions of Investments (including Capital Stock) in Joint Ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the Joint Venture parties set forth in Joint Venture arrangements and similar binding arrangements and (ii) the transfer for fair value of property (including Capital Stock of Subsidiaries) to another Person in connection with a Joint Venture arrangement with respect to the transferred property;

(xvi) the sale, exchange or other Disposition of cash or Cash Equivalents or investment grade securities in the ordinary course of business; or

(xvii) the lapse, abandonment or other Disposition of registered patents, trademarks and other intellectual property of the Company and its Subsidiaries to the extent not economically desirable in the conduct of their businesses;

provided that, notwithstanding anything in this definition to the contrary, the Disposition of Capital Stock of any Guarantor and the direct or indirect disposition of the Capital Stock of SumUp shall, in each case, constitute an Asset Sale.

"**Asset Sale Offer**" shall have the meaning specified in Section 4.16(b).

"**Bankruptcy Code**" means Title 11 of the United States Code, as amended.

"**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 15.01(b). 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 or the Corporate Trust Office is authorized or required by law or executive order to close or be closed.

"**Capital Lease**" means any lease (or other arrangement conveying the right to use real or personal Property) that is required to be capitalized for financial reporting purposes in accordance with GAAP (with the amount of any Indebtedness in respect of a Capital Lease being the capitalized amount of the obligations under such Capital Lease determined in accordance

with GAAP as in effect prior to the adoption of Accounting Standards Codification 842, Lease Accounting or any successor or similar accounting standard or guidance).

"**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 debt securities convertible into or exchangeable for any securities otherwise constituting Capital Stock under this definition until such debt securities are so converted or exchanged.

"**Cash Equivalents**" means the following:

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the government or any agency or instrumentality of the United States rated A-2 (or the equivalent thereof) or better by S&P (or the equivalent thereof) or better by Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, an equivalent rating from another "nationally-recognized statistical rating organization" (as defined in Rule 436 under the Securities Act)), having average maturities of not more than 12 months from the date of acquisition thereof, provided that the full faith and credit of the United States is pledged in support thereof;

(b) time deposit accounts, certificates of deposit and money market deposits maturing within 12 months of the date of acquisition thereof issued by a bank or trust company organized under the laws of the United States of America or any state thereof whose long-term debt is rated "A-3" or "A-" or higher according to Moody's or S&P (or such similar equivalent rating by at least one "nationally-recognized statistical rating organization" (as defined in Rule 436 under the Securities Act));

(c) repurchase obligations with a term of not more than 30 days for underlying securities of the types described in clause (a) entered into with:

(i) a bank meeting the qualifications described in clause (b) above; or

(ii) any primary government securities dealer reporting to the Market Reports Division of the Federal Reserve Bank of New York;

(d) commercial paper, maturing not more than 12 months after the date of acquisition, issued by a corporation (other than an Affiliate of the Company) organized and in existence under the laws of the United States of America with a rating at the time as of which any investment therein is made of "P-1" (or higher) according to Moody's or "A-1" (or higher) according to S&P (or such similar equivalent rating by at least one "nationally-recognized statistical rating organization" (as defined in Rule 436 under the Securities Act));

(e) securities with average maturities of 12 months or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States or by any political subdivision or taxing authority of any such state, commonwealth or territory having an investment grade rating from either S&P or Moody's (or such similar

equivalent rating by at least one “nationally recognized statistical rating organization” (as defined in Rule 436 under the Securities Act)); and

(f) any instruments similar to the foregoing or otherwise determined by the Company to be equivalent to cash based on past practice or its internal accounting or investing policies and/or guidelines.

“**Cash Settlement**” shall have the meaning specified in Section 15.02(a).

“**CERCLA**” shall have the meaning specified in Section 8.02(j).

“**CFC**” means (a) any Person that is a “controlled foreign corporation” (within the meaning of Section 957 of the Code) and (b) each Subsidiary of any Person described in clause (a).

“**Clause A Distribution**” shall have the meaning specified in Section 15.04(c).

“**Clause B Distribution**” shall have the meaning specified in Section 15.04(c).

“**Clause C Distribution**” shall have the meaning specified in Section 15.04(c).

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

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

“**Collateral**” means, collectively, all of the Security Agreement Collateral and all other Property of whatever kind and nature, whether now existing or hereafter acquired, pledged or purported to be pledged as collateral or otherwise subject to a security interest or purported to be subject to a security interest under any Collateral Document, excluding in all events Excluded Assets.

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

“**Collateral Documents**” means, collectively, the Security Agreement and each other security agreement or pledge agreement executed and delivered pursuant to Section 4.09 to secure any of the Obligations, any Permitted Pari Passu Intercreditor Agreement and any Permitted Junior Lien Intercreditor Agreement.

“**Combination Settlement**” shall have the meaning specified in Section 15.02(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 15.07.

"**Company**" shall have the meaning specified in the first paragraph of this Indenture, and subject to the provisions of Article 12, shall include its successors and assigns.

"**Company Order**" means a written order of the Company, signed by (a) the Company's Chief Executive Officer, President, Chief Financial Officer, Executive or Senior Vice President or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title "Vice President"), in each case including an individual serving in any such capacity on an interim basis and (b) any such other Officer designated in clause (a) of this definition or the Company's Treasurer or Assistant Treasurer or Secretary or any Assistant Secretary, 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 15.12.

"**Conversion Date**" shall have the meaning specified in Section 15.02(c).

"**Conversion Obligation**" shall have the meaning specified in Section 15.01(a).

"**Conversion Price**" means as of any time, $1,000, *divided by* the Conversion Rate as of such time.

"**Conversion Rate**" shall have the meaning specified in Section 15.01(a).

"**Corporate Event**" shall have the meaning specified in Section 15.01(b)(iii).

"**Corporate Trust Office**" means the principal office of the Trustee or Collateral Agent, as applicable, at which at any time its corporate trust business relating to this Indenture shall be administered, which office at the date hereof is located at 190 S. LaSalle Street, Chicago, Il 60603, or such other address as the Trustee or Collateral Agent, as applicable, may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor trustee (or such other address as such successor trustee may designate from time to time by notice to the Holders and the Company). With respect to registration for transfer or exchange or presentation at maturity, such office shall also mean the office or agency of the Trustee located at the date hereof at 111 Fillmore Ave E., St. Paul, MN 55107.

"**Covenant Termination**" shall have the meaning specified in Section 3.02(a).

"**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 20 consecutive Trading Days during the Observation Period, 5.0% of the product of (a) the Conversion Rate on such Trading Day and (b) the Daily VWAP for such Trading Day.

"**Daily Measurement Value**" means the Specified Dollar Amount (if any), *divided by* 20.

"**Daily Settlement Amount**," for each of the 20 consecutive Trading Days during the Observation Period, shall consist of:

(g) 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

(h) 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, for each of the 20 consecutive Trading Days during the relevant Observation Period, the per share volume-weighted average price as displayed under the heading "Bloomberg VWAP" on Bloomberg page "GRPN<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.

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

"**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.

"**Deposit Account**" shall have the meaning specified in or by reference in the Security Agreement.

“**Depositary**” means, with respect to each Global Note, the Person specified in Section 2.05(d) 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.

“**Deposit Account Control Agreement**” means an agreement, in form and substance satisfactory to the Collateral Agent, among any Note Party, a banking institution maintaining a Deposit Account, and the Collateral Agent with respect to collection and control of all deposits and balances held in a Deposit Account maintained by such Note Party with such banking institution, it being understood that any Deposit Account Control Agreement that purports to impose individual liability on the Collateral Agent will not be satisfactory to the Collateral Agent.

“**Designated Non-Cash Consideration**” means the Fair Market Value of non-cash consideration received by the Company or a Subsidiary in connection with an Asset Sale pursuant to Section 4.16(a) that is designated as Designated Non-Cash Consideration pursuant to a certificate of a Responsible Officer of the Company, setting forth the basis of such valuation.

“**Disposition**” means the sale, transfer, issuance, license, lease or other disposition (including any sale and leaseback transaction), whether in one transaction or in a series of transactions, of any property or assets (including, without limitation, any Capital Stock of the Company or any of its Subsidiaries) by any Person (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“**Disqualified Stock**” means any Capital Stock that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case at the option of the holder thereof), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder thereof, in whole or in part, on or prior to the date that is 91 days after the date on which the Notes mature (other than, in each case, any provision requiring an offer to purchase such Capital Stock as a result of a change of control, delisting, asset sale or similar provision or any other provision permitting holders to convert such Capital Stock so long as any right of the holders thereof upon the occurrence of a change of control, delisting, asset sale or similar provision shall be subject to the prior repayment in full in cash of the Notes and the other Obligations); *provided* that if such Capital Stock are issued pursuant to a plan for the benefit of employees of the Company or any of its Subsidiaries or by any such plan to such employees, such Capital Stock shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Company in order to satisfy applicable statutory or regulatory obligations. The amount of Disqualified Stock deemed to be outstanding at any time for purposes of this Indenture will be the maximum amount that the Company and its Subsidiaries may become obligated to pay upon maturity of, or pursuant to any mandatory redemption provisions of, such Disqualified Stock or portion thereof, plus accrued dividends.

“**Distributed Property**” shall have the meaning specified in Section 15.04(c).

"**Domestic Foreign Holding Company**" means, as to any Person, any Domestic Subsidiary of such Person that has no material assets other than the equity of one or more CFC.

"**Domestic Subsidiary**" means a Subsidiary that is not a Foreign Subsidiary.

"**Effective Date**" shall have the meaning specified in Section 15.03(b), except that, as used in Section 15.04 and Section 15.05, "**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. 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 this purpose.

"**Equity Interests**" means Capital Stock and all warrants, options or other rights to acquire Capital Stock (but excluding any debt security that is convertible into, or exchangeable for, any combination of Capital Stock and/or cash).

"**Event of Default**" shall have the meaning specified in Section 6.01.

"**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 15.12.

"**Excluded Assets**" shall have the meaning specified in the Security Agreement.

"**Excluded Entity**" means (a) Groupon Live, LLC for so long as it is a Joint Venture, (b) any non-Wholly Owned Subsidiary to the extent a guarantee of the Obligations and a pledge of the assets thereof in support of such guarantee is contractually prohibited or would require the consent of any third-party holder of the Capital Stock thereof (unless and until such consent is obtained); *provided* that, in the event (i) such non-Wholly Owned Subsidiary becomes a Wholly Owned Subsidiary of the Company or a Guarantor or any of their Subsidiaries (including in connection with the exercise of put/call arrangements under any such agreements governing such joint venture arrangements which results in such non-Wholly Owned Subsidiary becoming a Wholly Owned Subsidiary of the Company or a Guarantor or any of their Subsidiaries), (ii) the Company or a Guarantor or any of their Subsidiaries are permitted or able to cause (without obtaining the consent of any third party nor incurring any penalty or expense) such non-Wholly Owned Subsidiary to provide a guarantee of the Obligations or the pledge of the assets thereof in support of such guarantee or (iii) such non-Wholly Owned Subsidiary does not otherwise meet the definition of Excluded Entity, in each case, such Subsidiary shall promptly (and in any event within the time periods set forth in Section 4.09 of this Indenture) become a Guarantor pursuant to the terms of this Indenture, (c) any Subsidiary of the Company or a Guarantor that is prohibited by applicable law, rule or regulation or by any contractual obligation existing on the Issue Date or on the date any such Subsidiary is acquired, in each case from guaranteeing the Obligations or which would require governmental (including regulatory) consent, approval, license or authorization to provide such a guarantee, for so long as such

prohibition or circumstance exists, or for which the provision of such guarantee would result in 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 or a Guarantor or one of their Subsidiaries (as reasonably determined in good faith by the Company), (d) any CFC or (e) any Domestic Foreign Holding Company. Notwithstanding the foregoing, no Foreign Subsidiary shall be an Excluded Entity if such entity would be a Material Subsidiary if the 2.5% thresholds in such definitions were replaced with 10%.

"**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 the Common Stock under a separate ticker symbol or CUSIP number will not be considered "regular way" for this purpose.

"**Existing Convertible Notes**" means the 1.125% Convertible Senior Notes due 2026 of the Company outstanding on the Issue Date.

"**Fair Market Value**" means, with respect to any Property at the time of determination, the price that could be negotiated in an arm's-length free market transaction, for cash, between a willing seller and a willing buyer, neither of whom is under pressure or compulsion to complete the transaction. Fair Market Value shall be determined, except as otherwise provided, by an Officer of the Company or such Officer's designee.

"**Foreign Subsidiary**" means each Subsidiary that is organized under the laws of any jurisdiction other than the United States or any state thereof or the District of Columbia (or, for the avoidance of doubt, organized in or under the laws of any U.S. possession or territory).

"**Form of Assignment and Transfer**" means 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**" means the "Form of Fundamental Change Repurchase Notice" attached as Attachment 2 to the Form of Note attached hereto as Exhibit A.

"**Form of Note**" means the "Form of Note" attached hereto as Exhibit A.

"**Form of Notice of Conversion**" means 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:

(i) a "person" or "group" within the meaning of Section 13(d) of the Exchange Act, other than the Company, its direct or indirect Wholly Owned Subsidiaries and the employee benefit plans of the Company and its Wholly Owned Subsidiaries, files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect "beneficial owner," as defined in Rule 13d-3 under the Exchange Act, of the Common Stock representing more than 50% of the voting power of the Common Stock; *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.

(j) the consummation of (A) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision, a combination or merely 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 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 related 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 direct or indirect Wholly Owned Subsidiaries; *provided, however*, that neither (1) 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 nor (2) any merger of the Company solely for the purpose of changing the Company's jurisdiction of incorporation that results in a reclassification, conversion or exchange of outstanding shares of Common Stock solely into shares of common stock of the surviving entity shall be a Fundamental Change pursuant to this clause (b);

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

(l) the Common Stock (or other common stock 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 clause (a) or clause (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 or pursuant to statutory 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 the Notes become convertible into such consideration, excluding cash

payments for fractional shares or pursuant to statutory appraisal rights (subject to the provisions of Section 15.02(a)). If any transaction in which the Common Stock is replaced by the securities 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 this definition, following the effective date of such transaction) references to the Company in this definition shall instead be references to such other entity. For purpose of this definition of "**Fundamental Change**," any transaction that constitutes a Fundamental Change pursuant to both clause (a) and clause (b) of this definition (without giving effect to the *proviso* to clause (b)) shall be deemed a Fundamental Change solely under clause (b) of this definition (subject to the *proviso* to clause (b)).

"**Fundamental Change Company Notice**" shall have the meaning specified in Section 16.02(c).

"**Fundamental Change Repurchase Date**" shall have the meaning specified in Section 16.02(a).

"**Fundamental Change Repurchase Notice**" shall have the meaning specified in Section 16.02(b)(i).

"**Fundamental Change Repurchase Price**" shall have the meaning specified in Section 16.02(a).

"**GAAP**" means generally accepted accounting principles in the United States.

"**given**," with respect to any notice to be given 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 18.03. Notice so "given" shall be deemed to include any notice to be "mailed" or "delivered," as applicable, under this Indenture.

"**Global Note**" shall have the meaning specified in Section 2.05(b).

"**Guarantee**" or "**guarantee**" means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business), direct or indirect, in any manner (including letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

"**Guarantor**" means each Subsidiary of the Company that is or becomes a party to this Indenture and the Notes Documents.

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

"**Indebtedness**" means, with respect to any specified Person, (a) any indebtedness of such Person (excluding, for the avoidance of doubt, accrued expenses, trade payables and hedging obligations) in respect of borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments to the extent the same would appear as a liability on a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP, (c) all obligations described in clauses (a) and (b) above, and (d) below of others secured by any Lien on any asset owned or held by such Person regardless of whether the obligations secured thereby have been assumed by such Person or is non-recourse to the credit of such Person and (d) any guarantee by such Person of obligations of obligations described in clauses (a) and (b) of another. The term "Indebtedness" shall not include (i) deferred or prepaid revenue, (ii) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the seller, (iii) contingent indemnity and similar obligations incurred in the ordinary course of business, (iv) obligations in respect of operating leases and (v) intercompany liabilities arising from cash management, tax and accounting operations.

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

"**Intellectual Property**" shall have the meaning specified in the Security Agreement.

"**Interest Payment Date**" means each March 15 and September 15 of each year, beginning on March 15, 2025.

"**Investment**" means, with respect to any specified Person, all direct or indirect investments by such specified Person in other Persons (including Affiliates) in the forms of loans (including guarantees of Indebtedness or other Obligations), advances or capital contributions (excluding (i) commission, travel and similar advances to Officers and employees made in the ordinary course of business and (ii) extensions of credit to customers or advances, deposits or payment to or with suppliers, lessors or utilities or for workers' compensation, in each case, that are incurred in the ordinary course of business), or purchases or other acquisitions for consideration of Indebtedness, Capital Stock or other securities.

"**Issue Date**" means November 19, 2024.

"**Joint Venture**" means any joint venture entity in which the Company or any of its Subsidiaries holds Capital Stock (but which is not a Wholly Owned Subsidiary), which was entered into in the ordinary course of business with a bona fide business purpose.

"**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 the regular trading session hours.

"**Lien**" means, (a) any mortgage, deed of trust, lien (statutory or otherwise), pledge, encumbrance, charge, assignment, hypothecation, security interest or encumbrance of any kind, including any easement, right-of-way or other encumbrance on title to Real Property, in each of the foregoing cases whether voluntary or imposed by law, (b) the interest of a vendor or a lessor under any conditional sale agreement, Capital Lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such Property and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities; *provided* that in no event shall an operating lease, sublease, license or sublicense (other than an exclusive license securing Indebtedness) be deemed to constitute a Lien.

"**Make-Whole Fundamental Change**" means any transaction or event that constitutes a Fundamental Change (as defined herein and determined after giving effect to any exceptions to or exclusions from such definition, but without regard to subclause (1) of the *proviso* in clause (b) of the definition thereof).

"**Make-Whole Fundamental Change Period**" shall have the meaning specified in Section 15.03(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 on any U.S. exchange relating to the Common Stock.

"**Material Intellectual Property**" means any Intellectual Property that is material to the operation of the business of the Company and its Subsidiaries, taken as a whole.

“**Material Subsidiary**” means (a) a Subsidiary of the Company that has total assets in excess of 2.5% of consolidated total assets (other than goodwill) of the Company and its Subsidiaries or contributed greater than 2.5% of the consolidated revenue of the Company and its Subsidiaries (based upon and as of the date of delivery of the most recent consolidated financial statements of the Company); or (b) any Subsidiary that directly owns Equity Interests in any other Material Subsidiary; provided that (x) the total assets or consolidated revenue of all the Subsidiaries that are not Material Subsidiaries shall not exceed 10% of the consolidated total assets (other than goodwill) or consolidated revenue, as the case may be, of the Company and its Subsidiaries (tested as of the date of delivery of the most recent consolidated financial statements of the Company and its Subsidiaries) and (y) any Subsidiary that owns any Material Intellectual Property shall be a Material Subsidiary (other than a Foreign Subsidiary unless such entity would be a Material Subsidiary under clause (a) of this definition if the 2.5% threshold in such definition was replaced with 10%).

“**Maturity Date**” means March 15, 2027.

“**Measurement Period**” shall have the meaning specified in Section 15.01(b)(i).

“**Net Proceeds**” means, (a) with respect to any Disposition by the Company, any Subsidiary or any of their Subsidiaries, the excess, if any, of (i) the sum of cash and Cash Equivalents received by the Company or a Guarantor in connection with such transaction (including any cash or Cash Equivalents received (x) by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received, unless, for the avoidance of doubt, any such cash or Cash Equivalents received by monetization is in the form of retained collections that do not constitute purchase price or consideration for the sale or other Disposition of the asset subject to such Disposition received by the Company, any Subsidiary or any of their Subsidiaries for such Disposition, (y) in respect of or upon the sale or other disposition of any Designated Non-Cash Consideration received in any Disposition and (z) as a result of unwinding any related hedge agreements in connection with such transaction) over (ii) the sum of, without duplication, (A) the principal amount of any Indebtedness that is secured by the applicable asset by a Lien permitted hereunder which is senior to the Collateral Agent’s Lien on such asset and that is required to be repaid (or to establish an escrow for the future repayment thereof) in connection with such transaction (other than Indebtedness under this Indenture), (B) the reasonable and customary out-of-pocket expenses incurred by such Person in connection with such transaction (including, without limitation, appraisals, brokerage, legal, title and recording or transfer tax expenses and commissions and legal, accounting and investment banking fees, sales commissions and other reasonable and customary fees and expenses) paid by such Person to third parties (other than Affiliates) in cash, (C) the taxes paid or the Company’s good faith and reasonable estimation of income, franchise, sales and other applicable taxes required to be paid as a result of such transaction, and (D) any amount subject to an escrow or provided as a reserve against any liabilities in respect of any indemnification obligations or purchase price adjustment associated with any such Disposition and which are reasonably expected to be paid (*provided* that, to the extent and at any time such amounts are not paid and are released from such escrow or reserve to the Company or any Guarantor, such amounts shall constitute Net Proceeds) and (b) in connection with any issuance or sale of Indebtedness by the

Company or any Guarantor or any of their Subsidiaries, or any issuance or sale of Capital Stock by the Company, the cash proceeds received from such issuance or incurrence, net of the reasonable and customary out-of-pocket expenses incurred by such Person in connection with such transaction, including attorneys' fees, investment banking fees, accountants' fees, underwriting discounts and commissions and other customary fees and expenses actually incurred in connection therewith paid by such Person to third parties (other than Affiliates). In the case of any non-Wholly Owned Subsidiary or Joint Venture, "Net Proceeds" shall be reduced by the pro rata portion thereof attributable to such minority interests or interests of Joint Venture partners.

"**Note**" or "**Notes**" shall have the meaning specified in the first paragraph of the recitals of this Indenture.

"**Note Guarantee**" means the guarantee by any Guarantor of the Company's Obligations under this Indenture and the Notes.

"**Note Party**" or "**Note Parties**" means, collectively, the Company and the Guarantors.

"**Note Register**" shall have the meaning specified in Section 2.05(a).

"**Note Registrar**" shall have the meaning specified in Section 2.05(a).

"**Notes Documents**" means this Indenture, the Notes, the Note Guarantees and the Collateral Documents.

"**Notice of Conversion**" shall have the meaning specified in Section 15.02(b).

"**Notice of Default**" shall have the meaning specified in Section 6.10.

"**Obligations**" means all advances to, and debts, liabilities, obligations, covenants and duties of, the Note Parties arising under this Indenture or the Notes Documents or otherwise with respect to any Note, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Note Party of any proceeding under any Debtor Relief Laws naming a Note Party as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding. Without limiting the generality of the foregoing, the Obligations of the Note Parties under the Indenture or the Notes Documents include any obligations to pay principal, interest, reimbursement obligations, charges, expenses, fees, disbursements, attorney costs, indemnities and other amounts, in each case, payable by the Note Parties under the Indenture or the Notes Documents.

"**Observation Period**" with respect to any Note surrendered for conversion means (i) if the relevant Conversion Date occurs prior to December 15, 2026, the 20 consecutive Trading Day period beginning on, and including, the second Trading Day immediately succeeding such Conversion Date; and (ii), if the relevant Conversion Date occurs on or after December 15, 2026,

the 20 consecutive Trading Days beginning on, and including, the 21st Scheduled Trading Day immediately preceding the Maturity Date.

"**Offer Amount**" shall have the meaning specified in Section 4.16(b).

"**Officer**" means, with respect to the Company, the President, the Chief Executive Officer, the Chief Financial Officer, the Chief Accounting Officer, the Treasurer, the Secretary, any Executive or Senior Vice President or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title "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 18.05 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 acceptable to the Trustee, that is delivered to the Trustee. Each such opinion shall include the statements provided for in Section 18.05 if and to the extent required by the provisions of such Section 18.05.

"**outstanding**," when used with reference to Notes, shall, subject to the provisions of Section 9.04, mean, as of any particular time, all Notes authenticated and delivered by the Trustee under this Indenture, except:

(m) Notes theretofore cancelled by the Trustee or accepted by the Trustee for cancellation;

(n) 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);

(o) 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;

(p) Notes converted pursuant to Article 15 and required to be cancelled pursuant to Section 2.08;

(q) Notes repurchased pursuant to Article 16 or Section 4.16 and required to be cancelled pursuant to Section 2.08; and

(r) Notes repurchased by the Company pursuant to the penultimate sentence of Section 2.10 and delivered to the Trustee for cancellation in accordance with the ultimate sentence of Section 2.10, subject to Section 9.04.

"**Paying Agent**" shall have the meaning specified in Section 4.02.

"**Permitted Business**" means any business conducted by the Company or any of its Subsidiaries on the Issue Date and any business that, in the good faith judgment of the Board of Directors, is similar or reasonably related, ancillary, supplemental or complementary thereto or a reasonable extension, development or expansion thereof.

"**Permitted Debt**" has the meaning specified in Section 4.12(b).

"**Permitted Investments**" means each of the following:

(s) Investments in (i) cash or (ii) readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof having maturities of not more than 360 days from the date of acquisition thereof; *provided* that, in the case of Investments of the type described in clause (ii), the full faith and credit of the United States of America is pledged in support thereof;

(t) Investments in corporate debt issued by any Person organized under the laws of any state of the United States of America and rated at least "Prime-1" (or the then equivalent grade) by Moody's or at least "A-1" (or the then equivalent grade) by S&P, in each case with maturities of not more than 365 days from the date of acquisition thereof;

(u) Investments in time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i) (A) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (b) of this definition and (iii) has combined capital and surplus of at least $1,000,000,000, in each case with maturities of not more than 365 days from the date of acquisition thereof;

(v) Investments in fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above (without regard to the limitation on maturity contained in such clause) and entered into with a financial institution satisfying the criteria described in clause (c) above or with any primary dealer and having a market value at the time that such repurchase agreement is entered into of not less than 100% of the repurchase obligation of such counterparty entity with whom such repurchase agreement has been entered into;

(w) Investments, classified in accordance with GAAP as current assets of the Company or any Guarantor, in any money market fund, mutual fund, or other investment companies that are registered under the Investment Company Act of 1940, as amended, which

are administered by financial institutions that have the highest rating obtainable from either Moody's or S&P, and which invest solely in one or more of the types of securities described in clauses (a) through (d) above;

(x) Investments (i) existing on the Issue Date, (ii) made pursuant to binding commitments or in Joint Ventures in existence on the Issue Date or as required by, or made pursuant to, buy/sell arrangements between the joint venture parties set forth in, joint venture agreements and similar binding arrangements in effect on the Issue Date and (iii) that replaces, refinances, refunds, renews or extends any Investment described under either of the immediately preceding clauses (i) or (ii), *provided* that any such Investment is in an amount that does not exceed the amount replaced, refinanced, refunded, renewed or extended, except as contemplated pursuant to the terms of such Investment in existence on the Issue Date or as otherwise permitted under this definition;

(y) (i) Investments by and between the Company and Guarantors; (ii) Investments by and between Subsidiaries who are not Guarantors; and (iii) Investments by and between Subsidiaries, provided that such Investments under this clause (iii) are otherwise in the ordinary course of business and consistent with past practices; provided, however that any Investments constituting intercompany Indebtedness under this clause (g) are otherwise incurred in compliance with Section 4.12 hereof;

(z) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(aa) Guarantees constituting Permitted Debt including, without limitation, any guarantee or other obligation issued or incurred in connection with any letter of credit issued for the account of the Company or any of its Subsidiaries (including with respect to the issuance of, or payments in respect of drawing under, such letters of credit);

(ab) so long as no Default or Event of Default has occurred and is continuing or would be caused by such Investment, Investments by the Company or any Guarantor in non-speculative hedging agreements permitted hereunder, entered into in the ordinary course of business and consistent with past practice;

(ac) Investments received in connection with the bankruptcy, insolvency, reorganization or similar proceeding of, or settlement of delinquent accounts and disputes with, customers and suppliers, in each case in the ordinary course of business;

(ad) loans and advances to officers, directors and employees of the Company or any Subsidiary, in each case in the ordinary course of business; in an amount not to exceed $500,000 to any individual at any time or in an aggregate amount not to exceed $2,000,000 at any time;

(ae) any Investment by the Company or any Subsidiary in a Person, if as a result of such Investment: (x) such Person, to the extent required by Section 4.09, becomes a Guarantor;

or (y) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys substantially all of its assets to, or is liquidated into, the Company or any Guarantor;

(af) (i) deposits made in the ordinary course of business to secure the performance of leases or other obligations pursuant to Section 4.12 and (ii) Investments consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers;

(ag) Investments consisting of (x) transactions permitted under Article 12 and (y) repayments (including by way of defeasance or irrevocable deposit) or other acquisitions of Indebtedness of any Subsidiary not prohibited hereunder and payments at maturity of the Existing Notes or open market purchases or other acquisitions of the Existing Notes to the extent permitted under Section 4.13;

(ah) advances in the form of a prepayment of expense to vendors, suppliers and trade creditors consistent with their past practices, so long as such expenses were incurred in the ordinary course of business;

(ai) other Investments by the Company or a Subsidiary since the Issue Date in an aggregate amount not to exceed $10,000,000;

(aj) Investments in promissory notes, securities and other non-cash consideration or other assets received in connection with an Asset Sale made pursuant to Section 4.16 or any other Disposition of assets not constituting an Asset Sale;

(ak) purchases of intellectual property or other similar assets (or any series of related Dispositions thereof) in respect of a particular asset owned by or licensed to a Joint Venture in connection with a Disposition of all or substantially all of the intellectual property related to such asset;

(al) Investments consisting of purchases and acquisitions of inventory, supplies, materials and equipment or purchases of contract rights or licenses or leases of Intellectual Property, in each case in the ordinary course of business;

(am) Investments in Joint Ventures incurred in the ordinary course of business in connection with Treasury Management Arrangements;

(an) Investments resulting from the acquisition of a Person, otherwise permitted by this Indenture, which Investments at the time of such acquisition were held by the acquired Person and were not acquired in contemplation of the acquisition of such Person;

(ao) Investments in any Person to the extent the consideration for such Investments consists solely of Capital Stock of the Company (other than Disqualified Stock); and

(ap) Investment in or repurchases of the Notes;

provided, however, that notwithstanding the foregoing, in the case of (y) Investments by any Foreign Subsidiary or (z) Investments made or held in a jurisdiction outside the United States, Permitted Investments shall also include (A) Investments of the type and maturity described in clauses (a) through (e) above of foreign obligors, which Investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies (and which Investments may be denominated in Dollars, Euros, or the local currency), (B) other short-term Investments utilized by Foreign Subsidiaries in accordance with normal investment practices for cash management in the ordinary course of business in Investments analogous to the foregoing Investments in clauses (a) through (e) and in this definition and (C) cash and cash equivalents that are required under applicable foreign law (including to comply with (or is advisable to facilitate compliance with) any applicable foreign takeover statutes) to be held in a foreign bank account; and provided, further, that with respect to any Investment, the Company may, in its sole discretion, at any time allocate all or any portion of such Investment to one or more of the above clauses (a) through (x) so that all or a portion of such Investment would be a Permitted Investment. The amount of any Investment shall be measured on the date of each such Investment made and without giving effect to subsequent changes in value other than as a result of repayments of loans or advances, redemptions, returns of capital, sales or other dispositions thereof or similar events.

"**Permitted Junior Lien Intercreditor Agreement**" means an intercreditor agreement substantially in the form of Exhibit B-1, with such changes reasonably requested by the representatives party thereto with respect to such representatives' individual rights, privileges, immunities and protections.

"**Permitted Lien**" means any:

(aq) Liens existing on the Issue Date (other than Liens securing the Notes (including the Additional Notes) and Liens securing Indebtedness outstanding on the Issue Date and described in Section 4.12(b)(xviii));

(ar) Liens in favor of the Company or its Subsidiaries;

(as) Liens on the Collateral which are junior in priority to the Lien securing the Notes, and which are subject to a Permitted Junior Lien Intercreditor Agreement;

(at) Liens on assets acquired, constructed, altered, improved or repaired by the Company or any of its Subsidiaries and created prior to, at the time of, or within 360 days (or thereafter if such Lien is created pursuant to a binding commitment entered into prior to, at the time of or within 360 days) after such acquisition (including, without limitation, acquisition through merger or consolidation), construction, alteration, improvement or repair (or the completion of such construction, alteration, improvement or repair or commencement of commercial operation of such property, whichever is later) to secure or provide for the payment of all or any part of the price thereof so long as such Liens are no greater than the payment or price, as the case may be, for the assets acquired, constructed, altered, improved or repaired (plus an amount equal to any fees, expenses or other costs payable in connection therewith);

(au) Liens securing Indebtedness which is owed to the Company or a Subsidiary of the Company;

(av) (x) Liens for Taxes not yet due and payable and Taxes that are being contested in good faith and for which adequate reserves have been established in accordance with GAAP, (y) banker's liens, rights of setoff or similar rights and remedies as to deposit accounts or other funds maintained with depository institutions and (z) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by law;

(aw) (x) Liens securing obligations with respect to Capital Leases and Purchase Money Debt permitted to be incurred under Section 4.12 and (y) any interest or title of a lessor under leases entered into by the Company or any Subsidiary of the Company in the ordinary course of business;

(ax) Liens incurred (x) in the ordinary course of business to secure the performance of tenders, statutory obligations, surety, stay, customs and appeal bonds, bids, leases, government contracts, trade contracts, payment processing agreements, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money) and (y) pursuant to pledges and deposits of cash or Cash Equivalents in the ordinary course of business securing obligations in respect of letters of credit, bank guaranties, surety bonds, performance bonds or similar instruments posted with respect to the items described in clause (x);

(ay) Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(az) Liens on specific items of inventory or other goods and the proceeds thereof securing the relevant Person's obligations in respect of documentary letters of credit or banker's acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or goods;

(ba) Liens on cash or Cash Equivalents (or the accounts in which such cash or Cash Equivalents are held) arising in connection with the defeasance, discharge or redemption of Indebtedness;

(bb) in connection with the sale or transfer of any Capital Stock or other assets in a transaction not prohibited hereby, customary rights and restrictions contained in agreements relating to such sale or transfer pending the completion thereof;

(bc) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(bd) Liens securing or otherwise arising from judgments not constituting an Event of Default;

(be) Liens at any one time outstanding securing obligations other than Indebtedness for borrowed money in a principal amount not to exceed $5,000,000;

(bf) Liens securing the Notes (other than Additional Notes);

(bg) Liens securing Indebtedness relating to Treasury Management Arrangements permitted under this Indenture;

(bh) Liens securing Additional Notes or other pari passu Indebtedness permitted to be incurred under Section 4.12(b)(xii) which pari passu Indebtedness is subject to a Permitted Pari Passu Intercreditor Agreement; and

(bi) Liens on cash or Cash Equivalents securing Indebtedness permitted to be incurred under Section 4.12(b)(xviii).

"**Permitted Pari Passu Lien Intercreditor Agreement**" means an intercreditor agreement substantially in the form of Exhibit B-2.

"**Permitted Refinancing Indebtedness**" means with respect to any Indebtedness of any Person, any refinancing, refunding, renewal, replacement, defeasance, discharge or extension of such Indebtedness (each, a "refinancing", with "refinanced" having a correlative meaning); *provided*, that (a) the aggregate principal amount (or accreted value, if applicable) does not exceed the then outstanding aggregate principal amount (or accreted value, if applicable) of the Indebtedness so refinanced, except by an amount equal to all unpaid accrued or capitalized interest thereon, any make-whole payments or premium (including tender premium) applicable thereto or paid in connection therewith, any swap breakage costs and other termination costs related to hedge agreements, plus upfront fees and original issue discount on such refinancing Indebtedness, plus other customary fees and expenses in connection with such refinancing, (b) such refinancing has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being refinanced, (c) the borrower/issuer under such refinancing is the same Person that is the borrower/issuer under the Indebtedness being so refinanced and the other Persons that are (or are required to be) obligors under such refinancing are not more expansive than the Persons that are (or are required to be) obligors under the Indebtedness being so refinanced, except that any Guarantor may be an obligor thereof if otherwise permitted by this Indenture, (d) in the event such Indebtedness being so refinanced is contractually subordinated in right of payment to the Obligations, such refinancing shall contain subordination provisions that are substantially the same (as determined in good faith by the Company) as those in effect prior to such refinancing or are not materially less favorable, taken as a whole (as determined in good faith by Company), to the Secured Parties than those contained in the Indebtedness being so refinanced, (e) such refinancing does not provide for the granting or obtaining of collateral security from, or obtaining any Lien on any assets of, any Person, other than collateral security obtained from Persons that provided (or were required to provide) collateral security with respect to Indebtedness being so refinanced (so long as the assets subject to such Liens were or would have been required to secure the Indebtedness so refinanced) and (f) unless such Indebtedness being so refinanced is secured on a pari passu basis

with the Obligations, the refinancing does not provide for the granting or obtaining of collateral security from, or obtaining any Lien on any assets of, the Company or any Subsidiary on a pari passu basis with the Obligations.

“**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.

“**Physical Settlement**” shall have the meaning specified in Section 15.02(a).

“**Pledged Collateral**” shall have the meaning specified in the Security Agreement.

“**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.

“**Preferred Stock**” means, with respect to any Person, any Capital Stock with preferential rights to any other Capital Stock of such Person with respect to payment of dividends or preferential rights upon liquidation, dissolution, or winding up.

“Property” means, with respect to any Person, an interest of such Person in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, including intellectual property rights and Capital Stock in, and other securities of, any other Person. For purposes of any calculation required pursuant to this Indenture, the value of any Property shall be its Fair Market Value.

“**Purchase Money Debt**” means Indebtedness:

(bj) incurred to finance the purchase or construction (including additions and improvements thereto) of any assets (other than Capital Stock) of such Person or any Subsidiary; or

(bk) that is secured by a Lien on such assets where the lender’s sole security is to the assets so purchased or constructed (including additions and improvements thereto, and any casualty insurance proceeds with respect thereto); *provided*, however, that individual financings of assets provided by one lender may be cross collateralized to other financings of assets provided by such lender; and in either case that does not exceed 100% of the cost of such assets (including the installation, delivery and construction costs and additions and improvements thereto).

“**Real Property**” means, collectively, all right, title and interest (including any leasehold estate) in and to any and all parcels of or interests in real property owned or leased by any

Person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other Property and rights incidental to the ownership, lease or operation thereof.

"**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).

"**Reference Property**" shall have the meaning specified in Section 15.07(a).

"**Regular Record Date**," with respect to any Interest Payment Date, means the March 1 or September 1 (whether or not such day is a Business Day) immediately preceding the applicable March 15 and September 15 Interest Payment Date, respectively.

"**Related Business Assets**" means assets (other than cash or Cash Equivalents) used or useful in a Permitted Business, including any Capital Stock of a Person engaged in a Permitted Business.

"**Resale Restriction Termination Date**" shall have the meaning specified in Section 2.05.

"**Responsible Officer**" means, when used with respect to the Trustee or the Collateral Agent, as applicable, any officer within the corporate trust department of the Trustee or the Collateral Agent, as applicable, who customarily performs functions by the Persons having direct responsibility for administration for this Indenture and also, 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, who, in each case, shall have direct responsibility for this Indenture.

"**Restricted Debt**" means (x) any unsecured Indebtedness of the type referred to in clauses (a), (b) and (c) of the definition of "Indebtedness", (y) any Indebtedness that is subordinated in right of payment to the Notes or (z) any Indebtedness which is secured by a Lien on the Collateral on a junior basis. For the avoidance of doubt, the Notes shall not constitute Restricted Debt.

"**Restricted Debt Payment**" means any payment in cash in respect of the principal of (including any paid-in-kind principal) any Restricted Debt, including, without limitation, any payment at stated maturity, the principal portion of any amortization payment, any purchase, redemption, retirement, acquisition, cancellation or termination of any Restricted Debt, and any sinking fund or similar deposit in respect of such Restricted Debt.

"**Restricted Investment**" means any Investment other than a Permitted Investment.

“**Restricted Payment**” means any:

(a) declaration or payment of any dividend, any distribution or other payment (whether made in cash, securities or other property) on or in respect of the Company’s or any of its Subsidiaries’ Equity Interests (including any payment in connection with any merger or consolidation involving the Company or any of its Subsidiaries) other than:

(1) dividends or distributions payable solely in Capital Stock of the Company (other than Disqualified Stock); and

(2) dividends or distributions by a Subsidiary to the Company or another Subsidiary, so long as, in the case of any dividend or distribution payable on or in respect of any Capital Stock issued by a Subsidiary that is not a Wholly Owned Subsidiary, the Company or the Subsidiary holding such Capital Stock receives at least its pro rata share of such dividend or distribution; or

(b) purchase, redemption, defeasance, retirement or otherwise acquisition for value, including in connection with any merger or consolidation, of any Equity Interests of the Company.

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

“**Restrictive Legend**” 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 Parties**” means the Trustee, the Collateral Agent and the Holders of the Notes.

“**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 the date hereof, between the Company and the Collateral Agent for the benefit of the Secured Parties, as amended, restated, amended and restated, supplemented or otherwise modified from time to time by one or more Security Joinder Agreements or otherwise.

“**Security Agreement Collateral**” means all Property pledged or granted as collateral pursuant to the Security Agreement delivered on the date of this Indenture or thereafter pursuant to this Indenture or the Collateral Documents.

"**Security Joinder Agreement**" means a joinder agreement substantially in the form attached to the Security Agreement.

"**Settlement Amount**" has the meaning specified in Section 15.02(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**" has the meaning specified in Section 15.02(a)(iii).

"**Settlement Notice**" has the meaning specified in Section 15.02(a)(iii).

"**Share Exchange Event**" shall have the meaning specified in Section 15.07(a).

"**Significant Subsidiary**" means a Subsidiary of the Company that meets the definition of "significant subsidiary" in Article 1, Rule 1-02 of Regulation S-X promulgated by the Commission.

"**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 as set forth in Section 15.02(a)(iii)).

"**Spin-Off**" shall have the meaning specified in Section 15.04(c).

"**Stock Price**" shall have the meaning specified in Section 15.03(c).

"**Subject Excess Proceeds**" shall have the meaning specified in Section 4.16(b).

"**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 12.01(a).

"**SumUp**" means SumUp Holdings, S.a.r.l, a limited liability company incorporated and existing under the laws of Grand Duchy of Luxembourg and its successors. Any references to Equity Interests of SumUp shall include any securities or other non-cash consideration received by the Company or any Subsidiary in exchange for the Equity Interests of SumUp.

"**Suspension Period**" shall have the meaning specified in Section 4.16(c).

“**Taxes**” means present or future taxes, duties, assessments or governmental charges of whatever nature.

“**Trading Day**” means, except for purposes of determining amounts due upon conversion, 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 Nasdaq Global Select Market or, if the Common Stock (or such other security) is not then listed on The Nasdaq Global Select Market, 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 Nasdaq Global Select Market or, if the Common Stock is not then listed on The Nasdaq Global Select Market, 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.

“**Trading Price Condition**” shall have the meaning specified in Section 15.01(b).

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

“**Treasury Management Arrangement**” means any agreement or other arrangement governing the provision of treasury or cash management services, including, without limitation, deposit accounts, overdraft, overnight draft, credit cards, debit cards, p-cards (including purchasing cards, employee credit card programs and commercial cards), funds transfer, automated clearinghouse, direct debit, zero balance accounts, returned check concentration, controlled disbursement, lockbox, account reconciliation and reporting and trade finance

services, netting services, cash pooling arrangements, credit and debit card acceptance or merchant services and other treasury or cash management services.

"**Trigger Event**" shall have the meaning specified in Section 15.04(c).

"**Trust Indenture Act**" means the Trust Indenture Act of 1939, as amended, as it was in force at the date of execution of this Indenture; *provided*, *however*, that in the event the Trust Indenture Act of 1939 is amended after the date hereof, the term "Trust Indenture Act" shall mean, to the extent required by such amendment, the Trust Indenture Act of 1939, as so amended.

"**Trustee**" means the Person named as the "**Trustee**" in the first paragraph of this 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 15.07(a).

"**Valuation Period**" shall have the meaning specified in Section 15.04(c).

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

"**Wholly Owned Subsidiary**" means, with respect to any specified Person, a Subsidiary of such Person all of the outstanding Capital Stock or other ownership interests of which (other than directors' qualifying shares) are at the time owned by such Person or by one or more Wholly Owned Subsidiaries of such Person.

Section 1.2 *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 any of Section 4.06(d), Section 4.06(e), Section 4.14 and 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.

Article 2

ISSUE, DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE OF NOTES

Section 2.1 *Designation and Amount.* The Notes shall be designated as the "6.25% Convertible Senior Secured Notes due 2027." The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is initially limited to $197,260,000, subject to Section 2.10 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 2.2 *Form of Notes.* 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. To the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby.

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.

The Notes issued to holders (or indirectly to beneficial owners) of the Existing Convertible Notes in exchange for Existing Convertible Notes will be issued in the form of unrestricted Notes that do not bear and are not required to bear the Restrictive Legend specified in Section 2.05(c).

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.

Section 2.3 *Date and Denomination of Notes; Payments of Interest and Defaulted Amounts.*

(a) The Notes shall be issuable in registered form without coupons in denominations of $1,000 principal amount and integral multiples thereof. Each Note shall be dated the date of its authentication and shall bear interest from the date specified on the face of such Note. 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) 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 principal amount of any Note (x) in the case of any Physical Note, shall be payable at the office or agency of the Company maintained by the Company for such purposes in the continental United States, which shall initially be the Corporate Trust Office of the Trustee, and (y) in the case of any Global Note, shall be payable by wire transfer of immediately available funds to the account of the Depositary or its nominee. The Company shall pay 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 Holder or, upon application by such a Holder to the Note Registrar not later than the relevant Regular Record Date, by wire transfer in immediately available funds to that Holder's account within the United States 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.

(c) 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, subject to the enforceability thereof under applicable law, from, and including, such relevant payment date, and such Defaulted Amounts together with such interest thereon shall be paid by the Company, at its election in each case, as provided in clause (i) 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 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 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(c).

(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 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 2.4 *Execution, Authentication and Delivery of Notes.* The Notes shall be signed in the name and on behalf of the Company by the manual, electronic or facsimile signature of its Chief Executive Officer, President, Chief Financial Officer, Treasurer, Secretary or any of its Executive or Senior Vice Presidents in accordance with the requirements for such signature set forth in this Indenture.

Subject to Article 4, 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.

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 officer of the Trustee (or an authenticating agent appointed by the Trustee as provided

by Section 18.10), 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 2.5 *Exchange and Registration of Transfer of Notes; Restrictions on Transfer; Depositary.* (a) The Company shall cause to be kept at the Corporate Trust Office of the Trustee 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 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 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 Section 4.16 or Article 16.

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.

(a) 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. 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.

(a) 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 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 later of (1) the date that is one year after the last date of original issuance of the Notes, or such shorter period of time as permitted by Rule 144 or any successor provision thereto, and (2) such later date, if any, as may be required by applicable law, 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 (the "**Restrictive Legend**") (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 GROUPON, 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 LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

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

(B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT AND IS EFFECTIVE AT THE TIME OF SUCH TRANSFER, 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.

The Notes issued to holders (or indirectly to beneficial owners) of the Existing Convertible Notes in exchange for Existing Convertible Notes will be issued in the form of unrestricted Notes that do not bear and are not required to bear the Restrictive Legend specified in this Section 2.05(c).

To the extent the Notes (or any securities issued in exchange therefor or substitution thereof, in each case, that are treated as indebtedness for U.S. federal income tax purposes) are issued with "original issue discount" within the meaning of Section 1273 of the Code, such Notes (or applicable securities) shall bear a legend in substantially the following form:

FOR PURPOSES OF SECTIONS 1272, 1273 AND 1275 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, THIS NOTE IS BEING ISSUED WITH TAX ORIGINAL ISSUE DISCOUNT ("**OID**"). GROUPON, INC. AGREES TO PROVIDE PROMPTLY TO THE HOLDER OF THIS NOTE, UPON WRITTEN REQUEST, THE ISSUE PRICE, THE AMOUNT OF OID, THE ISSUE DATE AND THE YIELD TO MATURITY. ANY SUCH WRITTEN REQUEST SHOULD BE SENT TO GROUPON, INC. AT THE FOLLOWING ADDRESS: 35 WEST WACKER DRIVE, 25TH FLOOR, CHICAGO, ILLINOIS 60601, ATTENTION: GENERAL COUNSEL.

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 Restrictive Legend set forth above and affixed on any Note will be deemed, in accordance with the terms of the certificate representing such Note, to be removed therefrom upon the Company's delivery to the Trustee of written notice to such effect, without further action by the Company, the Trustee, the Holder(s) thereof or any other Person; at such time, such Note will be deemed to be assigned an unrestricted CUSIP number as provided in the certificate representing such Note, it being understood that the Depositary of any Global Note may require a mandatory exchange or other process to cause such Global Note to be identified by an unrestricted CUSIP number in the facilities of such Depositary. Without limiting the generality of any other provision of this Indenture, the Trustee will be entitled to receive an instruction letter, Officer's Certificate and Opinion from the Company before taking any action to effect any such mandatory exchange or other process.

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 paragraph 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.

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 Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary and (ii) for exchange of a Global Note or a portion thereof for one or more Physical Notes in accordance with the second immediately succeeding paragraph.

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

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, cancelled, repurchased, redeemed or transferred, such Global Note shall be, upon receipt thereof, cancelled 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, cancelled, repurchased, redeemed 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 or any agent of the Company or the Trustee shall have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Note or maintaining, supervising or reviewing any records relating to such beneficial ownership interests. None of the Company, the Trustee or any agent of the Company or the Trustee shall have any responsibility or liability for any act or omission of the Depositary.

The Trustee, Note Registrar and transfer agent shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer or exchange imposed under this Indenture or under applicable law with respect to any transfer or exchange of any interest in any Note (including any transfers between or among participants or other 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.

(b) Until the Resale Restriction Termination Date, any stock certificate representing Common Stock issued upon conversion of a Note that bears the Restrictive Legend 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 GROUPON, 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 LAST ORIGINAL ISSUE DATE 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 AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

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

(B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT AND IS EFFECTIVE AT THE TIME OF SUCH TRANSFER, 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).

For the avoidance of doubt, any Common Stock issued upon conversion of a Note issued to holders (or indirectly to beneficial owners) of the Existing Convertible Notes in exchange for Existing Convertible Notes will not bear the restrictive legend specified in this Section 2.05(d).

(c) 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 immediately preceding) may not be resold by such Affiliate (or such Person, as the case may be) unless registered under the Securities Act or resold pursuant to an exemption from the registration requirements of the Securities Act in a transaction that results in such Note or Common Stock, as the case may be, no longer being a "restricted security" (as defined under Rule 144).

The transferor shall provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Section 6045 of the Code. The Trustee may rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

Section 2.6 *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 its written request 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 15 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 evidence of their satisfaction 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 2.7 *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 written request of the Company, 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 2.8 *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 (and not withdrawn) in accordance with Article 16, registration of transfer or exchange or conversion, if surrendered to any Person that the Company controls, to be delivered to the

Trustee for cancellation. All Notes delivered to the Trustee shall no longer be considered outstanding under this Indenture upon their payment at maturity, repurchase upon a Fundamental Change (and not withdrawn) in accordance with Article 16, registration of transfer or exchange or conversion. All Notes delivered to the Trustee shall be cancelled by it in accordance with its customary procedures. Except for any Notes surrendered for registration of transfer or exchange, or as otherwise expressly permitted by any of the provisions of this Indenture, no Notes shall be authenticated in exchange for any Notes surrendered to the Trustee for cancellation.

Section 2.9 *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.* Subject to Article 4, the Company may, without the consent 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 and interest accrued prior to the issue date of such Additional Notes) in an unlimited aggregate principal amount; *provided* that if any such Additional Notes are not fungible with the Notes initially issued hereunder for U.S. federal income tax or securities law purposes, such Additional Notes shall have one or more separate CUSIP numbers. The Notes initially issued hereunder and any additional Notes shall rank equally and ratably and shall be treated as a single series for all purposes under this Indenture (except to the extent set forth in the immediately preceding sentence). 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, in addition to those required by Section 18.05, as the Trustee shall reasonably request. 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 private or public tender or exchange offer or through counterparties to private agreements, including by cash-settled swaps or other derivatives, in each case without prior notice to Holders. 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 (other than Notes repurchased upon a Fundamental Change pursuant to Article 16, which shall be surrendered for cancellation in accordance with Section 2.08), in the case of a reissuance or resale, so long as such Notes do not constitute "restricted securities" within the meaning of Rule 144(a)(3) under the Securities Act upon such reissuance or resale; *provided* that if any such reissued or resold Notes are not fungible for U.S. federal income tax or securities law purposes with the Notes that are not repurchased, such reissued or resold Notes will have a separate CUSIP number or no CUSIP number (to the extent such Notes are Physical Notes). Any such Notes that the Company may repurchase shall be considered outstanding for all purposes under this Indenture (other than, at

any time when such Notes are held by the Company, any of its Subsidiaries or its Affiliates or any Subsidiary of any of such Affiliates, for the purpose of determining whether Holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under this Indenture, such Notes shall be disregarded as set forth in Section 9.04) unless and until such time the Company surrenders such Notes to the Trustee for cancellation and, upon receipt of a Company Order, the Trustee shall cancel all Notes so surrendered in accordance with Section 2.08.

Article 3
SATISFACTION AND DISCHARGE

Section 3.1 *Satisfaction and Discharge.* This Indenture and the Notes shall upon request of the Company contained in an Officer's Certificate cease to be of further effect, and the Trustee, at the expense of the Company, shall execute such instruments reasonably requested by the Company acknowledging satisfaction and discharge of this Indenture and the Notes, when (i) all Notes theretofore authenticated and delivered (other than Notes which have been destroyed, lost or stolen and which have been replaced, paid or converted as provided in Section 2.06) have been delivered to the Trustee for cancellation; or (ii) the Company has irrevocably deposited with the Trustee or delivered to Holders, as applicable, after the Notes have become due and payable, whether on the Maturity Date, any Fundamental Change Repurchase Date, upon conversion or otherwise, cash or 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 by the Company; and the Company has delivered to the Trustee and the Collateral Agent 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 and the Notes, the obligations of the Company to the Trustee and the Collateral Agent under Section 7.06 and Section 8.02 shall survive.

Section 3.2 *Covenant Termination*.

(a) Notwithstanding anything to the contrary herein, at the time that less than fifteen percent (15%) of the original principal amount of the Notes issued on the date of this Indenture remain outstanding, the Company will, subject to the satisfaction of the conditions set forth in this Section 3.02, automatically be released from each of their obligations under the Collateral Documents and the covenants contained in Section 4.06 and Sections 4.09 through 4.15 with respect to the outstanding Notes (hereinafter, "**Covenant Termination**"), and such covenants shall no longer have any effect. For this purpose, Covenant Termination means that, with respect to the outstanding Notes, the Company may omit to comply with and shall have no liability in respect of any terms, condition or limitation set forth in any such Collateral Document or covenant, whether directly or indirectly, by reason of any reference elsewhere herein or therein to any such Collateral Document or covenant or by reason of any reference in any such Collateral Document or covenant to any other provision herein or therein or in any other document and such omission to comply shall not constitute a Default or an Event of Default

under Section 6.01, but, except as specified in this Section 3.02 , the remainder of this Indenture and such Notes will be unaffected thereby.

(b) In order to exercise Covenant Termination under clause Section 3.02(a) above, the Company shall deliver an Officer's Certificate to Holders, the Trustee and the Collateral Agent stating that less than fifteen percent (15%) of the original principal amount of the Notes issued on the date of this Indenture remains outstanding.

Article 4
PARTICULAR COVENANTS OF THE COMPANY

Section 4.1 *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.

Section 4.2 *Maintenance of Office or Agency.* The Company will maintain in the continental United States 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 of the Trustee; provided that no office of the Trustee shall be an office or agency for the purpose of service of legal process on the Company or any Guarantor.

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 continental United States 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 of the Trustee as the office or agency in the continental United States, 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.

Section 4.3 *Appointments to Fill Vacancies in Trustee'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.

Section 4.4 *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 on, the Notes in trust for the benefit of the Holders of the Notes;

(ii) that it will give the Trustee prompt 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 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 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, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of any failure to take such action; *provided* that if such deposit is made on the due date, such deposit must be received by the Paying Agent by 11:00 a.m., New York City time, on such date.

(a) 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 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 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 on, the Notes when the same shall become due and payable. Upon an Event of Default under Section 6.01(i) or (j), the Trustee shall automatically be the Paying Agent.

(b) 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.

(c) Subject to applicable escheatment laws and any money and shares of Common Stock deposited with the Trustee 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 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 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 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 or such Paying Agent with respect to such trust money and shares of Common Stock, and all liability of the Company as trustee thereof, shall thereupon cease.

Section 4.5 *Existence.* Subject to Article 12, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect (a) its corporate existence and the corporate, partnership, limited liability company or other existence of each of its Subsidiaries, in accordance with the respective organizational documents (as the same may be amended, supplemented or otherwise modified from time to time) of the Company or any such Subsidiary and (b) the rights (charter and statutory) of the Company and its Subsidiaries to conduct business; provided that the Company shall not be required to preserve any such right, or the corporate, partnership, limited liability company or other existence of any of its Subsidiaries, if the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries, taken as a whole.

Section 4.6 *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, upon written request, 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.

(a) The Company shall file with the Trustee, within 15 days after the same are required to be filed with the Commission, copies of any documents or reports (excluding any such information, documents or reports, or portions thereof, subject to confidential treatment and any correspondence with the Commission) that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act (giving effect to any grace period provided by Rule 12b-25 or any successor rule under the Exchange Act). 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 or for their timeliness or their content.

(a) Delivery of the reports, information and documents described in subsection (b) above to the Trustee is for informational purposes only, and the information and the Trustee's receipt of the foregoing 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 conclusively rely on an Officer's Certificate). The Trustee shall have no obligation whatsoever to monitor or confirm, on a continuing basis or otherwise, the Company's compliance with its covenants or with respect to any reports or other documents filed with the Commission via the EDGAR system (or any successor thereto) or any other website, or to participate in any conference calls.

(b) If, at any time during the six-month period beginning on, and including, the date that is six months after the last date of original issuance of the Notes, the Company fails to timely file any document or report that it is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, as applicable (after giving effect to all applicable grace periods thereunder and other than reports on Form 8-K), or the Notes are not otherwise freely tradable pursuant to Rule 144 by Holders other than the Company's Affiliates or Holders that have been the Company's Affiliates at any time during the three months immediately preceding (as a result of restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes), the Company shall pay Additional Interest on the Notes. Such Additional Interest shall accrue on the Notes at the rate of 0.50% per annum of the principal amount of the Notes outstanding for each day during such period for which the Company's failure to file has occurred and is continuing or the Notes are not otherwise freely tradable pursuant to Rule 144 by Holders other than the Company's Affiliates (or Holders that have been the Company's Affiliates at any time during the three months immediately preceding) without restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes. As used in this Section 4.06(d), documents or reports that the Company is required to "file" with the Commission pursuant to Section 13 or 15(d) of the Exchange Act does not include documents or reports that the Company furnishes to the Commission pursuant to Section 13 or 15(d) of the Exchange Act.

(c) If, and for so long as, the Restrictive Legend on the Notes specified in Section 2.05(c) has not been removed (or deemed removed as provided in Section 2.05(c)), the Notes are assigned a restricted CUSIP number or the Notes are not otherwise freely tradable pursuant to Rule 144 by Holders other than the Company's Affiliates or Holders that have been the Company's Affiliates at any time during the three months immediately preceding (as a result of restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes) as of the 380th day after the last date of original issuance of the Notes, the Company shall pay Additional Interest on the Notes at a rate equal to 0.50% per annum of the principal amount of Notes outstanding until the Restrictive Legend on the Notes has been removed in accordance with Section 2.05(c), the Notes are assigned an unrestricted CUSIP number and the Notes are freely tradable pursuant to Rule 144 by Holders other than the Company's Affiliates (or Holders that

have been the Company's Affiliates at any time during the three months immediately preceding) without restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes. The Restrictive Legend on the Notes shall be deemed removed pursuant to the terms of the Indenture as provided in Section 2.05(c), and, at such time, the Notes will, pursuant to, and subject to the provisions of, such Section, be deemed assigned an unrestricted CUSIP number. However, for the avoidance of doubt, for Notes that are not in certificated form, the Notes will continue to bear Additional Interest pursuant to this paragraph until such time as they are identified by an unrestricted CUSIP in the facilities of the Depositary or any successor depositary for the Notes, as a result of completion of the Depositary's mandatory exchange process or otherwise.

(d) Additional Interest will be payable in arrears on each Interest Payment Date following accrual in the same manner as regular interest on the Notes.

(e) Subject to the immediately succeeding sentence, the Additional Interest that is payable in accordance with Section 4.06(d) or Section 4.06(e) shall be in addition to, and not in lieu of, any Additional Interest that may be payable as a result of the Company's election pursuant to Section 6.03. Notwithstanding the foregoing, in no event shall Additional Interest with respect to the Notes payable as a result of the Company's failure to timely file any document or report that it is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, as applicable (after giving effect to any grace period provided by Rule 12b-25 or any successor rule under the Exchange Act), as set forth in under Section 4.06(d), together with any Additional Interest that may accrue at the Company's election pursuant to Section 6.03, accrue at a rate in excess of 0.50% per annum pursuant to this Indenture, regardless of the number of events or circumstances giving rise to the requirement to pay such Additional Interest.

(f) If Additional Interest is payable by the Company pursuant to Section 4.06(d) or Section 4.06(e), the Company shall deliver to the Trustee an Officer's Certificate to that effect stating (i) the amount of such Additional Interest that is payable and (ii) the date on which such Additional Interest is payable. Unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office of the Trustee such a certificate, the Trustee may assume without inquiry that no such Additional Interest is payable. If the Company has paid Additional Interest directly to the Persons entitled to it, the Company shall deliver to the Trustee an Officer's Certificate setting forth the particulars of such payment.

Section 4.7 *Stay, Extension and Usury Laws.* The Company and each Guarantor 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 or such Guarantor 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 and each Guarantor (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 4.8 *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 stating whether the signers thereof have knowledge of any Default or Event of Default that occurred in such fiscal year and, if so, specifying each such Default or Event of Default and the nature thereof.

In addition, the Company shall deliver to the Trustee within 30 days after 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 no notice is required if the event that would constitute a Default has been cured or waived before the date on which the Company is required to deliver such notice.

Section 4.9 *Covenant to Guarantee Obligations and Give Security*. The Company will:

(a) If, after the date of this Indenture, the Company or any Subsidiary forms or acquires any Material Subsidiary or a Subsidiary becomes a Material Subsidiary (other than an Excluded Entity), then the Company will:

(i) promptly (and in any event within 60 days) after the date of formation or acquisition or becoming a Material Subsidiary, as applicable, cause such Subsidiary to execute and deliver to the Trustee (x) a supplemental indenture to this Indenture substantially in the form of Exhibit C pursuant to which such Subsidiary will irrevocably and unconditionally Guarantee, on a joint and several basis, the full and prompt payment of the principal of, premium, if any, and interest in respect of the Notes on a senior basis and all other Obligations under this Indenture and (y) joinders to any applicable Permitted Pari Passu Lien Intercreditor Agreement, Permitted Junior Lien Intercreditor Agreement and Collateral Documents (including the Security Joinder Agreement), together with any filings and agreements to the extent required by the Collateral Documents to create or perfect the security interests for the benefit of the Holders in the Collateral of such Subsidiary, and

(ii) promptly (and in any event within 60 days after such Person becomes a Subsidiary or a Material Subsidiary, as applicable) deliver to the Collateral Agent the certificates, if any, representing all of the certificated Capital Stock (other than any Excluded Capital Stock) of such Subsidiary held by the Company or such Guarantor, as applicable, together with undated stock powers or other appropriate instruments of transfer executed and delivered in blank by a duly authorized officer of the holder(s) of such Capital Stock; provided that, during any period in which delivery is not practicable, impossible or otherwise restricted as a result of a force majeure (including, without limitation, a pandemic, outbreak or similar health issue), no certificates or instruments

representing any Pledged Collateral shall be required to be delivered to the Collateral Agent but shall be required to be delivered promptly after the expiration of any such period. If any Capital Stock of a Subsidiary of the Company or any Guarantor ceases to constitute Excluded Capital Stock but remains Capital Stock of a Subsidiary of the Company that is a Guarantor, then such Capital Stock shall be delivered pursuant to this Section 4.09 (within the time periods specified herein).

(b) The Company shall cause each Subsidiary (other than an Excluded Entity) that directly or indirectly guarantees or otherwise becomes liable (on a contingent basis or otherwise) for any Indebtedness of the Company or any Guarantor to, within 30 days after so becoming liable for such Indebtedness, to execute and deliver to the Trustee (x) a supplemental indenture to this Indenture substantially in the form of Exhibit C pursuant to which such Subsidiary will irrevocably and unconditionally Guarantee, on a joint and several basis, the full and prompt payment of the principal of, premium, if any, and interest in respect of the Notes on a senior basis and all other Obligations under this Indenture and (y) joinders to any applicable Permitted Pari Passu Lien Intercreditor Agreement, Permitted Junior Lien Intercreditor Agreement and Collateral Documents (including the Security Joinder Agreement), together with any filings and agreements to the extent required by the Collateral Documents to create or perfect the security interests for the benefit of the Holders in the Collateral of such Subsidiary.

(c) The Company shall cause each Foreign Subsidiary that becomes a Guarantor (except for any Guarantor on the Issue Date and any Guarantor that becomes a Guarantor solely because it owns Material Intellectual Property which is registered in the United States) to create security interests in assets located or titled outside of the U.S. and to perfect any security interests in such assets.

(d) Notwithstanding any provision of this Indenture (other than Section 4.09(e) of this Indenture) or any other Collateral Document to the contrary (including any provision that would otherwise apply notwithstanding other provisions or that is the beneficiary of other overriding language):

(i) no more than 65% of the issued and outstanding Equity Interests of any CFC or Domestic Foreign Holding Company shall be pledged or similarly hypothecated to guarantee, secure or support any Obligation of the Company or any Guarantor; (ii) no CFC or Domestic Foreign Holding Company shall guarantee or support any Obligation of the Company or any Guarantor; (iii) no security or similar interest shall be granted in the assets of any CFC or Domestic Foreign Holding Company (including indirectly by way of an offset or otherwise) which security or similar interests guarantees or supports any Obligation of the Company or any Guarantor;

(i) no Subsidiary shall grant security interests to secure the Obligations if such security interests would contravene the Agreed Security Principles;

(ii) other than with respect to (A) a Foreign Subsidiary that is a Guarantor or (B) any pledge pursuant to Section 4.14(b), (1) no actions in any non-U.S. jurisdiction shall be required in order to create any security interests in assets located or titled outside

of the U.S. or to perfect any security interests in such assets, including any Intellectual Property registered in any non-U.S. jurisdiction and (2) there shall be no security agreements or pledge agreements governed under the laws of any non-U.S. jurisdiction; and

(ii) except as set forth in Section 4.16(c) and Section 4.16(d), neither the Company nor any Guarantor shall be required to deliver deposit or securities account control agreements.

(e) Notwithstanding any provision of this Indenture or any other Collateral Document to the contrary (including any provision that would otherwise apply notwithstanding other provisions or that is the beneficiary of other overriding language):

(i) in the event that Equity Interests of SumUp are pledged directly as Collateral, the Company shall, and shall cause any Subsidiary that holds Equity Interests of SumUp to, execute and deliver a security agreement governed by the laws of the jurisdiction of organization of SumUp pursuant to which the owner of such Equity Interests shall grant a first priority security interest (subject to Permitted Liens) in such Equity Interests;

(ii) in connection with any pledge of the Equity Interests of the SumUp Entity under Section 4.14(b) or any direct pledge of the Equity Interests in SumUp under Section 4.14(b), the Company shall cause a customary enforceability and perfection opinion (subject to customary exceptions, qualifications and exclusions) to be delivered to the Trustee and Collateral Agent (for the benefit of the Secured Parties); and

(iii) in connection with any direct pledge of the Equity Interests in SumUp under Section 4.14(b), the Company shall, as a condition to such pledge, (i) enter into an amendment to the shareholders agreement relating to its investment in SumUp (the "**SumUp Shareholders' Agreement**") or obtain a waiver or consent thereunder (in each case, in form and substance acceptable to the Holders of a majority of the outstanding Notes, as certified by the Company to the Trustee in an Officer's Certificate) permitting (x) the pledge of such Equity Interests in favor of the Collateral Agent (for the benefit of the Secured Parties), (y) the Collateral Agent, its agent or the Secured Parties to foreclose on the Equity Interests of SumUp without any conditions (other than compliance with ministerial joinder documentation) and (z) the Collateral Agent, its agent or the Secured Parties to hold the Equity Interests of SumUp without any conditions other than compliance with the terms of the SumUp Shareholders' Agreement (as so amended or waived or subject to such consent described above).

Section 4.10 *Maintenance of Insurance*. The Company will maintain, with insurance companies that the Company believes (in the good faith judgment of the management of the Company) are financially sound and responsible at the time the relevant coverage is placed or renewed, insurance with respect to its insurable Property in at least such amounts (after giving effect to any self-insurance which the Company believes (in the good faith judgment of management of the Company) is reasonable and prudent in light of the size and nature of its

business) and against at least such risks (and with such risk retentions) as the Company believes (in the good faith judgment of the management of the Company) are reasonable and prudent in light of the size and nature of its business.

Section 4.11 *Impairment of Security Interest*. The Company shall not, and shall not permit any of its Subsidiaries to, knowingly take or omit to take any action that would have the result of impairing the security interest with respect to the Collateral for the benefit of the Secured Parties; provided that the foregoing shall not prohibit the incurrence of Permitted Liens, the disposition of assets otherwise permitted or not prohibited under this Indenture or any other action or inaction that is otherwise permitted or not prohibited by this Indenture.

Section 4.12 *Limitations on Debt and Liens.*

(a) The Company shall not and shall not permit any Subsidiary to, directly or indirectly, incur, assume, guarantee or otherwise become liable for any Indebtedness or Disqualified Stock and shall not permit any Subsidiary to issue shares of Preferred Stock.

(b) Notwithstanding anything to the contrary therein, Section 4.12(a) will not prohibit the incurrence of any of the following items of Indebtedness or the issuance of any of the following Disqualified Stock or Preferred Stock (collectively, "**Permitted Debt**"):

(i) the incurrence by the Company and its Subsidiaries of the existing Indebtedness (including the Existing Convertible Notes (after giving effect to the exchange of Existing Convertible Notes for Notes on the Issue Date) but excluding any Indebtedness outstanding on the Issue Date and described in clause (xviii) below);

(ii) the incurrence by the Company and the Guarantors of Indebtedness represented by the Notes and the related Guarantees in an aggregate amount not to exceed $197,260,000 at any time outstanding;

(iii) the incurrence by the Company or any of its Subsidiaries of Permitted Refinancing Indebtedness to Refinance any Indebtedness that was permitted to be incurred under Section 4.12(b) (other than clause (i));

(iv) the incurrence by the Company or any of its Subsidiaries of intercompany Indebtedness (or the guarantees of any such intercompany Indebtedness) between or among the Company or any of its Subsidiaries, provided that if a Guarantor incurs such Indebtedness to a Subsidiary that is not a Guarantor, any such intercompany Indebtedness or the guarantees thereof are expressly subordinated in right of payment to the Guarantee of such Guarantor and if secured, is secured by Liens that are junior to the Liens securing the Obligations;

(v) contingent liabilities under of performance bonds, warranty bonds, bid bonds, appeal bonds, surety bonds and completion or performance guarantees and similar obligations, or similar instruments incurred in the ordinary course of business;

(vi) hedging obligations that are not incurred for speculative purposes but for the purpose of (a) fixing or hedging interest rate risk with respect to any Indebtedness that is permitted by the terms of this Indenture to be outstanding; (b) fixing or hedging currency exchange rate risk with respect to any currency exchanges; or (c) fixing or hedging commodity price risk, including the price or cost of raw materials, emission rights, manufactured products or related commodities, with respect to any commodity purchases or sales;

(vii) the guarantee by the Company or any of the Guarantors of Indebtedness of the Company or a Guarantor permitted to be incurred under this Section 4.12 and the guarantee by any Subsidiary that is not a Guarantor of Indebtedness of another Subsidiary that is not a Guarantor, in each case, to the extent that the guaranteed Indebtedness was permitted to be incurred by another provision of this Section 4.12; provided that (a) if the Indebtedness being guaranteed is subordinated in right of payment to or pari passu with the Notes, then the guarantee must be subordinated or pari passu, as applicable, in right of payment to the same extent as the Indebtedness guaranteed and (b) such guaranteeing Subsidiary that is not a Guarantor shall have also provided a Guarantee of the Notes;

(viii) the incurrence by the Company or any of its Subsidiaries of unsecured Indebtedness (other than for borrowed money) arising from customary agreements of the Company or any such Subsidiary providing indemnification, deferred purchase price, non-cash earn-outs, cash earn-outs, purchase price adjustments and other similar obligations, in each case, incurred or assumed in connection with the acquisition or sale or other Disposition of any business, assets or Capital Stock of the Company or any of its Subsidiaries, other than, in the case of any such Disposition by the Company or any of its Subsidiaries, guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or Capital Stock;

(ix) the incurrence of contingent liabilities arising out of endorsements of checks, drafts and other similar instruments for deposit or collection in the ordinary course of business, including, without limitation, for amounts required by payment processors to cover chargebacks;

(x) the incurrence of Indebtedness in the ordinary course of business under any agreement between the Company or any of its Subsidiaries and any commercial bank or other financial institution relating to Treasury Management Arrangements;

(xi) unsecured Indebtedness owed to any Person providing property, casualty, liability or other insurance to the Company or any Guarantor, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, the premiums with respect to such insurance for the period in which such Indebtedness is incurred and such Indebtedness is outstanding only for a period not exceeding twelve months;

(xii) (a) Additional Notes, junior Lien Indebtedness or other pari passu secured Indebtedness at any one time outstanding; provided, such Indebtedness is incurred subject

to a Permitted Junior Lien Intercreditor Agreement or Permitted Pari Passu Intercreditor Agreement, as applicable, or is unsecured Indebtedness of the Company or any Guarantor, and, in each case, is incurred to Refinance the Existing Convertible Notes, up to the aggregate principal amount of Existing Convertible Notes outstanding on the Issue Date (after giving effect to the exchange of Existing Convertible Notes for Notes on the Issue Date), provided that (x) the consideration paid (or principal amount of Indebtedness issued as consideration) to repurchase or redeem such Existing Convertible Notes shall not exceed 100% of the aggregate principal amount thereof plus an amount equal to accrued interest and any fees or expenses incurred in connection with such incurrence and (y) any Indebtedness other than the Additional Notes incurred pursuant to this clause (a) of Section 4.12(b)(xii) (A) has a final maturity date equal to or later than the Maturity Date and shall not permit or require any principal repayments prior to the Maturity Date and (B) the terms of any such pari passu secured Indebtedness shall be no more favorable to the investors therein relative to the terms of the Notes, including the interest rate payable on such Indebtedness lien priority, structural subordination and contractual subordination, but if such pari passu secured Indebtedness is convertible into Common Stock, the conversion price of such Indebtedness may be lower than the conversion price of the Notes, *minus* any amounts of Additional Notes or pari passu secured Indebtedness incurred in reliance on clause (xii)(b) below; and (b) Additional Notes or pari passu secured Indebtedness not to exceed an aggregate amount at any one time outstanding of $10,000,000 *minus* any amounts of Additional Notes or pari passu secured Indebtedness incurred in reliance on clause (xii)(a) above; provided, that any pari passu secured Indebtedness is incurred subject to a Permitted Pari Passu Intercreditor Agreement and is subject to the restrictions specified in subclause (y) of clause (a) of this Section 4.12(b)(xii);

(xiii) Indebtedness incurred by the Company or any of its Subsidiaries constituting reimbursement obligations with respect to letters of credit and bank guarantees issued in the ordinary course of business, including, without limitation, letters of credit in respect of workers' compensation claims, health, disability or other employee benefits (whether current or former) or property, casualty or liability insurance or self-insurance, or other Indebtedness with respect to reimbursement-type obligations regarding workers' compensation claims; provided that any reimbursement obligations in respect thereof are reimbursed within 90 days following the due date thereof;

(xiv) Indebtedness of a Joint Venture to the Company or a Subsidiary and to the other holders of Capital Stock of such Joint Venture not to exceed an aggregate amount at any one time outstanding of $10,000,000 under this clause (xiv) and so long as the percentage of the aggregate amount of such Indebtedness of such Joint Venture owed to such holders of its Capital Stock does not exceed the percentage of the aggregate outstanding amount of the Capital Stock of such Joint Venture held by such holders;

(xv) Indebtedness representing deferred compensation or similar obligation to employees of the Company or any Guarantor or any of their Subsidiaries or incurred in the ordinary course of business;

(xvi) customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business;

(xvii) Indebtedness of the Company and its Subsidiaries, to the extent the Net Proceeds thereof are promptly used to purchase the Notes in connection with a Fundamental Change;

(xviii) Indebtedness of the Company or any Guarantor representing letters of credit, bank guarantees and similar obligations which are incurred in the ordinary course of business and consistent with past practices up to an aggregate principal amount at any one time outstanding not to exceed $40,000,000; and

(xix) (a) unsecured Indebtedness or Indebtedness of the Company or any Guarantor secured by Liens on the Collateral which are junior to the Liens securing the Notes and subject to a Permitted Junior Lien Intercreditor Agreement in an aggregate amount at any one time outstanding not to exceed $10,000,000, less any outstanding Indebtedness incurred in reliance on clause (b) below; and (b) Indebtedness of the Company or any Guarantor incurred in the ordinary course of business in an aggregate amount at any one time outstanding not to exceed $2,500,000.

(c) For purposes of determining compliance with Section 4.12, in the event that an item of proposed Indebtedness or Disqualified Stock meets the criteria of more than one of the categories of Permitted Debt described in Section 4.12(b) above, the Company will be permitted to classify all or a portion of such item of Indebtedness or Disqualified Stock on the date of its incurrence, or later reclassify all or a portion of such item of Indebtedness (based on circumstances existing on the date of such reclassification), in any manner that complies with this covenant. The accrual of interest, the accrual of dividends, the accretion or amortization of original issue discount, the amortization of debt discount, the payment of interest on any Indebtedness in the form of additional Indebtedness, the payment of interest in the form of additional shares of preferred Capital Stock or Disqualified Stock, the reclassification of Preferred Stock as Indebtedness due to a change in accounting principles and the payment of dividends on Disqualified Stock in the form of additional shares of the same class of Disqualified Stock will not be deemed to be an incurrence of Indebtedness for purposes of this covenant.

(d) The amount of any Indebtedness outstanding as of any date will be:

(i) the accreted value of the Indebtedness, in the case of any Indebtedness issued with original issue discount;

(ii) the aggregate principal amount outstanding, in the case of Indebtedness issued with interest payable in kinds;

(iii) the principal amount of the Indebtedness, in the case of any other Indebtedness; and

(iv) in respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, the lesser of: (x) the Fair Market Value of such assets at the date of determination; and (y) the amount of the Indebtedness of the other Person.

(e) For purposes of determining compliance with any U.S. dollar-denominated restriction on the incurrence of Indebtedness, the U.S. dollar-equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred, in the case of term Indebtedness, or first committed, in the case of revolving credit Indebtedness; provided that if such Indebtedness is incurred to refinance other Indebtedness denominated in a foreign currency, and such refinancing would cause the applicable U.S. dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such U.S. dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such Permitted Refinancing Indebtedness does not exceed the principal amount of such Indebtedness being refinanced. Notwithstanding any other provision of this Section 4.12, the maximum amount of Indebtedness that the Company may incur pursuant to this Section 4.12 shall not be deemed to be exceeded solely as a result of fluctuations in the exchange rate of currencies. The principal amount of any Indebtedness incurred to refinance other Indebtedness, if incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such Permitted Refinancing Indebtedness is denominated that is in effect on the date of such refinancing.

(f) Notwithstanding anything to the contrary set forth herein, the Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, incur, assume, guarantee or otherwise become liable for any Indebtedness, that is secured on a pari passu basis with the Obligations, other than Additional Notes permitted pursuant to Section 4.12(b)(xii).

(g) The Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or suffer to exist any Lien (i) securing any Indebtedness on any of its property or assets (including Equity Interests of Subsidiaries), whether owned on the Issue Date or acquired after that date, other than a Permitted Lien, or (ii) secured by any Equity Interests of (A) SumUp or (B) any Subsidiary that directly or indirectly owns Equity Interests of SumUp.

Section 4.13 *Limitation on Restricted Payments, Restricted Debt Payments and Investments.*

(a) The Company shall not, and shall not permit any of its Subsidiaries, directly or indirectly, to make any Restricted Payment other than:

(i) payments made or expected to be made by the Company or any of its Subsidiaries in respect of withholding or similar taxes payable upon exercise or vesting of equity or equity-linked securities referencing Common Stock by any future, present or former employee, director, officer, member of management or consultant of the Company or any Subsidiary or any direct or indirect parent company of the Company and any

repurchases of such equity-linked securities or of Common Stock deemed to occur upon exercise or vesting of such Common Stock, stock options, warrants or other equity-based awards if Common Stock represents a portion of the exercise price or vesting of such options, warrants or awards;

(ii) cash payments or payments in lieu of issuing fractional shares in connection with the exercise, vesting, conversion or grant of Common Stock or of warrants, options or other securities vesting as, convertible into or exchangeable for Common Stock of the Company or any direct or equity of indirect parent of the Company;

(iii) payments in respect of Common Stock deemed to occur upon the redemption, purchase, conversion, discharge, defeasance or other repayment or acquisition of Indebtedness of the Company or any of its Subsidiaries that is convertible into, exchangeable for, or in reference to, Common Stock, including any Restricted Debt Payment made in compliance with Section 4.13(b);

(iv) any Restricted Payment to pay for the repurchase, redemption or other acquisition or retirement for value of Common Stock of the Company or equity of any direct or indirect parent company of the Company held by any future, present or former employee, director, officer, member of management or consultant of the Company, any of its Subsidiaries or any of its direct or indirect parent companies pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or arrangement, or any stock subscription or shareholder agreement; *provided* that the aggregate amount of Restricted Payments made under this clause (iv) do not exceed in any calendar year an amount equal to $5,000,000 (with unused amounts in any calendar year being carried over to succeeding calendar years), *provided* further that the repurchase of Common Stock deemed to occur upon the exercise of options, warrants or similar instruments if such Common Stock represent all or a portion of the exercise price thereof or payments or in lieu of the issuance of fractional shares of Common Stock or in respect of withholding to pay other taxes payable in connection therewith, will not be deemed to constitute a Restricted Payment;

(v) the purchase by the Company of fractional shares arising out of stock dividends, splits, combinations, tenders or exchanges of Common Stock, stock options, other equity awards or business combinations and payments or distributions to dissenting stockholders pursuant to applicable law in connection with a consolidation, merger or transfer of assets;

(vi) any Restricted Payment made in connection with the purchase by the Company of any of its Common Stock in connection with the issuance of the Notes or substantially concurrently with any other equity-linked securities;

(vii) any Restricted Payment made by the Company to comply with the terms of the Indenture or the Collateral Documents; and

(viii) the making of any Restricted Payment in exchange for, or out of or with the net cash proceeds from the substantially concurrent contribution to the Common Equity of the Company or from the substantially concurrent sale (other than to a Subsidiary of the Company) of, Capital Stock (other than Disqualified Stock) of the Company.

(b) Notwithstanding the foregoing, the Company shall not, and shall not permit any of its Subsidiaries, directly or indirectly to transfer or distribute any Equity Interests of SumUp as a Restricted Payment.

(c) The Company shall not, and shall not permit any of its Subsidiaries, directly or indirectly, to make any Restricted Debt Payment other than:

(i) any payments with respect to any purchase, defeasance, redemption, repurchase, repayment or other acquisition or retirement thereof made by exchange for, or out of the proceeds of, Permitted Refinancing Indebtedness;

(ii) any payments permitted by the applicable terms of subordination that are approved in accordance with Section 10.03 of this Indenture;

(iii) (x) Restricted Debt Payments in exchange for, or with proceeds of any issuance of, Common Equity, and (y) Restricted Debt Payments as a result of the conversion of all or any portion of any Restricted Debt into Common Equity;

(iv) Restricted Debt Payments as part of applicable high-yield discount obligation catch-up payments;

(v) any payments of principal pursuant to mandatory repurchase offers with respect to Restricted Debt (and related payments of interest) made in connection with any fundamental change repurchase offer (however characterized) (such offer, not including any payment for accrued but unpaid interest, not exceeding 101% of the outstanding principal balance of such Restricted Debt), *provided* that such Restricted Debt Payment may only be made concurrently with, or following, any payment of the Fundamental Change Repurchase Price hereunder in respect of the transaction giving rise to such fundamental change repurchase offer;

(vi) scheduled payments, including payment at maturity and open market or other repurchases or retirements of the Existing Notes at a price equal to or less than par; and

(vii) any Restricted Debt Payment made by the Company or its Subsidiaries to comply with applicable laws or the terms of the Indenture or the Collateral Documents.

(d) The Company shall not, and shall not permit any of its Subsidiaries, directly or indirectly, to make any Restricted Investment. For purposes of this Indenture, if the Company or any Subsidiary sells or otherwise disposes of any voting stock of any Subsidiary or engages in

any other transaction such that, after giving effect to any such sale, disposition or other transaction, such entity is no longer a Subsidiary of the Company, the Company shall be deemed to have made an Investment on the date of any such sale, disposition or other transaction equal to the Fair Market Value of the Capital Stock of such Subsidiary sold or disposed of.

(e) For purposes of determining compliance with this Section 4.13, if any Investment or Restricted Payment (or portion thereof) would be permitted pursuant to one or more provisions described above and/or is entitled to be incurred under one or more of the categories of Permitted Investments, the Company may divide and classify such Investment or Restricted Payment in any manner that complies with this covenant and may later divide and reclassify any such Investment or Restricted Payment so long as the Investment or Restricted Payment (as so divided and/or reclassified) would be permitted to be made in reliance on the applicable exception as of the date of such reclassification.

Section 4.14 *Post-Closing Covenant*.

(a) On or prior to the date that is twenty (20) Business Days following the Issue Date, the Company shall deliver, or cause to be delivered, to the Collateral Agent, all Pledged Collateral required to be pledged as Collateral duly indorsed by an effective indorsement (within the meaning of Section 8-107 of the UCC), or accompanied by share transfer powers or other instruments of transfer duly endorsed by such an effective endorsement, in blank.

(b) On or prior to November 19, 2025, the Company shall either (i) consummate the sale of at least 66.6% of the Equity Interests in SumUp that it owns directly or indirectly in compliance with Section 4.16, (ii) transfer all Equity Interests in SumUp that it owns directly or indirectly to a direct Wholly Owned Subsidiary that is a Guarantor (the "**SumUp Entity**") and deliver the entire Equity Interests of the SumUp Entity as Collateral to the Collateral Agent or (iii) deliver the entire Equity Interests of SumUp as Collateral to the Collateral Agent, in the case of each of the foregoing clauses (ii) or (iii), duly indorsed by an effective indorsement (within the meaning of Section 8-107 of the UCC), or accompanied by share transfer powers or other instruments of transfer duly endorsed by such an effective endorsement, in blank.

(c) The SumUp Entity shall not (1) transfer the Equity Interests in SumUp (other than pursuant to an Asset Sale in compliance with Section 4.16) and (2) own or acquire any material assets or engage in any material business or activity or incur any Indebtedness for borrowed money or create or suffer to exist any Lien upon any property or assets now owned or hereafter acquired by it, provided that the following and activities incidental thereto shall be permitted in any event: (i) its ownership of the Equity Interests of SumUp, (ii) the maintenance of its legal existence (including the ability to incur fees, costs and expenses relating to such maintenance), (iii) the performance of its obligations with respect to the Note Documents, including the guarantee of the Obligations, (iv) participating in tax, accounting and other administrative matters as a Subsidiary of the Company, (v) providing indemnification to officers, managers and directors and (x) holding any cash incidental to any activities permitted under this Section 4.14. The Company shall not, and shall cause its Subsidiaries not to, transfer the Equity Interests in SumUp (other than to the SumUp Entity or pursuant to an Asset Sale in compliance with Section 4.16), provided that the Company shall not be deemed to have breached its obligations in this

sentence to the extent that such obligations would conflict with or cause the Company to be in default or breach under any drag-along or similar provision in the SumUp Shareholders' Agreement; provided, further, however, that any Net Proceeds received in connection with any sale or disposition of the Equity Interests in SumUp are applied as required under Section 4.16 hereof.

(d) If, at any time during the period beginning on November 20, 2025 the Company has failed to comply with Section 4.14(b), the Company shall pay Additional Interest on the Notes. Such Additional Interest shall accrue on the Notes at the rate of 2.50% per annum of the principal amount of the Notes outstanding for each day during such period when the Company has failed to comply with Section 4.14(b). Additional Interest will be payable in arrears on each Interest Payment Date following accrual in the same manner as regular interest on the Notes. If Additional Interest is payable by the Company pursuant to this clause (d), the Company shall deliver to Holders and the Trustee an Officer's Certificate to that effect stating (i) the amount of such Additional Interest that is payable and (ii) the date on which such Additional Interest is payable. Unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office of the Trustee such a certificate, the Trustee may assume without inquiry that no such Additional Interest is payable. The payment of Additional Interest pursuant to this clause (d) shall be the sole remedy for failure to comply with Section 4.14(b).

(e) The Additional Interest payable under Section 4.14(d) shall cease to accrue on the earliest date on which the Company is in compliance with the requirements of Section 4.16(b). If Additional Interest is no longer payable by the Company pursuant to this clause (d), the Company shall deliver to Holders and the Trustee an Officer's Certificate to that effect stating the date on which such Additional Interest is no longer payable. Unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office of the Trustee such a certificate, the Trustee may assume without inquiry that such Additional Interest is payable.

Section 4.15 *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 4.16 *Asset Sales*.

(a) The Company shall not, and shall not permit any of its Subsidiaries to, consummate an Asset Sale, unless (i) the Company (or the Subsidiary, as the case may be) receives consideration at the time of the Asset Sale at least equal to the Fair Market Value (measured as of the date of the definitive agreement with respect to such Asset Sale) of the assets, property or Capital Stock issued or sold or otherwise disposed of; and (ii) at least 75% of the consideration received from such Asset Sale and all other Asset Sales since the Issue Date on a cumulative basis is, or will be when paid (in the case of milestones, royalties and other deferred payment obligations), in the form of cash or Cash Equivalents; provided that for purposes of this clause (ii), any Designated Non-Cash Consideration received by the Company or such Subsidiary in respect of such Asset Sale having an aggregate Fair Market Value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (ii), not in excess of $20,000,000 received from such Asset Sale and all other Asset Sales since the Issue Date on a

cumulative basis at the time of the receipt of such Designated Non-Cash Consideration, with the Fair Market Value of each item of Designated Non-Cash Consideration being measured at the time received and without giving effect to subsequent changes in value, shall be deemed to be cash, and (iii) immediately after giving effect to such Asset Sale, no Default or Event of Default shall have occurred and be continuing under this Indenture.

(b) Any Net Proceeds from Asset Sales in excess of $20,000,000 (when aggregated with the Net Proceeds received by the Company and its Subsidiaries from prior Asset Sales) will constitute "**Excess Proceeds**". Within 30 days after the earlier of (i) receipt of any Excess Proceeds in excess of $10,000,000 or (ii) six months from the date the Company first receives $1 of Excess Proceeds, the Company will use at least 85% of such Excess Proceeds (the "**Subject Excess Proceeds**") to make an offer (each, an "**Asset Sale Offer**") to all Holders of Notes, to purchase the maximum principal amount of Notes of such Subject Excess Proceeds (the "**Offer Amount**"). The offer price in any Asset Sale Offer will be equal to at least 100% of the aggregate principal amount purchased, plus accrued and unpaid interest on such principal amount to the date of purchase plus the Applicable Premium and will be payable in cash. The Company shall be solely responsible for the calculation of the Offer Amount and the Applicable Premium, and the Trustee shall have no duty to calculate or verify the Company's calculation thereof. The Company will conduct the Asset Sale Offer using procedures applicable to a repurchase offer upon a Fundamental Change set forth in Section 16.02(b). If any Subject Excess Proceeds remain after consummation of an Asset Sale Offer, the Company may use those Subject Excess Proceeds for any purpose not otherwise prohibited by this Indenture. If the aggregate principal amount of Notes tendered in or required to be prepaid or redeemed in connection with such Asset Sale Offer exceeds the Offer Amount, the Company will select the Notes to be purchased, prepaid or redeemed on a pro rata basis (subject to adjustment to maintain the authorized minimum denomination of the Notes), based on the amounts tendered or required to be prepaid or redeemed. Upon completion of each Asset Sale Offer, the amount of Excess Proceeds will be reset at zero.

(c) The Company shall not be required to make more than one Asset Sale Offer in any calendar quarter and the 30 day period referred to in clause (b) above will be tolled during any period when the Company is in earnings black-out or while Commission comments are pending on any Schedule TO relating to any Asset Sale Offer. Notwithstanding anything to the contrary contained in this Section 4.16, the Company shall be entitled to delay the launch of the Asset Sale Offer for a reasonable period of time not to exceed sixty (60) days in succession or one-hundred twenty (120) days in the aggregate in any rolling twelve (12) month period (a "**Suspension Period**") if the board of directors of the Company shall determine in its reasonable and good faith judgment that (a) it is not feasible for the Company to comply with applicable securities laws because of the unavailability of audited or other required financial statements, provided that the Company shall use its commercially reasonable efforts to obtain and/or file such financial statements as promptly as practicable, or (b) the Asset Sale Offer documents would require the disclosure of material, non-public information, the premature disclosure of which would be materially detrimental to the Company and, in each case of clauses (a) and (b), subject to the delivery to the Trustee of a certificate signed by the chief executive officer or the chief financial officer of the Company certifying as to the determination of the Company's board

of directors described above; provided, however, that any Suspension Period shall terminate upon the earliest of (i) the date upon which the Company notifies the Holders in writing that suspension of such rights for the grounds set forth in this Section 4.16(c) is no longer necessary, (ii) in the case of clause (a) above, the date upon which the Company has filed such reports or obtained and filed the financial information required to be included or incorporated by reference in the Asset Sale Offer documents and (iii) in the case of clause (b) above, at such time as the public disclosure of such information is otherwise made. The Company will use commercially reasonable efforts to limit the length of any Suspension Period and shall notify the Holders promptly if the suspension for the grounds set forth in this Section 4.16(c) is no longer necessary. Notice of the commencement of a Suspension Period shall simply specify such commencement and shall not contain any facts or circumstances relating to such commencement or any material non-public information. The Trustee shall have no duty or obligation to monitor the existence or termination of any Suspension Period. For the duration of any Suspension Period, the Company shall cause the relevant Subject Excess Proceeds to be deposited into an account that is subject to a first priority perfected Lien (subject to Permitted Liens) for the benefit of the Collateral Agent under a Deposit Account Control Agreement.

(d) The Company shall cause any Net Proceeds that are Excess Proceeds to be invested in Cash Equivalents or held in the form of cash and the Company and its Subsidiaries shall not use such Net Proceeds for any purpose other than consummation of an Asset Sale Offer until the Company has consummated an Asset Sale Offer to purchase the maximum principal amount of Notes of such Subject Excess Proceeds. Within five (5) Business Days after the receipt of any Net Cash Proceeds from any disposition of the Equity Interests in SumUp constituting Excess Proceeds, the Company shall cause such proceeds to be deposited into an account that is subject to a first priority perfected Lien for the benefit of the Collateral Agent under a Deposit Account Control Agreement (which account may be established by the Company in advance of the date on which such deposit is due). Upon delivery of an Officer’s Certificate specifying that such Deposit Account Control Agreement is permitted pursuant to this Section 4.16(d), the Collateral Agent shall execute and deliver such Deposit Account Control Agreement.

(e) The Company will comply with the requirements of Rule 14e-1 and Rule 13e-4 under the Exchange Act and any other securities laws and regulations thereunder to the extent those laws and regulations are applicable in connection with each repurchase of Notes pursuant to an Asset Sale Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of Section 16.02 hereof or this Section 4.16, the Company will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under Section 16.02 hereof or this Section 4.16 by virtue of such compliance. For purposes of this Section 4.16, the Company shall convert any non-U.S. dollar Net Proceeds into U.S. dollars using the relevant currency exchange rate in effect on the date such Net Proceeds are received and such converted U.S. dollar amounts shall be utilized for purposes of complying with the provisions of this Section 4.16.

Section 4.17 *Limitation on Transfers of Material Intellectual Property and SumUp.*

(a) The Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, enter into or conduct any transaction (including, but not limited to, the transfer, purchase, sale, lease, license or exchange of any property or asset, the making of any Restricted Payment or Investment or the disposition of any assets) with any Person in the form of transferring title to, or licensing on an exclusive basis, as applicable, Intellectual Property that, at the time of such transaction, constitutes Material Intellectual Property, unless the transferee is the Company or a Guarantor.

(b) All Equity Interests of SumUp beneficially owned, directly or indirectly, by the Company or any Subsidiary shall be owned directly by the Company or a Wholly Owned Subsidiary of the Company at all times. For the avoidance of doubt, this clause (b) shall not prohibit the disposition of Equity Interests of SumUp in compliance with Section 4.16. Notwithstanding anything to the contrary contained herein, the Company shall not be deemed to have breached its obligations under clause (ii) of Section 4.16(a) of this Indenture to the extent that such obligations would conflict with or cause the Company to be in default or breach under any drag-along or similar provision in the SumUp Shareholders' Agreement; provided, however, that any Net Proceeds received in connection with any sale or disposition of the Equity Interests in SumUp are applied as required under Section 4.16 hereof.

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

Section 5.1 *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 March 1 and September 1 in each year beginning with December 31, 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 5.2 *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 6.1 *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, or premium if any, on 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 exercise of a Holder's conversion right and such failure continues for a period of three Business Days;

(d) failure by the Company to issue (i) a Fundamental Change Company Notice in accordance with Section 16.02(c), (ii) notice of a Make-Whole Fundamental Change in accordance with Section 15.03(b), or (iii) notice of a specified corporate event in accordance with Section 15.01(b)(ii) or Section 15.01(b)(iii), in each case when due, and such failure continues for a period of three Business Days;

(e) failure by the Company or a Guarantor to comply with its obligations under Article 12;

(f) failure by the Company or any of the Guarantors, as applicable, for 60 days after written notice from the Trustee or the Holders of at least 25% in 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 or the Collateral Documents;

(g) default by the Company 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 $35,000,000 (or its foreign currency equivalent) in the aggregate of the Company and/or any such 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 or (ii) constituting a failure to pay the principal of any such indebtedness when due and payable 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 shall not have been paid or discharged, as the case may be, within 30 days after written notice to the Company by the Trustee or to the Company and the Trustee by Holders of at least 25% in aggregate principal amount of Notes then outstanding in accordance with this Indenture;

(h) a final judgment for the payment of $35,000,000 (or its foreign currency equivalent) or more (excluding any amounts covered by insurance or third-party indemnity) in the aggregate rendered against the Company or any Significant Subsidiary of the Company, which judgment is not discharged or stayed within 60 days after (i) the date on which the right to appeal thereof has expired if no such appeal has commenced, or (ii) the date on which all rights to appeal have been extinguished;

(i) the Company 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 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 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;

(j) an involuntary case or other proceeding shall be commenced against the Company or any Significant Subsidiary seeking liquidation, reorganization or other relief with respect to the Company or such 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 Significant Subsidiary or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 30 consecutive days;

(k) any security interest and Liens purported to be created by any Collateral Document on any material portion of the Collateral shall cease to be in full force and effect or shall cease to give the Collateral Agent, for the benefit of the Secured Parties, the Liens, rights, powers and privileges purported to be created and granted under such Collateral Documents (including a valid and perfected security interest in and Lien on all of the Collateral thereunder in favor of the Collateral Agent with the priority required by the Collateral Documents) with respect to a material portion of the Collateral, or shall be asserted by or on behalf of the Company not to be a valid and perfected security interest in or Lien on the Collateral covered thereby (in each case, except (i) the failure of the Collateral Agent to maintain possession of possessory Collateral received by it, which failure is not a direct result of any act, omission, advice or direction of the Company, (ii) in connection with a transaction expressly permitted under the Indenture or the Collateral Documents, in each case solely to the extent such termination or release is permitted under the Indenture or the Collateral Documents or (iii) as a result of the satisfaction and discharge of this Indenture in accordance with Section 3.02 or a Covenant Termination in accordance with Section 3.02); or

(l) a Note Guarantee of a Guarantor ceases to be in full force and effect (except as contemplated by the terms thereof) or the Company or Guarantor denies or disaffirms its obligations under this Indenture or any Guarantee with respect to the Notes (except as contemplated by the terms hereof or thereof).

Section 6.2 *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(i) or Section 6.01(j) 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 9.04, by notice in writing to the Company 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(i) or Section 6.01(j) 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 action on the part of the Trustee or holders.

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, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay installments of accrued and unpaid interest upon all Notes and the principal of any and all Notes that shall have become due otherwise than by acceleration (with interest on overdue installments of accrued and unpaid interest to the extent that payment of such interest is enforceable under applicable law, and on such principal at the rate borne by the Notes at such time) and amounts due to the Trustee and the Collateral Agent pursuant to Section 7.06 and Section 8.02(e), 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 continuing 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 6.3 *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(c) shall, for the first 360 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 0.25% per annum of the principal amount of the Notes outstanding for each day during the first 180 days after the occurrence of such Event of Default and 0.50% per annum of the principal amount of the Notes

outstanding from the 181st day until the 360th day after the occurrence of such Event of Default during which such Event of Default is continuing. Additional Interest payable pursuant to this Section 6.03 shall be in addition to, not in lieu of, any Additional Interest payable pursuant to Section 4.06(e) or Section 4.06(f), subject to the second immediately succeeding paragraph. 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 file is not cured or waived prior to such 361st day), the Notes shall be immediately subject to acceleration as provided in Section 6.02. The provisions of this paragraph will not affect the rights of Holders of Notes 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(c). 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. Unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office of the Trustee such a notice, the Trustee may assume without inquiry that no such Additional Interest is payable. The Trustee will not at any time be under any duty or responsibility to any Holder to determine whether any Additional Interest is payable.

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 of such election in writing 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. No Additional Interest shall accrue, and no right to declare the principal or other amounts due and payable in respect of the Notes pursuant to Section 6.02 shall exist, after such violation has been cured, and Holders shall only be entitled to any Additional Interest that has accrued prior to such violation having been cured as a remedy in respect of such violation.

In no event shall Additional Interest payable at the Company's election for failure to comply with its obligations as set forth in Section 4.06(d), together with any Additional Interest that may accrue pursuant to Section 4.06(e) as a result of the Company's failure to timely file any document or report that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, as applicable (after giving effect to any grace period provided by Rule 12b-25 or any successor rule under the Exchange Act and other than reports on Form 8-K), accrue at a rate in excess of 0.50% per annum pursuant to this Indenture, regardless of the number of the events or circumstances giving rise to the requirement to pay such Additional Interest.

Section 6.4 *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, the Company shall, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of the Notes, 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 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 and

Collateral Agent under Section 7.06 and Section 8.02(e). 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, or the Collateral Agent 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 (in all of its capacities), 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 Collateral Agent under Section 7.06 and Section 8.02(e); 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 each of the Trustee and 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 Collateral Agent under Section 7.06 and Section 8.02(e), 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, the Collateral Agent, their 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 and the Trustee 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 and the Trustee shall continue as though no such proceeding had been instituted.

Section 6.5 *Application of Monies Collected by Trustee.* Any monies 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, 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 (in all of its capacities) and to the Collateral Agent under Section 7.06 and Section 8.02(e) for amounts due to it under this Indenture and the Notes Documents;

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 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, or to the extent the Trustee collects any amount for any Guarantor, to such Guarantor.

Section 6.6 *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 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 and Collateral Agent such security or indemnity satisfactory to each of them 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, 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, each Holder shall have the right 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.

Section 6.7 *Proceedings by Trustee.* In case of an Event of Default, the Trustee may 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 6.8 *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 6.9 *Direction of Proceedings and Waiver of Defaults by Majority of Holders.* The Holders of a majority of the aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 9.04 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; *provided*, *however*, that such direction shall not be in conflict with any rule of law or with this Indenture, and the Trustee and Collateral Agent may take any other action deemed proper by the Trustee that is not inconsistent with such direction. The Trustee and Collateral Agent, as applicable, may refuse to follow any direction that the Trustee determines is unduly prejudicial to the rights of any other Holder or that would involve the Trustee or Collateral Agent in personal liability (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). The Holders of a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 9.04 may on behalf of the Holders of all of

the Notes waive any past Default or Event of Default hereunder and its consequences except a continuing default in the payment 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, a continuing failure by the Company to pay or deliver, as the case may be, the consideration due upon conversion of the Notes or a continuing default in respect of a covenant or provision hereof which under Article 11 cannot be modified or amended without the consent of each Holder of an outstanding Note affected. Upon any such waiver the Company, the Trustee 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.* Neither the Trustee nor the Collateral Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, unless a Responsible Officer of the Trustee or Collateral Agent, as applicable, shall have received written notice from the Company or a Holder describing such Default or Event of Default, and stating that such notice is a notice of Default (a "**Notice of Default**"). The Trustee shall, within 90 days after the occurrence and continuance of a Default of which a Responsible Officer of the Trustee has written notice of, deliver to all Holders notice of all Defaults known to a Responsible Officer of the Trustee, 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 a committee of Responsible Officers of the Trustee 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 for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees 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 9.04, 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, if applicable) 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, or receive the consideration due upon conversion, in accordance with the provisions of Article 15.

Article 7
CONCERNING THE TRUSTEE

Section 7.1 *Duties and Responsibilities of Trustee.* The Trustee, prior to the occurrence of an Event of Default 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, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs; *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. The Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability in acting under this Indenture or other Notes Documents if there are reasonable grounds for believing that the repayment of those funds or indemnity satisfactory to it against that risk or liability is not reasonably assured to it under this Indenture.

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 and 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 9.04 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; and

(h) in the event that the entity serving as Trustee is also acting as Custodian, Note Registrar, Paying Agent, Conversion Agent, Bid Solicitation Agent, transfer agent or Collateral Agent hereunder, the rights and protections afforded to the Trustee pursuant to this Article 7 shall also be afforded to such Custodian, Note Registrar, Paying Agent, Conversion Agent, Bid Solicitation Agent, transfer agent or Collateral Agent; *provided*, *however*, in and during an Event of Default, only the Trustee, and not the Custodian, Note Registrar, Paying Agent, Conversion Agent, Bid Solicitation Agent, transfer agent, Collateral Agent or any agent appointed hereunder, shall be subject to the prudent person standard provided in the second sentence of this Section 7.01.

None of the provisions contained in this Indenture or the other Notes Documents 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 7.2 *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 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 and require an Opinion of Counsel and any written or oral 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;

(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 shall have no obligation to pursue any action that is not in accordance with applicable law; and

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

In no event shall the Trustee or Collateral Agent be liable for any special, indirect, punitive or consequential 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. Except in the case of a Default in the payment of principal of, or any accrued and unpaid interest on any Note that is to be paid by the Trustee, as Paying Agent, the Trustee shall not be charged with knowledge of any Default or Event of Default with respect to the Notes, unless a Responsible Officer of the Trustee shall have been given written notice of such Default or Event of Default by the Company or by any Holder of the Notes describing such Default or Event of Default and stating that such notice is a Notice of Default.

Section 7.3 *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 or sufficiency 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.

Section 7.4 *Trustee, Paying Agents, Conversion Agents, Bid Solicitation Agent or Note Registrar May Own Notes.* The Trustee, any Paying Agent, any Conversion Agent, Bid Solicitation Agent (if other than the Company or any Affiliate thereof), or Note Registrar or Collateral Agent, 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, Paying Agent, Conversion Agent, Bid Solicitation Agent, or Note Registrar or Collateral Agent.

Section 7.5 *Monies and Shares of Common Stock to Be Held in Trust.* All monies and 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 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 7.6 *Compensation and Expenses of Trustee.* The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, 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 and the Company, and the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances reasonably incurred or made by the Trustee 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 adjudicated by a court of competent jurisdiction in a final non-appealable decision. The Company and the Guarantors, jointly and severally, also covenant to indemnify the Trustee in any capacity under this Indenture, any Notes Document and any other document or transaction entered into in connection herewith, the Collateral Agent and their officers, directors, agents or employees and any authenticating agent for, and to hold them harmless against, any loss, claim, damage, liability or expense (whether asserted by the Company, any holder, or any third-party) incurred without gross negligence or willful misconduct, as adjudicated by a court of competent jurisdiction in a final non-appealable decision, on the part of the Trustee, the Collateral Agent, officers, directors, agents, employees, or authenticating agent, as the case may be, and arising out of or in connection with the acceptance or administration of this Indenture and the other Notes Documents or in any other capacity hereunder or thereunder, including without limitation expenses and costs (including reasonable attorney's fees and expenses and court costs, the costs and expenses of enforcing this Indenture and the indemnification provided herein) incurred in connection with any action , claim or suit brought to enforce the Trustee's or Collateral Agent's right to indemnification. The obligations of the Company under this Section 7.06 to compensate or indemnify the Trustee and to pay or reimburse the Trustee 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. The Trustee's and Collateral Agent's right to receive payment of any amounts due under this Section 7.06 and Section 8.02(e) 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 earlier resignation or removal of the Trustee or Collateral Agent, as applicable. 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 Collateral Agent.

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

Section 7.7 *Officer's Certificate 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 and willful misconduct on the part of the Trustee, be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Trustee, and such Officer's Certificate, in the absence of gross negligence and 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 7.8 *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 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 7.9 *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 60 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, 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.

(a) 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 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.

(a) The Holders of a majority in aggregate principal amount of the Notes at the time outstanding, as determined in accordance with Section 9.04, 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.

(b) 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 claim 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 the date any officer that the Company has indicated to the Trustee should receive such application actually receives such application, 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.

Article 8

Section 8.1 *Collateral Documents*. The payment of the principal, interest (including Additional Interest) and premium, if any, on the Notes when due, whether on an Interest Payment Date, at maturity, by acceleration, repurchase, or otherwise, the payment of all other Obligations of the Company under this Indenture, the Notes, and the Collateral Documents and performance of all other obligations of the Company and any Guarantor to the Holders of the Notes or the Trustee or the Collateral Agent under this Indenture, the Notes and the other Notes Documents, according to the terms hereunder or thereunder, are secured as provided in the Collateral Documents, which the Collateral Agent and the Company have entered into simultaneously with the execution of this Indenture, and will be secured by Collateral Documents delivered after the date of this Indenture as required or permitted by this Indenture.

Section 8.2 *Collateral Agent*.

(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 8.02, 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) 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 Notes Documents, for the creation, perfection, priority, sufficiency or protection of any Lien, including without limitation 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 the Collateral Documents or any delay in doing so. Neither the Trustee nor the Collateral Agent nor any of their respective officers, directors, employees, attorneys or agents will be responsible or liable for making any filings or recordings to perfect or maintain the perfection of the Collateral Agent's Lien in the Collateral, including without limitation, the filing of any UCC financing statements, continuation statements, or amendments, or any filings with respect to the U.S. Patent and Trademark Office or U.S. Copyright Office.

(c) The Collateral Agent will be subject to such directions as may be given to it from time to time by the Trustee or Holders holding a majority in aggregate principal amount of the Notes (as required or permitted by this Indenture). Except as directed by the Trustee or any representatives of the Trustee as required or permitted by this Indenture, and only if indemnified to its satisfaction, the Collateral Agent will not be obligated:

(i) to act upon direction 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) to take any other action whatsoever with regard to any or all of the Liens, Collateral Documents or Collateral.

(d) The Collateral Agent will be accountable only for amounts that it actually receives as a result of the enforcement of the Liens or Collateral Documents.

(e) In acting as Collateral Agent hereunder and under the Notes 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 of this Indenture;

provided that in that context any references in such Article 7 of this Indenture to "Trustee" shall be references to "Collateral Agent" and references to "negligence" shall be references to "gross negligence". Without limiting the immediately preceding sentence, the Collateral Agent shall be entitled to compensation, reimbursement and indemnity in the same manner as the Trustee as provided in Section 7.06 of this Indenture.

(f) At all times when the entity serving as Trustee is not the Collateral Agent, the Company will deliver to the Trustee copies of all Collateral Documents delivered to the Collateral Agent and copies of all documents delivered to the Collateral Agent pursuant to the Collateral Documents.

(g) Notwithstanding any provision to the contrary contained elsewhere in the Indenture and the Notes Documents, the duties of the Collateral Agent shall be ministerial and administrative in nature, and the Collateral Agent shall not have any duties or responsibilities, except those expressly set forth herein and in the Notes Documents, to which the Collateral Agent is a party, nor shall the Collateral Agent have or be deemed to have any trust or other fiduciary relationship with the Trustee, any Holder, or any other party, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into the Indenture and the Collateral Documents, or otherwise exist against the Collateral Agent. Without limiting the generality of the foregoing sentence, the use of the term "agent" in the Indenture 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. 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.

(h) The Collateral Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, unless a Responsible Officer of the Collateral Agent shall have received written notice from the Trustee or the Company referring to the Indenture, describing such Default or Event of Default and stating that such notice is a "notice of default."

(i) No provision of this Indenture or any Collateral Document shall require the Collateral Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or thereunder or to take or omit to take any action hereunder or thereunder or take any action at the request or direction of Holders or the Trustee unless it shall have received indemnity satisfactory to the Collateral Agent against potential costs and liabilities incurred by the Collateral Agent relating thereto. Notwithstanding anything to the contrary contained in this Indenture or the Collateral Documents, in the event the Collateral Agent is entitled or required to commence an action to foreclose or otherwise exercise its remedies to acquire control or possession of the Collateral, the Collateral Agent shall not be required to commence any such action or exercise any remedy or to inspect or conduct any studies of any property under any mortgage or take any such other action if the Collateral Agent has determined that the Collateral Agent may incur personal liability as a result of the presence at, or release on or from, the Collateral or such property, of any hazardous substances. The Collateral Agent shall at any time be entitled to cease taking any action described in this clause

(i) if it no longer reasonably deems any indemnity, security or undertaking from the Company or the Holders to be sufficient.

(j) The parties hereto and the Holders hereby agree and acknowledge that neither the Collateral Agent nor the Trustee shall assume, be responsible for or otherwise be obligated for any liabilities, claims, causes of action, suits, losses, allegations, requests, demands, penalties, fines, settlements, damages (including foreseeable and unforeseeable), judgments, expenses and costs (including but not limited to, any remediation, corrective action, response, removal or remedial action, or investigation, operations and maintenance or monitoring costs, for personal injury or property damages, real or personal) of any kind whatsoever, pursuant to any environmental law as a result of the Indenture, the Collateral Documents or any actions taken pursuant hereto or thereto. Further, the parties hereto and the Holders hereby agree and acknowledge that in the exercise of its rights under the Indenture and the Collateral Documents, the Collateral Agent may hold or obtain indicia of ownership primarily to protect the security interest of the Collateral Agent in the Collateral and that any such actions taken by the Collateral Agent shall not be construed as or otherwise constitute any participation in the management of such Collateral. In the event that the Collateral Agent is required to acquire title to an asset for any reason, or take any managerial action of any kind in regard thereto, in order to carry out any obligation for the benefit of another, which in the Collateral Agent's sole discretion may cause it to be considered an "owner or operator" under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**"), 42 U.S.C. §9601, et seq., or otherwise cause it to incur liability under CERCLA or any other federal, state or local law, the Collateral Agent and reserves the right, instead of taking such action, to either resign or arrange for the transfer of the title or control of the asset to a court-appointed receiver. Neither the Collateral Agent nor the Trustee shall be liable to any person for any environmental claims or contribution actions under any federal, state or local law, rule or regulation by reason of the Collateral Agent's actions and conduct as authorized, empowered and directed hereunder or relating to the discharge, release or threatened release of hazardous materials into the environment.

Section 8.3 *Release of Collateral; Non-Disturbance*.

(a) Subject to Section 8.03(b) and (c) hereof, the Liens on the Collateral securing the Notes will be automatically released in whole or in part, as applicable, under one or more of the following circumstances:

(i) in whole upon:

(A) satisfaction and discharge of this Indenture as set forth under Section 3.01; or

(B) a Covenant Termination under Section 3.02;

(ii) in whole or in part, as applicable, with the consent of the requisite Holders of the Notes in accordance with Article 11, including consents obtained in connection

with a tender offer or exchange offer, or purchase of Notes; or (iii) in part, as to any asset constituting Collateral:

(A) that is sold, transferred or otherwise disposed of by the Company or a Guarantor to any Person that is not the Company or a Guarantor in a transaction permitted by the Indenture or the Collateral Documents;

(B) to the extent such asset ceases to be Collateral or is no longer required to be Collateral as a result of any transaction or any other event not prohibited by the Indenture; or

(b) [Reserved].

(c) With respect to any release of the Liens on the 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, as applicable, to such release or the entry into such agreements have been met and that it is proper for the Trustee or the Collateral Agent to execute and deliver the documents requested by the Company in connection with such release or the entry into such agreements, and in the case of any release any appropriate instruments of termination, satisfaction, discharge or release prepared by the Company, the Trustee and the Collateral Agent shall execute, deliver or acknowledge (at the Company's expense) such instruments or releases to evidence the release and discharge of any Collateral permitted to be released pursuant to this Indenture. Neither the Trustee nor the Collateral Agent shall be liable for any such release undertaken in reliance upon any such Officer's Certificate or 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, discharge or termination, unless and until such party receives such Officer's Certificate and Opinion of Counsel.

(d) At any time when an Event of Default has occurred and is continuing and the maturity of the Notes has been accelerated (whether by declaration or otherwise) and the Trustee has delivered notice of acceleration to the Collateral Agent, no release of the Liens on the Collateral pursuant to the provisions of this Indenture or the Collateral Documents shall be effective as against the Holders.

Section 8.4 *Suits to Protect the Collateral*. Subject to the provisions of the Collateral Documents, the Trustee is authorized and empowered to institute and maintain, or direct the Collateral Agent to institute and maintain, such suits and proceedings to protect or enforce the Liens securing the Notes or 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 to preserve or protect its interest and the interests of the Holders of the Notes in the Collateral (including suits or proceedings to restrain the enforcement of or compliance with any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid if the enforcement of, or compliance with, such enactment, rule or order would

impair the Liens created under the Collateral Documents or be prejudicial to the interests of the Holders of the Notes).

Section 8.5 *Authorization of Action to be Taken*.

(a) Each Holder of Notes by its acceptance of the 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, as applicable, to enter into the Collateral Documents to which such party 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 either such party is party and to perform its respective obligations and exercise its respective 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 Trustee (who may seek directions from the Holders of a majority in aggregate principal amount of the Notes) or at the direction from the Holders of a majority in aggregate principal amount of the Notes. Any notice, agreement, certificate or other document delivered to the Collateral Agent by the Company or any other Person in connection with any of the Indenture or the Collateral Documents, shall promptly be delivered by the Company or such Person to the Trustee.

(b) The Collateral Agent and the Trustee are authorized and empowered to receive for the benefit of the Holders of Notes any funds collected or distributed under the Collateral Documents to which the Collateral Agent or the Trustee is a party and to make further distributions of such funds to the Holders of Notes according to the provisions of this Indenture.

(c) The Trustee may (but shall not be obligated to), in its sole discretion and without the consent of any Holders, during the continuance of an Event of Default, direct, on behalf of the Holders, the Collateral Agent to take all actions it deems necessary or appropriate in order to:

(i) foreclose upon or otherwise enforce any or all of the Liens created under the Collateral Documents;

(ii) enforce any of the terms of the Collateral Documents to which the Collateral Agent or Trustee is a party;

(iii) collect and receive payment of any and all Obligations to the extent then due and payable.

(c) If the Company (i) incurs any obligations secured by Liens permitted under clause (r) of the definition of “Permitted Liens” and (ii) delivers to the Collateral Agent an Officer’s Certificate so stating and requesting the Collateral Agent to enter into a Permitted Pari Passu Intercreditor Agreement contemplated hereby and certifying that such intercreditor agreement complies herewith, the Collateral Agent shall (and each Holder, by acceptance of the Notes,

authorizes and directs the Collateral Agent to) enter into such Permitted Pari Passu Intercreditor Agreement (at the sole expense and cost of the Company, including legal fees and expenses of the Trustee and the Collateral Agent), bind the Holders on the terms set forth therein and perform and observe its obligations thereunder. If the Company (i) incurs any obligations secured by Liens permitted under clause (c) of the definition of "Permitted Liens" and (ii) delivers to the Collateral Agent an Officer's Certificate so stating and requesting the Collateral Agent to enter into a Permitted Junior Lien Intercreditor Agreement contemplated hereby and certifying that such intercreditor agreement complies herewith, the Collateral Agent shall (and each Holder, by acceptance of the Notes, authorizes and directs the Collateral Agent to) enter into such Permitted Junior Lien Intercreditor Agreement (at the sole expense and cost of the Company, including legal fees and expenses of the Trustee and the Collateral Agent), bind the Holders on the terms set forth therein and perform and observe its obligations thereunder. At any time after the Issue Date, upon delivery to the Collateral Agent and the Trustee of an Officer's Certificate and written request from the Company, the Collateral Agent shall enter into such Collateral Documents reasonably requested by the Company (at the sole expense and cost of the Company, including legal fees and expenses of the Trustee and the Collateral Agent). Neither the Trustee nor the Collateral Agent shall have any liability to any Person for entering into an intercreditor agreement or joinder thereto or any other Collateral Document in reliance on an Officer's Certificate.

Section 8.6 *Purchaser Protection*. In no event shall any purchaser in good faith of any property purported to be released hereunder be bound to ascertain the authority of the Collateral Agent or the Trustee to execute the release or to inquire as to the satisfaction of any conditions required by the provisions hereof for the exercise of such authority or to see the application of any consideration given by such purchaser or other transferee; nor shall any purchaser or other transferee of any property or rights permitted by this Article 8 to be sold be under any obligation to ascertain or inquire into the authority of the Company to make any such sale or other transfer.

Section 8.7 *Powers Exercisable by Receiver or Trustee*. In case the Collateral shall be in the possession of a receiver or trustee, lawfully appointed, the powers conferred in this Article 8 upon the Company with respect to the release, sale or other disposition of such property may be exercised by such receiver or trustee, and an instrument signed by such receiver or trustee shall be deemed the equivalent of any similar instrument of the Company or of any Officer or Officers thereof required by the provisions of this Article 8; and if the Trustee shall be in possession of the Collateral under any provision of this Indenture, then such powers may be exercised by the Trustee.

Section 8.8 *Release Upon Termination of the Company's Obligations*. In the event that the Company delivers to the Trustee an Officer's Certificate certifying that (i) payment in full of the principal of, together with any premium and accrued and unpaid interest on, the Notes and all other Obligations under this Indenture and the Collateral Documents that are due and payable at or prior to the time such principal, together with any premiums and accrued and unpaid interest, are paid or (ii) Covenant Termination has occurred in compliance with the provisions of Section 3.02, the Trustee shall deliver to the Company and the Collateral Agent a notice stating that the Trustee, on behalf of the Holders, disclaims and gives up any and all rights

it has in or to the Collateral, and any rights it has under the Collateral Documents, and upon receipt by the Collateral Agent of such notice, the Collateral Agent shall be deemed not to hold a Lien in the Collateral on behalf of the Trustee and shall execute and deliver (at the expense of the Company) such instruments of release as reasonably requested by the Company to acknowledge the release and discharge of such Lien as soon as is reasonably practicable.

Section 8.9 *Collateral Agent; Collateral Documents*.

(a) U.S. Bank Trust Company, National Association is hereby designated and appointed as the Collateral Agent for the Secured Parties under this Indenture and the 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. 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 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).

Section 8.10 *Replacement of Collateral Agent*.

(a) The Collateral Agent may resign at any time by so notifying the Company in writing not less than 45 days prior to the effective date of such resignation. The Holders of a majority of the principal amount of the Notes then outstanding may remove the Collateral Agent by so notifying the removed Collateral Agent in writing not less than 30 days prior to the effective date of such removal and may appoint a successor Collateral Agent with the Company's written consent. If:

(i) the Collateral Agent shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Collateral Agent or of its property shall be appointed, or any public officer shall take charge or control of the Collateral Agent or of its property or affairs for the purpose of rehabilitation, conservation or liquidation; or (ii) the Collateral Agent otherwise becomes incapable of acting then, the Company may by a Board Resolution remove the Collateral Agent and appoint a successor collateral agent by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Collateral Agent so removed and one copy to the successor collateral agent, 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 itself

and all others similarly situated, petition, at the Company's expense, any court of competent jurisdiction for the removal of the Collateral Agent and the appointment of a successor Collateral Agent. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Collateral Agent and appoint a successor Collateral Agent.

(b) If the Collateral Agent consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Collateral Agent.

Section 8.11 *Acceptance by Collateral Agent*. Any successor Collateral Agent appointed as provided in Section 8.10 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 Collateral Agent 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.

Upon acceptance of appointment by a successor Collateral Agent as provided in Section 8.11, 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 18.03.

Article 9
CONCERNING THE HOLDERS

Section 9.1 *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 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 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 10, or 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, but shall not be required to, fix 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 9.2 *Proof of Execution by Holders.* Subject to the provisions of Section 7.01, Section 7.02 and Section 10.05, 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 10.06.

Section 9.3 *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; 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. 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 holder 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 9.4 *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, by any Subsidiary thereof or by any Affiliate of the Company or 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 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 9.04 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, a Subsidiary thereof or an Affiliate of the Company or a Subsidiary thereof. In the case of a dispute as to such right, any decision 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 9.5 *Revocation of Consents; Future Holders Bound.* At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 9.01, 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 of the Trustee and upon proof of holding as provided in Section 9.02, 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 10
HOLDERS' MEETINGS

Section 10.1 *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 10 for any of the following purposes:

(a) to give any notice to the Company or to the Trustee or to give any directions to the Trustee 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 and nominate a successor trustee 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 11.02; 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 10.2 *Call of Meetings by Trustee.* The Trustee may at any time call a meeting of Holders to take any action specified in Section 10.01, to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of 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 9.01, 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 10.3 *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 10.01, by delivering notice thereof as provided in Section 10.02.

Section 10.4 *Qualifications for Voting.* To be entitled to vote at any meeting of Holders a Person shall be a Holder of one or more Notes on the record date pertaining to such meeting or 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 10.5 *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 10.03, 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 Notes represented at the meeting and entitled to vote at the meeting.

Subject to the provisions of Section 9.04, at any meeting of Holders each Holder or proxyholder shall be entitled to one vote for each $1,000 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 10.02 or Section 10.03 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 10.6 *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 10.02. 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 10.7 *No Delay of Rights by Meeting.* Nothing contained in this Article 10 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.

Article 11
SUPPLEMENTAL INDENTURES

Section 11.1 *Amendments and Supplements Without Consent of Holders.* The Company, when authorized by the resolutions of the Board of Directors, and 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 an amendment or supplement to the Collateral 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 or Successor Guarantor of the obligations of the Company or a Guarantor under this Indenture pursuant to Article 12;

(c) to add guarantees with respect to the Notes, or to confirm and evidence the release, termination or discharge of any guarantee with respect to the Notes when such release,

termination or discharge is provided for under this Indenture or the other Notes Documents, as applicable;

(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;

(e) to make any change that does not adversely affect the rights of any Holder;

(f) to increase the Conversion Rate as provided in this Indenture;

(g) to provide for the acceptance of appointment by a successor trustee or facilitate the administration of the trusts under this Indenture by more than one trustee;

(h) in connection with any Share Exchange Event, to provide that the Notes are convertible into Reference Property, subject to the provisions of Section 15.02, and make such related changes to the terms of the Notes to the extent expressly required by Section 15.07;

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

(j) to make provisions with respect to conversion rights of the Holders of the Notes as required under this Indenture;

(k) to provide for the release of Collateral from the Lien pursuant to this Indenture and the Collateral Documents when permitted or required by this Indenture;

(l) to provide for the entry into a Permitted Junior Lien Intercreditor Agreement or Permitted Pari Passu Intercreditor Agreement, or to mortgage, pledge, hypothecate or grant any other Lien in favor of the Collateral Agent for its benefit and the benefit of the Secured Parties as additional security for the payment and performance of all or any portion of the Obligations, in any property or assets, including any which are required to be mortgaged, pledged or hypothecated, or in which a Lien is required to be granted to or for the benefit of the Trustee or the Collateral Agent pursuant to this Indenture, any of the Collateral Documents or otherwise; or

(m) to irrevocably elect a Settlement Method or a Specified Dollar Amount, or eliminate the Company’s right to elect a Settlement Method.

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

Any amendment or supplement authorized by the provisions of this Section 11.01 may be executed by the Company, the Trustee and the Collateral Agent without the consent of the

Holders of any of the Notes at the time outstanding, notwithstanding any of the provisions of Section 11.02.

Section 11.2 *Amendments and Supplements with Consent of Holders.* With the consent (evidenced as provided in Article 9) of the Holders of at least a majority of the aggregate principal amount of the Notes then outstanding (determined in accordance with Article 9 and including, without limitation, consents obtained in connection with a repurchase of, or tender or exchange offer for, Notes), the Company, when authorized by the resolutions of the Board of Directors and 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 an amendment or supplement to the Collateral Documents for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture, or any supplemental indenture or any Collateral Document 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 amendment or supplemental shall:

(a) reduce the 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) except as required under this Indenture, make any change that adversely affects the conversion rights of any Notes;

(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 other than that stated in such Note or at a place of payment other than that stated in such Note or in this Indenture;

(g) change the ranking of the Notes or any Note Guarantee in any manner adverse to the Holders;

(h) impair the right of any Holder to institute suit for the enforcement of any payment or delivery on or with respect to such Holder's Notes;

(i) make any change in the provisions of this Indenture or the other Notes Documents, in each case dealing with the application of proceeds of Collateral, that would adversely affect the Holders of the Notes in any material respect;

(j) expressly subordinate the Notes in right of payment to any other Indebtedness of the Company or any Guarantor or subordinate the Lien on the Collateral securing the Obligations or as otherwise provided for in the Notes Documents to the Lien granted to secure any other

Indebtedness (other than in accordance with the terms of this Indenture and the other Notes Documents);

(k) release all or substantially all of the value of the Note Guarantees of the Guarantors (except as expressly provided in the Notes Documents); or

(l) make any change in this Article 11 that requires each Holder's consent or in the waiver provisions in Section 6.02 or Section 6.09.

In addition, notwithstanding the foregoing, any amendment to, or waiver of, the provisions of this Indenture or any Notes Document that has the effect of releasing all or substantially all of the Collateral shall require the consent of the Holders of at least 75% in aggregate principal amount of the Notes then outstanding under this Indenture (including any consents obtained in connection with a tender offer or exchange for the Notes). If any amendment to, or waiver of, the provisions of this Indenture or any Notes Document to which it is a party affects the rights or obligations of the Collateral Agent, then in such case the consent of the Collateral Agent shall also be required.

Upon the written request of the Company, and upon the filing with the Trustee and Collateral Agent of evidence of the consent of Holders as aforesaid and subject to Section 11.05, the Trustee and the Collateral Agent shall join with the Company in the execution of such amendment or supplement unless such amendment or supplement affects the Trustee's or the Collateral Agent's own rights, duties or immunities under this Indenture, the other Notes Documents or otherwise, in which case the Trustee and Collateral Agent, as applicable, may in its discretion, but shall not be obligated to, enter into such amendment or supplement.

Holders do not need under this Section 11.02 to approve the particular form of any proposed amendment or supplement. It shall be sufficient if such Holders approve the substance thereof. After any such supplemental indenture becomes effective, the Company shall deliver to the Holders (with a copy to the Trustee) a notice briefly describing such supplemental indenture. 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.

Section 11.3 *Effect of Supplemental Indentures.* Upon the execution of any supplemental indenture pursuant to the provisions of this Article 11, this Indenture 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 Trustee, the Collateral Agent, 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 shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 11.4 *Notation on Notes.* Notes authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 11 may, at the Company's expense, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company or the Trustee shall so determine, new Notes

so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may, at the Company's expense, be prepared and executed by the Company, authenticated by the Trustee (or an authenticating agent duly appointed by the Trustee pursuant to Section 18.10) and delivered in exchange for the Notes then outstanding, upon surrender of such Notes then outstanding.

Section 11.5 *Evidence of Compliance of Amendments and Supplements and Enforceability of the Supplemental Indenture to Be Furnished Trustee and Collateral Agent.* In addition to the documents required by Section 18.05, the Trustee and the Collateral Agent shall receive an Officer's Certificate and an Opinion of Counsel as conclusive evidence that any amendment or supplement executed pursuant hereto complies with the requirements of this Article 11 and is permitted or authorized by this Indenture and the Notes Documents and an Opinion of Counsel that such supplemental indenture constitutes the legal, valid and binding obligation of the Company enforceable against it in accordance with its terms, subject to customary exceptions as to enforceability by such counsel.

Article 12
CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE

Section 12.1 *Company May Consolidate, Etc. on Certain Terms.* Subject to the provisions of Section 12.02, 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 one or more of its Wholly Owned Subsidiaries), if the Company is not the resulting, surviving or transferee Person, unless:

(a) the resulting, surviving or transferee Person (the "**Successor 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 shall expressly assume, by supplemental indenture and other supplements or agreements all of the obligations of the Company under the Notes, and this Indenture and the Collateral Documents;

(d) the property and assets of the Person which is merged or consolidated with or into the Successor Company, as applicable, to the extent that they are property or assets or of the types which would constitute Collateral under the Collateral Documents, shall be treated as after-acquired property and the Successor Company shall take such action as may be reasonably necessary to cause such property and assets to be made subject to the Lien under the Collateral Documents in the manner and to the extent required in this Indenture or any Collateral Document and shall take all reasonably necessary action so that such Liens are perfected to the extent required by this Indenture or any Collateral Document; and

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

Section 12.2 *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 covenants and conditions of this Indenture 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. 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 12 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 12) 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.

Section 12.3 *Officer's Certificate and Opinion of Counsel to Be Given to Trustee.* No such consolidation, merger, sale, conveyance, transfer or lease (other than any consolidation or merger where the Company is the surviving entity) shall be effective unless the Trustee shall receive an Officer's Certificate and an Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale, conveyance, transfer or lease and any such assumption and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, complies with the provisions of this Article 12.

Section 12.4 *Guarantors May Consolidate on Certain Terms.* No Guarantor shall, and the Company shall not permit any Guarantor to, consolidate with, merge with or into, or sell, convey, transfer or lease all or substantially all of the consolidated properties and assets of such Guarantor, to another Person unless:

(a) the resulting, surviving or transferee Person (the "**Successor Guarantor**") 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 shall expressly assume, by supplemental indenture and other supplements or agreements all of the obligations of the Guarantor under the Notes, and this Indenture and the Collateral Documents;

(e) the property and assets of the Person which is merged or consolidated with or into the Successor Guarantor, as applicable, to the extent that they are property or assets or of the types which would constitute Collateral under the Collateral Documents, shall be treated as after-acquired property and the Successor Guarantor shall take such action as may be reasonably necessary to cause such property and assets to be made subject to the Lien under the Collateral Documents in the manner and to the extent required in this Indenture or any Collateral Document and shall take all reasonably necessary action so that such Liens are perfected to the extent required by this Indenture or any Collateral Document;

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

(c) the Successor Guarantor (if other than such Guarantor) shall have delivered or caused to be delivered to the Trustee and Collateral Agent an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, amalgamation, merger or transfer and such supplemental indenture (if any) comply with this Indenture.

The Successor Guarantor (if other than such Guarantor) will succeed to, and be substituted for, such Guarantor under this Indenture, the Notes, the Note Guarantee and the Collateral Documents, as applicable, and such Guarantor will automatically be released and discharged from its obligations under this Indenture, the Notes, its Note Guarantee and the Collateral Documents.

Article 13
GUARANTEES

Section 13.1 *Guarantee*. Subject to the provisions of this Article 13, each Guarantor hereby fully, unconditionally and irrevocably guarantees, as primary obligor and not merely as surety, jointly and severally with each other Guarantor, to each Holder of the Notes, the Trustee and the Collateral Agent the full and punctual payment when due, whether at maturity, by acceleration or otherwise, of the principal of, premium, if any, and interest (including Additional Interest, if any) on the Notes, fees, expenses, indemnities and all other Obligations and liabilities of the Company under this Indenture and the Collateral Documents (including without limitation interest (including Additional Interest, if any) accruing after the filing of any petition or application in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Company or any Guarantor whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) (all the foregoing being hereinafter collectively called the "**Guaranteed Obligations**"). Each Guarantor agrees that the Guaranteed Obligations will rank equally in right of payment with other Indebtedness of such Guarantor, except to the extent such other Indebtedness is subordinate to the Guaranteed Obligations, in which case the obligations of the Guarantors under the Note Guarantees will rank senior in right of payment to such other Indebtedness.

To evidence its Note Guarantee set forth in this Section 13.01, each Guarantor hereby agrees that this Indenture shall be executed on behalf of such Guarantor by an Officer of such Guarantor.

Each Guarantor hereby agrees that its Note Guarantee set forth in this Section 13.01 shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Note Guarantee on the Notes.

If an Officer whose signature is on this Indenture no longer holds that office at the time the Trustee authenticates the Note, the Note Guarantee shall be valid nevertheless.

Each Guarantor further agrees (to the extent permitted by law) that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from it, and that it will remain bound under this Article 13 notwithstanding any extension or renewal of any Guaranteed Obligation.

Each Guarantor waives presentation to, demand of payment from and protest to the Company of any of the Guaranteed Obligations and also waives notice of protest for nonpayment. Each Guarantor waives notice of any default under the Notes or the Guaranteed Obligations.

Each Guarantor further agrees that its Note Guarantee herein constitutes a Guarantee of payment when due (and not a Guarantee of collection) and waives any right to require that any resort be had by any Holder to any security held for payment of the Guaranteed Obligations.

Except as set forth in Section 13.02, the obligations of each Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason (other than payment of the Guaranteed Obligations in full), 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 Guaranteed Obligations of each Guarantor herein shall not be discharged or impaired or otherwise affected by (a) the failure of the Trustee, the Collateral Agent or any Holder to assert any claim or demand or to enforce any right or remedy against the Company or any other Person under this Indenture, the Notes or any other agreement or otherwise; (b) any extension or renewal of any thereof; (c) any rescission, waiver, amendment or modification of any of the terms or provisions of this Indenture, the Notes or any other agreement; (d) the release of any security held by the Collateral Agent or any Holder for the Guaranteed Obligations; (e) the failure of the Trustee, the Collateral Agent or any Holder to exercise any right or remedy against any other Guarantor; (f) any change in the ownership of the Company; (g) any default, failure or delay, willful or otherwise, in the performance of the Guaranteed Obligations; or (h) 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 such Guarantor as a matter of law or equity (other than, in each case, payment in full of the Obligations (other than contingent obligations and expense reimbursement not yet due and payable)).

Each Guarantor agrees that its Note Guarantee herein shall remain in full force and effect until payment in full of all the Guaranteed Obligations or such Guarantor is released from its Note Guarantee in compliance with Section 13.02 or Article 3. Each Guarantor further agrees that its Note 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, premium, if any, or interest (including Additional Interest, if any) on any of the Guaranteed Obligations is rescinded or must otherwise be restored by any Holder upon the bankruptcy, insolvency or reorganization of the Company or otherwise.

In furtherance of the foregoing and not in limitation of any other right which any Holder has at law or in equity against any Guarantor by virtue hereof, upon the failure of the Company to pay any of the Guaranteed Obligations when and as the same shall become due, whether at maturity, by acceleration, or otherwise, each Guarantor hereby promises to and will, upon receipt of written demand by the Trustee, forthwith pay, or cause to be paid, in cash, to the Holders or the Trustee on behalf of the Holders an amount equal to the sum of (i) the unpaid amount of such Guaranteed Obligations then due and owing and (ii) accrued and unpaid interest (including Additional Interest, if any) on such Guaranteed Obligations then due and owing (but only to the extent not prohibited by law) (including interest accruing after the filing of any petition or application in bankruptcy or the commencement of any insolvency, reorganization or like proceeding relating to the Company or any Guarantor whether or not a claim for post filing or post petition interest is allowed in such proceeding).

Each Guarantor further agrees that, as between such Guarantor, on the one hand, and the Holders, on the other hand, (x) the maturity of the Guaranteed Obligations guaranteed hereby may be accelerated as provided in this Indenture for the purposes of its Note Guarantee herein, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Guaranteed Obligations guaranteed hereby and (y) in the event of any such declaration of acceleration of such Guaranteed Obligations, such Guaranteed Obligations (whether or not due and payable) shall forthwith become due and payable by the Guarantor for the purposes of this Note Guarantee.

Each Guarantor also agrees to pay any and all fees, costs and expenses (including reasonable out-of-pocket attorneys' fees and expenses) incurred by the Collateral Agent, Trustee or the Holders in enforcing any rights under this Section 13.01.

Each Guarantor assumes all responsibility for being and keeping itself informed of the Company's and each other Guarantor's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that such Guarantor assumes and incurs hereunder, and agrees that none of the Secured Parties will have any duty to advise such Guarantor of information known to it or any of them regarding such circumstances or risks.

Section 13.2 *Limitation on Liability; Termination, Release and Discharge*.

(a) Any term or provision of this Indenture to the contrary notwithstanding, the obligations of each Guarantor hereunder will be limited to the maximum amount as will, after

giving effect to all other contingent and fixed liabilities of such Guarantor and after giving effect to any collections from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under its Note Guarantee or pursuant to its contribution obligations under this Indenture, not render the obligations of such Guarantor under its Note Guarantee subject to avoidance under applicable law as a fraudulent conveyance, fraudulent transfer or unjust preference, including under federal, foreign, or state law, or otherwise void or voidable under any similar laws affecting the rights of creditors generally.

(b) Any Note Guarantee of a Guarantor (x) in the case of clause (i) below, at the election of the Company, may be released and discharged and such Guarantor and its obligations under this Indenture and the other Notes Documents shall be released and discharged and (y) in the case of clauses (ii), (iii), (iv) and (v) below, shall be automatically (and without any further action on the part of the Company or any Secured Party) be released and discharged and such Guarantor and its obligations under this Indenture and the other Notes Documents shall be released and discharged:

(i) [reserved];

(ii) in connection with any sale or other disposition of all or substantially all of the assets of such Guarantor (including by way of merger or consolidation or amalgamation) to a Person that is not (either before or after giving effect to such transaction) a Subsidiary of the Company;

(iii) in connection with any sale or other disposition of the Capital Stock of such Guarantor after which such Guarantor is no longer a Subsidiary of the Company;

(iv) in connection with the dissolution of such Guarantor under applicable law; provided that the Person who receives the assets of such dissolving Guarantor shall be or become a Note Party if such Person is a Subsidiary of the Company; or

(v) upon discharge of the Notes or Covenant Termination, as provided in Article 3.

(c) With respect to any release of any Note Guarantee, upon receipt of an Officer's Certificate and an Opinion of Counsel each stating that all conditions precedent under this Indenture and the other Notes Documents, as applicable, to such release have been met and that it is proper for the Trustee or the Collateral Agent to execute and deliver the documents requested by the Company in connection with such release, and any instruments of termination, satisfaction, discharge or release prepared by the Company, the Trustee and the Collateral Agent shall execute, deliver or acknowledge (at the Company's expense) such instruments or releases to evidence the release and discharge of any Note Guarantee permitted to be released pursuant to this Indenture. Neither the Trustee nor the Collateral Agent shall be liable for any such release undertaken in reliance upon any such Officer's Certificate or Opinion of Counsel, and notwithstanding any term hereof or in any other Notes Document to the contrary, the Trustee and

the Collateral Agent shall not be under any obligation to execute and deliver any such instrument of release, satisfaction, discharge or termination, unless and until it receives such Officer's Certificate and Opinion of Counsel.

Section 13.3 *Right of Contribution*. Each Guarantor hereby agrees that to the extent that any Guarantor shall have paid more than its proportionate share of any payment made on the obligations under the Note Guarantees, such Guarantor shall be entitled to seek and receive contribution from and against the Company or any other Guarantor who has not paid its proportionate share of such payment. The provisions of this Section 13.03 shall in no respect limit the obligations and liabilities of each Guarantor to the Trustee, the Collateral Agent and the Holders and each Guarantor shall remain liable to the Trustee, the Collateral Agent and the Holders for the full amount guaranteed by such Guarantor hereunder.

Section 13.4 *No Subrogation*. Notwithstanding any payment or payments made by each Guarantor hereunder, no Guarantor shall be entitled to be subrogated to any of the rights of the Trustee, the Collateral Agent or any Holder against the Company or any other Guarantor or any collateral security or guarantee or right of offset held by the Trustee, the Collateral Agent or any Holder for the payment of the Guaranteed Obligations, nor shall any Guarantor seek or be entitled to seek any contribution or reimbursement from the Company or any other Guarantor in respect of payments made by such Guarantor hereunder, until all amounts owing to the Trustee, the Collateral Agent and the Holders by the Company on account of the Guaranteed Obligations are paid in full. If any amount shall be paid to any Guarantor on account of such subrogation rights at any time when all of the Guaranteed Obligations shall not have been paid in full, such amount shall be held by such Guarantor in trust for the Trustee, the Collateral Agent and the Holders, segregated from other funds of such Guarantor, and shall, forthwith upon receipt by such Guarantor, be turned over to the Trustee in the exact form received by such Guarantor (duly indorsed by such Guarantor to the Trustee, if required), to be applied against the Guaranteed Obligations.

Section 13.5 *Subordination.* Notwithstanding any provision of this Indenture to the contrary, all rights of the Guarantors under Section 13.04, and all other rights of indemnity, contribution or subrogation under applicable law or otherwise, shall be fully subordinated to the payment in full in cash of the Obligations. No failure on the part of the Company or any Guarantor to make the payments required by Section 13.04 (or any other payments required under applicable law or otherwise) shall in any respect limit the obligations and liabilities of any Guarantor with respect to its obligations hereunder, and each Guarantor shall remain liable for the full amount of the obligations of such Guarantor hereunder.

Article 14
IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 14.1 *Indenture and Notes Solely Corporate Obligations.* No recourse for the payment of the principal of or accrued and unpaid interest on any Note, 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 in this Indenture or in any supplemental indenture or in any Note, 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 of any successor corporation, either directly or through the Company 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.

Article 15
CONVERSION OF NOTES

Section 15.1 *Conversion Privilege.* (a) Subject to and upon compliance with the provisions of this Article 15, 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 thereof) of such Note (i) subject to satisfaction of the conditions described in Section 15.01(b), at any time prior to the close of business on the Business Day immediately preceding December 15, 2026, under the circumstances and during the periods set forth in Section 15.01(b), and (ii) regardless of the conditions described in Section 15.01(b), on or after December 15, 2026 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 33.333 shares of Common Stock (subject to adjustment as provided in this Article 15, the "**Conversion Rate**") per $1,000 principal amount of Notes (subject to, and in accordance with, the settlement provisions of Section 15.02, the "**Conversion Obligation**").

(a) (i) Prior to the close of business on the Business Day immediately preceding December 15, 2026, 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 written request by a Holder of Notes in accordance with this subsection (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 Price Condition**"). The Trading Prices shall be determined by the Bid Solicitation Agent pursuant to this subsection (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 determine the Trading Price per $1,000 principal amount of Notes unless the Company has requested such determination 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 determine the Trading Price per $1,000 principal amount of Notes) unless a Holder or Holders in the aggregate 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 on any Trading Day would be less than 98% of the product of the Last Reported Sale Price of the Common Stock on such Trading Day and the Conversion Rate on such Trading Day, at which time the Company shall (i) instruct

the three independent nationally recognized securities dealers to deliver bids to the Bid Solicitation Agent and (ii) instruct the Bid Solicitation Agent (if other than the Company) to determine, or if the Company is acting as Bid Solicitation Agent, the Company shall determine, the Trading Price per $1,000 principal amount of Notes, in each case, 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 shall 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 instruct the Bid Solicitation Agent in writing to determine the Trading Price per $1,000 principal amount of Notes when obligated as provided in the preceding sentence, or if the Company instructs the Bid Solicitation Agent in writing to obtain bids and the Bid Solicitation Agent fails to make such determination, or (y) the Company is acting as Bid Solicitation Agent and the Company fails to obtain such bids when obligated as provided in the preceding sentence, 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, the Company shall so notify the Holders, the Trustee and the Conversion Agent (if other than the Trustee) in writing. Any such determination shall be conclusive absent manifest error. If, at any time after the Trading Price Condition 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 date, 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.

(i) If, prior to the close of business on the Business Day immediately preceding December 15, 2026, the Company elects to:

(A) issue to all or substantially all holders 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 Common Stock) entitling them, for a period of not more than 45 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 the Common Stock the Company's assets, the Company's securities or rights to purchase securities of the Company, which distribution has a per share value, as reasonably determined by the Company in good faith and in a commercially reasonable manner,

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, the Trustee and the Conversion Agent (if other than the Trustee) in writing 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 (or in the case of a separation or triggering event, until the 20th Trading Day following the date of the Company's notice), in each case, even if the Notes are not otherwise convertible at such time. Notwithstanding the foregoing, Holders of the Notes may not convert their Notes pursuant to this provision 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 above without having to convert their Notes as if they held a number of shares of Common Stock equal to the Conversion Rate, *multiplied by* the principal amount (expressed in thousands) of Notes held by such Holder.

(i) 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 December 15, 2026, regardless of whether a Holder has the right to require the Company to repurchase the Notes pursuant to Section 16.02, or (II) if the Company is a party to a Share Exchange Event (other than a Share Exchange 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 December 15, 2026 (each such Fundamental Change, Make-Whole Fundamental Change or Share Exchange Event, a "**Corporate Event**"), all or any portion of a Holder's Notes may be surrendered for conversion at any time after the effective date for such Corporate Event until the earlier of (x) 35 Trading Days after the actual effective date 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 Business Day immediately preceding December 15, 2026. The Company shall notify Holders, the Trustee and the Conversion Agent (if other than the Trustee) in writing no later than the actual effective date of such Corporate Event.

(ii) Prior to the close of business on the Business Day immediately preceding December 15, 2026, a Holder may surrender all or any portion of its Notes for conversion

during any calendar quarter commencing after the calendar quarter ending on December 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 on each applicable Trading Day. The Company shall determine at the beginning of each calendar quarter commencing after December 31, 2024 whether the Notes may be surrendered for conversion in accordance with this clause (iv) and shall notify the Trustee, Conversion Agent (if other than the Trustee) and the Holders thereof.

(iii) [Reserved].

Section 15.2 *Conversion Procedure; Settlement Upon Conversion*.

(a) Subject to this Section 15.02, Section 15.03(b) and Section 15.07(a), upon conversion of any Note, the Company shall pay or deliver, as the case may be, to the converting Holder, in respect of each $1,000 principal amount 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 (i) of this Section 15.02 ("**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 15.02 ("**Combination Settlement**"), at its election, as set forth in this Section 15.02.

(i) [Reserved].

(ii) Except for any conversions for which the relevant Conversion Date occurs on or after December 15, 2026, 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 one of the periods described in the fourth immediately succeeding set of parentheses, as the case may be), 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 Trading Day immediately following the relevant Conversion Date (or, in the case of any conversions for which the relevant Conversion Date occurs on or after December 15, 2026, no later than the close of business on the Scheduled Trading Day immediately preceding December 15, 2026 (in each case, the "**Settlement Method Election Deadline**"). If the Company does not elect a Settlement Method prior to the Settlement Method Election Deadline, then the Company shall no longer have the right to elect Cash Settlement or Physical Settlement for such conversion or during such period and the Company shall be deemed to have elected Combination Settlement in respect of its Conversion Obligation,

and the Specified Dollar Amount per $1,000 principal amount of Notes shall be equal to $1,000. 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 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.

Prior to December 15, 2026, the Company may, at its election, by notice to Holders, the Trustee, and the Conversion Agent (if other than the Trustee), irrevocably elect to satisfy the 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 and for which another Settlement Method does not otherwise apply or is not otherwise deemed to apply as set forth above. 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 shall, after the date of such election, inform Holders, the Trustee, and the Conversion Agent (if other than the Trustee) of such Specified Dollar Amount no later than the Settlement Method Election Deadline, or, if the Company does not timely notify Holders, the Trustee, and the Conversion Agent of the Specified Dollar Amount, such Specified Dollar Amount shall be the specific amount set forth in the notice of such change or election or, if no specific amount was set forth in the notice of such change or election, such Specified Dollar Amount shall be $1,000 per $1,000 principal amount of Notes. If the Company changes the Default Settlement Method or irrevocably elects to fix the Settlement Method pursuant to the preceding sentence, the Company shall promptly either post the Default Settlement Method or the fixed Settlement Method, as applicable, 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. The irrevocable election shall apply to all conversions of Notes with a Conversion Date occurring subsequent to delivery of such notice; *provided*, *however*, that no such change in the Default Settlement Method or irrevocable 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 11.01(m). However, the Company may nonetheless choose to execute such an amendment at its option.

(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) 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 each $1,000 principal amount of Notes being converted a number of shares of Common Stock equal to 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 each $1,000 principal amount of Notes being converted cash in an amount equal to the sum of the Daily Conversion Values for each of the 20 consecutive Trading Days during the related Observation Period; and

(C) 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, in respect of each $1,000 principal amount of Notes being converted, a Settlement Amount equal to the sum of the Daily Settlement Amounts for each of the 20 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, subject to the applicable procedures of the Depositary. The Trustee and the Conversion Agent (if other than the Trustee) shall have no responsibility for any such determination.

(b) Subject to Section 15.02(e), before any Holder of a Note shall be entitled to convert a Note as set forth above, such Holder shall in the case of a Global Note, comply with the 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 15.02(e) and in the case of a Physical Note, or when required by applicable procedures of the Depositary in effect at that time in the case of a Global 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 thereof) (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 15.02(e). The Trustee (and if different, the Conversion Agent) shall notify the Company of any conversion pursuant to this Article 15 as soon as practical, but in any event, not later than the Trading Day immediately following the Conversion Date. No Notice of Conversion with respect to any Notes may be surrendered 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 16.03.

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 15.03(b) and Section 15.07(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 (*provided* that, with respect to any Conversion Date occurring after March 1, 2027, settlement shall occur on the Maturity Date), or on the second Business Day immediately following the last Trading Day of the 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 (if applicable) to the Conversion Agent or to such Holder, or such Holder's nominee or nominees, the full number of shares of Common Stock to which such Holder shall be entitled, in book-entry format through the Depositary, 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 any such shares to be issued in a name other than the Holder's name, in which case the Holder shall pay that 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 15.04, 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 15.

(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 for accrued and unpaid interest, if any, except as set forth below, and the Company shall not adjust the Conversion Rate for any accrued and unpaid interest on the Notes. 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 not including, the relevant Conversion Date. As a result, accrued and unpaid interest, if any, to, but not including, 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 interest payable on the Notes so converted; *provided* that no such payment shall be required for conversions of the Notes following the Regular Record Date immediately preceding the Maturity Date; (1) 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 following the corresponding Interest Payment Date; or (2) 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 or any Fundamental Change Repurchase Date, in each case described above, shall receive the full interest payment due on the Maturity Date or other applicable Interest Payment Date in cash regardless of whether their Notes have been converted following such Regular Record Date.

(i) The Person in whose name the shares of Common Stock shall be issuable upon conversion 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 for the relevant Conversion Date (in the case of Physical Settlement) or based on the Daily VWAP for 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 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 15.3 *Increased Conversion Rate Applicable to Certain Notes Surrendered in Connection with a Make-Whole Fundamental Change*. If the Effective Date of a Make-Whole Fundamental Change occurs prior to the Maturity Date and a Holder elects to convert its Notes 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 Notice of Conversion is received by the Conversion Agent 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 subclause (a) of 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**").

(a) Upon surrender of Notes for conversion in connection with a Make-Whole Fundamental Change, the Company shall, at its option, satisfy the related Conversion Obligation by Physical Settlement, Cash Settlement or Combination Settlement in accordance with Section 15.02; *provided*, *however*, that if, at the effective time of a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the Reference Property following such Make-Whole 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 adjustment for Additional Shares), *multiplied by* such Stock Price. In such event, the Conversion Obligation shall be paid to Holders in cash on the second Business Day following the Conversion Date. The Company shall notify the Holders of Notes, 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.

(b) 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 paid (or deemed to be paid) per share of the Common Stock in the Make-Whole Fundamental Change (the "**Stock Price**"). 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 Trading Day period ending on, and including, the Trading Day immediately preceding the Effective Date of the Make-Whole Fundamental Change. The Company shall make appropriate adjustments to the Stock Price, in good faith and in a commercially reasonable manner, 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 (as such term is used in Section 15.04) or expiration date of the event occurs during such five consecutive Trading Day period.

(c) 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 15.04.

(d) The following table sets forth the number of Additional Shares of Common Stock by which the Conversion Rate shall be increased per $1,000 principal amount of Notes pursuant to this Section 15.03 for each Stock Price and Effective Date, set forth below:

	$11.32	**$11.50**	**$12.00**	**$13.00**	**$14.00**	**$16.00**	**$18.00**	**$22.00**	**$30.00**	**$40.00**	**$60.00**	**$85.00**
11/19/2024	50.5901	49.3348	46.0583	40.3131	35.4564	27.7494	21.9794	14.1273	6.1040	2.0650	0.0272	0.0000
3/15/2026	52.7721	49.3348	46.0583	40.3131	35.4564	27.7494	21.7439	13.0805	4.6337	1.0655	0.0000	0.0000
3/15/2027	55.0059	49.3348	46.0583	40.3131	35.4564	27.7494	21.7439	12.1214	0.0003	0.0000	0.0000	0.0000

The exact Stock Price 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, the number of Additional Shares shall be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Stock Prices and the earlier and later Effective Dates based on a 365-day year;

(ii) if the Stock Price is greater than $85.00 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 $11.32 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 88.3392 shares of Common Stock, subject to adjustment in the same manner as the Conversion Rate pursuant to Section 15.04.

(e) Nothing in this Section 15.03 shall prevent an adjustment to the Conversion Rate pursuant to Section 15.04 in respect of a Make-Whole Fundamental Change.

Section 15.4 *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 a share split or share combination or 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 15.04, without having to convert their Notes, as if they held a number of shares of Common Stock equal to the Conversion Rate, *multiplied by* the principal amount (expressed in thousands) of Notes held by such Holder.

(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:

$$CR^1 = CR_0 \times \frac{OS_1}{OS_0}$$

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_1 = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date or Effective Date;

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, split or combination); and

OS_1 = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination.

Any adjustment made under this Section 15.04(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 15.04(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 45 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:

$$CR_1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

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

CR_1 = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date;

OS_0 = 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 15.04(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 15.04(b) and for the purpose of Section 15.01(b)(ii)(A), in determining whether any rights, options or warrants entitle the holders 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 for 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 in good faith and in a commercially reasonable manner.

(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, to all or substantially all holders of the Common Stock, excluding dividends, distributions or issuances (including share splits) as to which an adjustment was effected pursuant to Section 15.04(a) or Section 15.04(b), dividends or distributions paid exclusively in cash as to which the provisions set forth in Section 15.04(d) shall apply, except as otherwise described below, rights issued pursuant to a stockholder rights plan of the Company, (iv) distributions of Reference Property in a Share Exchange Event, and (v) Spin-Offs as to which the provisions set forth below in this Section 15.04(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:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

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

CR_1 = 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 in good faith and in a commercially reasonable manner) 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 15.04(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. If the Company issues rights, options or warrants that are only exercisable upon the occurrence of certain triggering events, then the Company shall not adjust the Conversion Rate pursuant to the clauses above until the earliest of these triggering events occurs, and the Company shall readjust the Conversion Rate to the extent that any of these rights, options or warrants are not exercised before they expire. In the case of any distribution of rights, options or warrants, to the extent any such rights, options or warrants expire unexercised, the Conversion Rate shall be immediately readjusted to the Conversion Rate that would then be in effect had the increase made for the distribution of such rights, options or warrants been made on the basis of delivery of only the number of shares of the Common Stock actually delivered upon exercise of such rights, options or warrants. 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. If the Company determines the "FMV" (as defined above) of any distribution for purposes of this Section 15.04(c) by reference to the actual or when-issued trading market for any securities, it shall in doing so consider the prices in such market over the same period used in computing 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.

With respect to an adjustment pursuant to this Section 15.04(c) where there has been a payment of a dividend or other distribution on the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit 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:

$$CR_1 = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where,

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

CR_1 = the Conversion Rate in effect immediately after the end of the Valuation Period;

FMV_0 = 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 the holders of the Common Stock on such Ex-Dividend Date, the "**Valuation Period**" shall be the first 10 consecutive Trading Day period after, and including, the first date such Last Reported Sale Price is available; and

MP_0 = 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 preceding paragraph 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 preceding paragraph 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 15.04(c) (and subject in all respect to Section 15.11), 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 15.04(c) (and no adjustment to the Conversion Rate under this Section 15.04(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 15.04(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 15.04(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 15.04(a), Section 15.04(b) and this Section 15.04(c), if any dividend or distribution to which this Section 15.04(c) is applicable also includes one or both of:

(A) a dividend or distribution of shares of Common Stock to which Section 15.04(a) is applicable (the "**Clause A Distribution**"); or

(B) a dividend or distribution of rights, options or warrants to which Section 15.04(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 15.04(c) is applicable (the "**Clause C Distribution**") and any Conversion Rate adjustment required by this Section 15.04(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 15.04(a) and Section 15.04(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 15.04(a) or "outstanding immediately prior to the open of business on such Ex-Dividend Date" within the meaning of Section 15.04(b).

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

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

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_1 = 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 pursuant to this Section 15.04(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, 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:

$$CR_1 = CR_0 \times \frac{AC + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where,

CR_0 = 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_1 = 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 in good faith and in a commercially reasonable manner) paid or payable for shares of Common Stock purchased in such tender or exchange offer;

OS_0 = 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_1 = 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_1 = 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 15.04(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 the preceding paragraph shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the date that such tender or exchange offer expires 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 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 the preceding paragraph shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding such expiration date of such tender or exchange offer to, and including, such Trading Day in determining the Conversion Rate as of such Trading Day. For the avoidance of doubt, no adjustment under this Section 15.04(e) shall be made if such adjustment would result in a decrease in the Conversion Rate (other than, for the avoidance of doubt, any readjustment described in the immediately succeeding paragraph).

If the Company or one of its Subsidiaries is obligated to purchase the Common Stock pursuant to any such tender or exchange offer described in this Section 15.04(e) but the Company or such Subsidiary is permanently prevented by applicable law from effecting any such purchase or all such purchases are rescinded, the Conversion Rate shall 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 15.04 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 15.02(i) based on an adjusted Conversion Rate for such Ex-Dividend Date, then, notwithstanding the Conversion Rate adjustment provisions in this Section 15.04, 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 15.04, and to the extent permitted by applicable law and subject to the applicable rules of any exchange on which any of the Company's securities are then 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, to the extent permitted by applicable law and subject to the applicable rules of any exchange on which any of the Company's securities are then 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. Whenever the Conversion Rate is increased pursuant to either of the preceding two sentences, the Company shall deliver to the Holder of each Note a notice of the increase at least 15 days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(i) Notwithstanding anything to the contrary in this Article 15, the Conversion Rate shall not be adjusted:

(i) upon the issuance of shares of the Common Stock at a price below the Conversion Price or otherwise, other than any such issuance described in clause (a), (b), or (c) of this Section 15.04;

(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 (including pursuant to any evergreen plan) or program of or assumed by the Company or any of the Company's Subsidiaries or in connection with any such shares withheld by the Company for tax withholding purposes;

(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 tender offer by any party other than a tender offer by the Company or one or more of the Company's Subsidiaries as described in clause (e) of this Section 15.04;

(vi) upon the repurchase of any shares of the 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 under clause (e) of this Section 15.04;

(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 adjust the Conversion Rate pursuant to the clauses above unless the adjustment would result in a change of at least 1% in the then effective Conversion Rate; *provided* that the Company shall carry forward any adjustment to the Conversion Rate 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) in connection with any subsequent adjustment to the Conversion Rate of at least 1% of the Conversion Rate in the aggregate (taking into account all carried-forward adjustments described in the immediately preceding sentence), (ii) regardless of whether the aggregate adjustment is less than 1% of the Conversion Rate, (x) on the Conversion Date (in the case of Physical Settlement) or (y) on each Trading Day of any Observation Period (in the case of Cash Settlement or Combination Settlement) and (iii) the date a Fundamental Change or Make-Whole Fundamental Change occurs. All calculations and other determinations under this Article 15 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. 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 (with a copy to the Trustee). Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(l) For purposes of this Section 15.04, 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 15.5 *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 for determining the Stock Price for purposes of a Make-Whole Fundamental Change), the Company shall, in good faith and in a commercially reasonable manner, make appropriate adjustments without duplication in respect of any adjustment made pursuant to clause Section 15.04(a), Section 15.04(b), Section 15.04(c), Section 15.04(d) or Section 15.04(e) of Section 15.04 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, as the case may be, of the event occurs, at any time during the period when such Last Reported Sale Prices, Daily VWAPs, Daily Conversion Values or Daily Settlement Amounts are to be calculated.

Section 15.6 *Shares to Be Fully Paid.* The Company shall 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 15.03 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 were applicable).

Section 15.7 *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 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 "**Share Exchange Event**"), then the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee and without the consent of the Holders a supplemental indenture providing that, at and after the effective time of such Share Exchange Event, the right to convert each $1,000 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 Share Exchange 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 Share Exchange Event, and, prior to or at the effective time of such Share Exchange Event, the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee a supplemental indenture permitted under Section 11.01(h) providing for such change in the right to convert each $1,000 principal amount of Notes; *provided*, *however*, that at and after the effective time of the Share Exchange Event (A) the Company 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 15.02 and (B) (I) any amount payable in cash upon conversion of the Notes in accordance with Section 15.02 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 15.02 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 been entitled to receive in such Share Exchange Event and (III) the Daily VWAP shall be calculated based on the value of a unit of Reference Property.

If the Share Exchange Event causes the Common Stock to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of stockholder election), then (i) 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, and (ii) the unit of Reference Property for purposes of the immediately preceding paragraph shall refer to the consideration referred to in clause (i) attributable to one share of Common Stock. If the holders of the Common Stock receive only cash in such Share Exchange Event, then for all conversions for which the relevant Conversion Date occurs after the effective date of such Share Exchange Event (A) the consideration due upon conversion of each $1,000 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 15.03), *multiplied by* the price paid per share of Common Stock in such Share Exchange 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 practicable after such determination is made.

Such 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 15. If, in the case of any Share Exchange Event, the Reference Property includes shares of stock, securities or other property or assets (including cash or any combination thereof) of a Person other than the successor or purchasing corporation, as the case may be, in such Share Exchange Event, then such supplemental indenture shall also be executed by such other Person and shall contain such additional provisions to protect the interests of the Holders of the Notes as the Board of Directors shall reasonably consider necessary by reason of the foregoing, including the provisions providing for the purchase rights set forth in Article 16.

(b) When the Company executes a supplemental indenture pursuant to subsection (a) of this Section 15.07, 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 Share Exchange Event, any adjustment to be made with respect thereto and that all conditions precedent have been complied with, and shall promptly deliver 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 15.01 and Section 15.02 prior to the effective date of such Share Exchange Event.

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

Section 15.8 *Certain Covenants.* 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.

(a) 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.

(b) 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 15.9 *Responsibility of Trustee.* The Trustee and any 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 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 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 15.07 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 15.07 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 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 15.01(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 15.01(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 15.01(b).

Section 15.10 *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 15.04 or Section 15.11 (other than as to any notice required pursuant to Section 15.01(b)(iii) with respect to the effective date of any Corporate Event);

(b) Share Exchange Event; or

(c) voluntary or involuntary dissolution, liquidation or winding-up of the Company or any of its Subsidiaries;

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 20 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 Share Exchange Event, 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 Share Exchange Event, 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, Share Exchange Event, dissolution, liquidation or winding-up.

Section 15.11 *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, 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 15.04(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

Section 15.12 *Exchange in Lieu of Conversion*.

(a) When a Holder surrenders its Notes for conversion, the Company may, at its election (an "**Exchange Election**"), direct the Conversion Agent to deliver, on or prior to the second Trading Day immediately following the relevant Conversion Date, such Notes to one or more financial institutions designated by the Company for exchange in lieu of conversion. In order to accept any Notes surrendered for 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 the Common Stock or any combination thereof that would otherwise be due upon conversion pursuant to Section 15.02 (the "**Conversion Consideration**") or such other amount agreed to by the Holder and the designated financial institution(s). 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 its Notes for conversion, the Trustee and the Conversion Agent (if other than the Trustee) in writing that it has made the Exchange Election and it will notify the designated financial 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.

(b) Any Notes delivered to the designated institution(s) shall remain outstanding, subject to applicable Depositary procedures. If the designated institution(s) agree(s) to accept any Notes for exchange but do(es) not timely pay and/or deliver, as the case may be, the related Conversion Consideration, or if such designated financial institution(s) do(es) not accept the Notes for exchange, the Company shall pay and/or deliver, as the case may be, the relevant Conversion Consideration as if it had not made an Exchange Election.

(c) The Company's designation of any financial institution(s) to which the Notes may be submitted for exchange does not require such financial institution(s) to accept any Notes.

Section 15.13 *Limitation on Conversion*.

(a) Notwithstanding anything to the contrary contained herein, the Company is entitled to not effect any conversion of any Note (or portion thereof), and the Holders of the Notes shall not have the right to convert or surrender any Note (or portion thereof) for conversion, to the extent that immediately following such conversion, such Holder of the Notes, together with the Attribution Parties, beneficially owns or would beneficially own a number of shares of Common Stock in excess of the Exchange Cap.

(i) On or prior to the second (2nd) Business Day preceding to submitting a conversion notice for any Note (or complying with the procedures of the Depositary in effect at that time for converting such beneficial interest) pursuant to Section 15.01, the relevant Holder of the Notes shall deliver to the Company, the Trustee and the Conversion Agent a written notice setting forth the principal amount of Notes proposed to be converted, the Pro Forma Owned Shares, the Exchange Cap and the Excess Shares, if any, (the "**Holder's Ownership Information Notice**") in connection with such conversion.

(ii) If such Holder of the Notes fails or refuses to provide the Company, the Trustee and the Conversion Agent the Holder's Ownership Information Notice in connection with such conversion by the time specified in the preceding paragraph, such Holder of the Notes shall be deemed to represent and warrant to the Company, the Trustee and the Conversion Agent that no Exchange Cap Limitation shall apply to such conversion, and the Company shall be entitled to disregard any Exchange Cap Limitation in connection with such conversion and to effect the conversion.

(iii) In connection with any conversion as to which the Company has received the relevant Holder's Ownership Information Notice in accordance with Section 15.13(a)(i), the Company shall use reasonable efforts to deliver, or caused to be delivered, to such holder of the Notes such number of shares of Common Stock so that, immediately following such delivery, such Holder of the Notes, together with the applicable Attribution Parties, does not beneficially own a number of shares of Common Stock in excess of the Exchange Cap (as set forth in the Holder's Ownership Information Notice).

(b) The Company's obligation to deliver the Excess Shares in connection with any conversion shall be suspended and not extinguished, and the Company shall deliver such Excess Shares within five (5) Business Days following delivery of written notice from the relevant Holder of the Notes to the Company that the receipt of such Excess Shares will not be restricted under Section 15.13(a).

(c) Following the delivery of the Settlement Amount in accordance with Section 15.13(a)(iii), notwithstanding anything to the contrary in this Indenture, the converted (or exchanged) Notes shall be deemed to cease to be outstanding, and the right or claims of the Holders of the Notes under this Indenture following such delivery shall be limited solely to the right to receive the Excess Shares pursuant to Section 15.13(b).

(d) Notwithstanding anything to the contrary in this Indenture, this Section 15.13 shall not restrict the number of shares of Common Stock which any Holder of the Notes or the applicable Attribution Parties may receive or beneficially own in order to determine the amount of securities or other consideration that such Holder of the Notes or the Attribution Parties may receive in the event of a Share Exchange Event as contemplated in Section 15.07.

(e) Neither the Trustee nor the Conversion Agent shall have any duty to determine or verify any determination of the Exchange Cap, Excess Shares, Exchange Cap Limitation, Settlement Amount, Pro Forma Outstanding Share Numbers, Pro Forma Outstanding Shares or the Reported Outstanding Share Number or whether and to what extent any conversion triggers the Exchange Cap or Exchange Cap Limitation, nor any duty to determine the identity of the Attribution Parties or whether any Holder of the Notes has Attribution Parties for purposes of this Section 15.13.

(f) For purposes of this Section 15.13 only, the following terms shall have the following meaning:

"**Attribution Parties**" means, with respect to a Holder of the Notes, collectively, the following persons and entities: (i) any direct or indirect Affiliates of the Holder, (ii) any person acting or who could be deemed to be acting as a "group" (within the meaning of Section 13(d)(3) of the Exchange Act) together with such holder or any Attribution Parties and (iii) any other persons whose beneficial ownership of the Company's Common Stock would or could be aggregated with the Holder's and/or any other Attribution Parties for purposes of Section 13(d) of the Exchange Act.

"**Excess Shares**" means, with respect to a Holder of the Notes, in connection with any conversion, the number of shares of Common Stock equal to (i) the Pro Forma Owned Shares *less* (ii) the Exchange Cap, to the extent it is greater than zero.

"**Exchange Cap**" means, with respect to a Holder of the Notes, in connection with any conversion, the number of shares of Common Stock equal to the product of the Maximum Percentage and the Pro Forma Outstanding Share Number.

"**Exchange Cap Limitation**" means the limitation on the Company to issue any shares of Common Stock to any Holder of the Notes as a result of this Section 15.13.

A "**Holder of the Notes**" means (i) an owner of a beneficial interest in a Global Note, if the Notes is evidenced by one or more Global Notes, or (ii) the Holder of a Physical Note, if the Notes is evidenced by one or more Physical Notes, as the case may be.

"**Maximum Percentage**" means 9.9%.

"**Pro Forma Outstanding Share Numbers**" means, with respect to any conversion, the sum of the most recent Reported Outstanding Share Numbers and the number of shares of Common Stock to be issued in connection with such conversion.

"**Pro Forma Owned Shares**" means with respect to any Holder of the Notes, in connection with any conversion, the aggregate number of shares of Common Stock held and/or beneficially owned by a Holder together with the applicable Attribution Parties, plus the number of shares of Common Stock issuable upon the conversion of any Note (or portion thereof) with respect to which the determination is being made, without giving effect to this Section 15.13, but, for the avoidance of doubt, shall exclude the number of shares of Common Stock which would be issuable upon (i) exercise of the remaining outstanding Notes held and/or beneficially owned by the Holder or the applicable Attribution Parties and (ii) exercise or conversion of the unexercised or unconverted portion of any other securities of the Company held and/or beneficially owned by such Holder or any applicable Attribution Party (including, without limitation, any convertible notes, convertible stock or warrants) that are subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 15.13.

"**Reported Outstanding Share Number**" means the number of outstanding shares of Common Stock of the Company as reflected in (1) the Company's most recent Form 10-K or Form 10-Q or Form 8-K or other public filing with the SEC, as the case may be, or (2) a more recent public announcement by the Company.

Article 16
REPURCHASE OF NOTES AT OPTION OF HOLDERS

Section 16.1 *Intentionally Omitted*.

Section 16.2 *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 that is equal to $1,000 or an integral multiple of $1,000, on the date (the "**Fundamental Change Repurchase Date**") specified by the Company that is not less than 20 calendar days or more than 35 calendar 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 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 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 16.

(a) Repurchases of Notes under this Section 16.02 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 Notes to be repurchased shall state:

(i) in the case of Physical Notes, the certificate numbers of the Notes to be delivered for repurchase or if the Notes are Global Notes, the Fundamental Change Repurchase Notice must comply with applicable Depositary procedures;

(iii) the portion of the principal amount of Notes to be repurchased, which must be $20,000 or an integral multiple thereof; and

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

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Fundamental Change Repurchase Notice contemplated by this Section 16.02 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 16.03.

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.

(a) 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 of Notes and 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. Simultaneously with providing such notice, the Company shall publish the information set forth in the Fundamental Change Company Notice on the Company's website or through such other public medium as the Company may use at that time. 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 16;

(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;

(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 validly 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 16.02.

At the Company's request, 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.

(b) 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 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.

(c) Notwithstanding anything to the contrary in this Article 16, 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 above 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 16.3 *Withdrawal of Fundamental Change Repurchase Notice.* A Fundamental Change Repurchase Notice may be withdrawn (in whole or in part) by means of a written notice of withdrawal delivered to the Corporate Trust Office of the Paying Agent in accordance with this Section 16.03 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, which must be $1,000 or an integral multiple thereof;

(ii) if Physical Notes have been issued, the certificate number of the Note in respect of which such notice of withdrawal is being submitted, or if the Notes are Global Notes, the notice must comply with applicable procedures of the Depositary; and

(iii) the principal amount, if any, of such Note that remains subject to the original Fundamental Change Repurchase Notice, which must be $1,000 or an integral multiple thereof.

With respect to Notes held in book-entry form, withdrawals shall be made in accordance with the Depositary's applicable procedures.

Section 16.4 *Deposit of Fundamental Change Repurchase Price.* 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 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 16.02) 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 16.02 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.

(a) 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 make payment on all the Notes or portions thereof that are 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, such Notes will cease to be outstanding, interest will cease to accrue on such Notes (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 all other rights of the Holders of such Notes will terminate (other than the right to receive the Fundamental Change Repurchase Price and, if applicable, accrued and unpaid interest).

(b) Upon surrender of a Note that is to be repurchased in part pursuant to Section 16.02, 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 16.5 *Covenant to Comply with Applicable Laws Upon Repurchase of Notes*. In connection with any repurchase offer, the Company will, if required:

(a) comply with the provisions of any tender offer rules under the Exchange Act;

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

(c) otherwise comply 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 16 to be exercised in the time and in the manner specified in this Article 16. To the extent that the provisions of any securities laws or regulations enacted after the date the Company initially issues the Notes conflict with the provisions of this Indenture relating to the Company's obligations to purchase the Notes upon a Fundamental Change, the Company's compliance with such laws or regulations shall not be considered to be a Default of those obligations; rather, the Company shall be deemed to be in compliance with those obligations if it complies with its obligation to repurchase Notes upon a Fundamental Change in accordance with this Article 16,

modified as necessary by the Company in good faith to permit compliance with such laws or regulations.

Article 17
OPTIONAL REDEMPTION

Section 17.1 *No Optional Redemption*. No sinking fund is provided for the Notes. The Notes shall not be redeemable by the Company.

Article 18
MISCELLANEOUS PROVISIONS

Section 18.1 *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 18.2 *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 18.3 *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 and the Collateral Agent) to Groupon, Inc., 35 West Wacker Drive, 25th Floor, Chicago, Illinois 60601, Attention: General Counsel. Any notice, direction, request or demand hereunder to or upon the Trustee or 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, electronic transmission or overnight delivery addressed to the applicable Corporate Trust Office. Notices served on the Trustee or Collateral Agent shall be deemed given when actually received by the Trustee or Collateral Agent, as applicable.

The Trustee and the Collateral Agent, 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.

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 18.4 *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 (WITHOUT REGARD TO THE CONFLICTS OF LAWS PROVISIONS THEREOF).

The Company irrevocably consents and agrees, for the benefit of the Holders from time to time of the Notes, the Trustee and the Collateral Agent, 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 18.5 *Evidence of Compliance with Conditions Precedent; Certificates and Opinions of Counsel to Trustee and Collateral Agent.* Upon any application or demand by the Company to the Trustee or the Collateral Agent to take any action under any of the provisions of this Indenture or the Collateral Documents, the Company shall, if requested by the Trustee or the Collateral Agent, furnish to the Trustee and Collateral Agent an Officer's Certificate and Opinion of Counsel stating that such action is permitted by the terms of this Indenture and such Collateral Documents.

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 Collateral Agent with respect to compliance with this Indenture or the Collateral Documents (other than the Officer's Certificates provided for in Section 4.08) shall include a statement that the Person signing such certificate is

familiar with the requested action and this Indenture and the applicable Collateral Documents; a brief statement as to the nature and scope of the examination or investigation upon which the statement contained in such certificate is based; 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 the applicable Collateral Documents; and a statement as to whether or not, in the judgment of such Person, such action is permitted by this Indenture and the applicable Collateral Documents.

Section 18.6 *Legal Holidays.* In any case where any Interest Payment Date, any Fundamental Change Repurchase Date or the 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.

Section 18.7 *No Security Interest Created.* Nothing in this Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

Section 18.8 *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 18.9 *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 18.10 *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 11.04 and Section 16.04 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 18.10, 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 9.03 and this Section 18.10 shall be applicable to any authenticating agent.

If an authenticating agent is appointed pursuant to this Section 18.10, 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 Officer

Section 18.11 *Execution in Counterparts.* The parties may sign multiple counterparts of this Indenture. Each signed counterpart shall be deemed an original, but all of them together represent the same agreement. Delivery of an executed counterpart by facsimile, PDF or other electronic means shall be effective as delivery of a manually executed counterpart thereof. Unless otherwise provided in this Indenture or in any Note, the words "execute," "execution," "signed" and "signature" and words of similar import used in or related to any document to be signed in connection with this Indenture, any Note or any of the transactions contemplated hereby (including amendments, waivers, consents and other modifications) shall be deemed to include electronic signatures and the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature in ink or the use of a paper-based recordkeeping system, as applicable, to the fullest extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act and any

other similar state laws based on the Uniform Electronic Transactions Act; provided that, notwithstanding anything herein to the contrary, neither the Trustee nor the Collateral Agent is under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Trustee and the Collateral Agent, as applicable, pursuant to procedures approved by the Trustee or Collateral Agent. 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, AdobeSign or other electronic signature provider (such other digital signature provider as specified in writing to Trustee by an Officer), in English. The Company agrees to assume all risks arising out of the use of using digital signatures and electronic methods to submit communications to Trustee or the Collateral Agent, including without limitation the risk of Trustee or the Collateral Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 18.12 *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 18.13 *Waiver of Jury Trial.* EACH OF THE COMPANY, 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 18.14 *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, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee and the 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 18.15 *Calculations*. Except as otherwise provided herein, the Company shall be responsible for making all calculations called for under this Indenture and the Notes. These calculations include, but are not limited to, determinations of the Last Reported Sale Prices of the Common Stock, the Trading Price of the Notes (for purposes of determining whether the Notes are convertible as described in Section 15.01(b)(i)), the Daily VWAPs, the Daily Conversion Values, the Daily Settlement Amounts, accrued interest payable on the Notes, the Conversion Rate of the Notes, the Applicable Premium and the Offer Amount. 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 of Notes. 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 18.16 *USA PATRIOT Act.* The parties hereto acknowledge that in accordance with Section 326 of the USA PATRIOT Act, the Trustee and the Collateral Agent, like all financial institutions and in order to help fight the funding of terrorism and money laundering, are 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 or the Collateral Agent. The parties to this Indenture agree that they will provide the Trustee and the Collateral Agent with such information as it may request in order for the Trustee and the Collateral Agent to satisfy the requirements of the USA PATRIOT Act.

Section 18.17 *Tax Matters*. The Company and the Holders of the Notes by acceptance of their Notes intend, for U.S. federal (and applicable state and local) income tax purposes: (i) to treat the Notes as indebtedness that are not "contingent payment debt instruments" within the meaning of Treasury Regulations Section 1.1275-4, (ii) to treat any adjustment to the Conversion Rate of the Notes pursuant to Section 15.04 (other than clause (e) thereof), Section 15.07 or Section 15.11 as being made pursuant to a "bona fide, adjustment formula" within the meaning of Treasury Regulations Section 1.305-7 (except to the extent otherwise required pursuant to the last sentence of Treasury Regulations Section 1.305-7(b)(1)), and (iii) to treat any adjustment to the Conversion Rate occurring pursuant to Section 15.03 or Section 15.04(e) as not giving rise to a constructive distribution pursuant to Section 305 of the Code. The Company and the Holders of the Notes by acceptance of their Notes agree that they shall not take any position for U.S. federal (and applicable state and local) income tax purposes inconsistent with the foregoing clauses (i) through (iii), in each case, except to the extent otherwise required by a change in applicable law or a "determination" within the meaning of Section 1313(a) of the Code.

[*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.

GROUPON, INC.

By: */s/ Jiri Ponrt*

Name: Jiri Ponrt
Title: Chief Financial Officer

LIVING SOCIAL, LLC

By: */s/ Jiri Ponrt*

Name: Jiri Ponrt
Title: Chief Financial Officer

GROUPON GOODS, INC.,

By: */s/ Jiri Ponrt*

Name: Jiri Ponrt
Title: President

GI INTERNATIONAL HOLDINGS, INC.,

By: */s/ Jiri Ponrt*

Name: Jiri Ponrt
Title: President

GROUPON MERCHANT SERVICES, LLC

By: */s/ Jiri Ponrt*

Name: Jiri Ponrt
Title: President

GROUPON ACTIVITIES, LLC

By: /s/ Jiri Ponrt

Name: Jiri Ponrt
Title: Chief Financial Officer

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

By: */s/Linda Garcia*

Name: Linda Garcia

Title: Vice President

EXHIBIT A

[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[1]]

[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 GROUPON, 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 LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT:

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

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[1] Notes issued in exchange for the Existing Convertible Notes will be issued under an unrestricted CUSIP and will not bear this legend.

(B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT AND IS EFFECTIVE AT THE TIME OF SUCH TRANSFER, 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 (21)(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.][2]

[FOR PURPOSES OF SECTIONS 1272, 1273 AND 1275 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, THIS NOTE IS BEING ISSUED WITH TAX ORIGINAL ISSUE DISCOUNT ("**OID**"). GROUPON, INC. AGREES TO PROVIDE PROMPTLY TO THE HOLDER OF THIS NOTE, UPON WRITTEN REQUEST, THE ISSUE PRICE, THE AMOUNT OF OID, THE ISSUE DATE AND THE YIELD TO MATURITY. ANY SUCH WRITTEN REQUEST SHOULD BE SENT TO GROUPON, INC. AT THE FOLLOWING ADDRESS: 35 WEST WACKER DRIVE, 25TH FLOOR, CHICAGO, ILLINOIS 60601, ATTENTION: GENERAL COUNSEL.] [3]

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

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[2] To be included if the Notes bear the Restrictive Legend: The Restrictive Legend set forth on this page [*Insert if a Global Note*: (other than the first paragraph hereof)] shall be deemed removed from the face of this Note, without further action of the Company, the Trustee or the Holder(s) of this Note, at such time when the Company delivers written notice to the Trustee that all requirements to such removal pursuant to Section 2.05(c) of the within-mentioned Indenture have been met, including the assignment of an unrestricted CUSIP number.

[3] To be included if the Notes are deemed to be issued with original issue discount within the meaning of Section 1273 of the Code.

GROUPON, Inc.
6.25% Convertible Senior Secured Note due 2027

No. [_____] [Initially][4] $[_________]

CUSIP No. 399473 AG2 [5]

Groupon, Inc., a corporation duly organized and validly existing under the laws of the State of Delaware (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.][6] [_______][7], or registered assigns, the principal sum [as set forth in the "Schedule of Exchanges of Notes" attached hereto][8] [of $[_______]][9], which amount, taken together with the principal amounts of all other outstanding Notes, shall not, unless permitted by the Indenture, exceed in aggregate at any time $[ ], in accordance with the rules and procedures of the Depositary, on March 15, 2027, and interest thereon as set forth below.

This Note shall bear interest at the rate of 6.25% per year from November [__], 2024, or from the most recent date to which interest had been paid or provided for to, but excluding, the next scheduled Interest Payment Date until March 15, 2027. Any 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 actual days elapsed over a 30-day month. Interest is payable semi-annually in arrears on each March 15 and September 15, commencing on March 15, 2025, to Holders of record at the close of business on the preceding March 1 and September 1 (whether or not such day is a Business Day), respectively. Additional Interest will be payable as set forth in Section 4.06(d), Section 4.06(e), Section 4.14 and 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 any of such Section 4.06(d), Section 4.06(e), Section 4.14 or 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.

Any Defaulted Amounts shall accrue interest per annum at the rate borne by the Notes, subject to the enforceability thereof under applicable law, 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(c) of the Indenture.

[4] Include if a global note.

[5] To be included if the Notes bear the Restrictive Legend: At such time as the Company notifies the Trustee to remove the Restrictive Legend pursuant to Section 2.05(c) of the Indenture and all such conditions to the removal or deemed removal of the Restrictive Legend (including the assignment of an unrestricted CUSIP number) have been met, the CUSIP number for this Note shall be deemed to be CUSIP No. 399473 AH0. Additional Notes issued pursuant to Section 2.10 of the Indenture may have different CUSIP numbers.

[6] Include if a global note.

[7] Include if a physical note.

[8] Include if a global note.

[9] Include if a physical note.

The Company shall pay (or cause the Paying Agent to pay) the principal of and interest on this Note, if and so long as such Note is a Global Note, in immediately available funds to the Depositary or its nominee by wire transfer, 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 (or cause the Paying Agent to 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 the Corporate Trust Office of the Trustee as a place where Notes may be presented for payment or for registration of transfer and exchange.

Reference is made to the further provisions of this Note set forth on the reverse hereof, including, without limitation, provisions giving the Holder of this Note 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 (without regard to the conflicts of laws provisions thereof).

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.

GROUPON, 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]

GROUPON, INC.

6.25% Convertible Senior Secured Note due 2027

This Note is one of a duly authorized issue of Notes of the Company, designated as its 6.25% Convertible Senior Secured Notes due 2027 (the "**Notes**"), all issued or to be issued under and pursuant to an Indenture dated as of November 19, 2024 (the "**Indenture**"), among the Company, the Guarantors and U.S. Bank Trust Company, National Association, as trustee (the "**Trustee**") and as 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 and the Holders of the Notes. Additional Notes may be issued in an unlimited aggregate principal amount, 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.

To guarantee the due and punctual payment of the principal and interest (including post-filing or post-petition interest) on the Notes and all other amounts payable by the Company under the Indenture, the Notes and the other Note Documents when and as the same shall be due and payable, whether at maturity, by acceleration or otherwise, according to the terms of the Notes and the Indenture, the Guarantors will unconditionally guarantee (and future guarantors, jointly and severally with the Guarantors, will fully and unconditionally Guarantee) such obligations on a senior secured basis pursuant to the terms of the Indenture.

The Notes and the Guarantor's Guarantees of the Notes will be secured by the Collateral on the terms and subject to the conditions set forth in the Indenture and the Collateral Documents. The Collateral Agent will hold the Collateral for the benefit of the Secured Parties pursuant to the Collateral Documents. Each Holder, by accepting this Note, consents and agrees to the terms of the Collateral Documents (including the provisions providing for the foreclosure and release of Collateral), as the same may be in effect or may be amended from time to time in accordance with their terms and the Indenture and authorizes and directs the Collateral Agent to enter into the Collateral Documents and to perform its obligations and exercise its rights thereunder in accordance therewith.

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 25% 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.

Each Holder shall have the right 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, this Note at the place, at the respective times, at the rate and in the lawful money or shares of Common Stock, as the case may be, herein prescribed.

The Notes are issuable in registered form without coupons in denominations of $1,000 principal amount and integral multiples thereof. 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 Notes shall not be redeemable at the Company’s option and 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 (in principal amounts of $1,000 or integral multiples 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 that is $1,000 or an integral multiple 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.

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 A[10]

SCHEDULE OF EXCHANGES OF NOTES

GROUPON, Inc.

6.25% Convertible Senior Secured Notes due 2027

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

Date of exchange	Amount of decrease in principal amount of this Global Note	Amount of increase in principal amount of this Global Note	Principal amount of this Global Note following such decrease or increase	Signature of authorized signatory of Trustee or Custodian

[10] Include if a global note.

ATTACHMENT 1

[FORM OF NOTICE OF CONVERSION]

To: U.S. Bank Trust Company, National Association
190 S. LaSalle Street
Chicago, IL 60603
Attention: Corporate Trust

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 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 15.02(d) and Section 15.02(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): $______,000

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

ATTACHMENT 2

[FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE]

To: U.S. Bank Trust Company, National Association
190 S. LaSalle Street
Chicago, IL 60603
Attention: Corporate Trust

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from Groupon, 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 16.02 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 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 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 repaid (if less than all): $______,000

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.

ATTACHMENT 3

[FORM OF ASSIGNMENT AND TRANSFER]

For value received ___________________________ hereby sell(s), assign(s) and transfer(s) unto ________________ (Please insert social security or Taxpayer Identification Number of assignee) the within 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 Groupon, 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, and that continues to be effective at the time of such transfer; 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.

EXHIBIT B-1

FORM OF PERMITTED JUNIOR LIEN INTERCREDITOR AGREEMENT

[To be inserted]

EXHIBIT B-2

FORM OF PERMITTED PARI PASSU INTERCREDITOR AGREEMENT

[To be inserted]

EXHIBIT C

[FORM OF SUPPLEMENTAL INDENTURE
TO BE DELIVERED BY SUBSEQUENT GUARANTORS]

This [ ] SUPPLEMENTAL INDENTURE, dated as of ___________ __, 20__ is by and among ___________________________ (the "**Guaranteeing Subsidiary**"), a subsidiary of Groupon, Inc. (the "**Company**"), and U.S. Bank Trust Company, National Association, as Trustee and Collateral Agent.

RECITALS

WHEREAS, the Company has heretofore executed and delivered to the Trustee and the Collateral Agent the Indenture (the "**Indenture**"), dated as of November 19, 2024, providing for the issuance of 6.25% Senior Secured Convertible Notes due 2027 (the "**Notes**");

WHEREAS, the Indenture provides that under certain circumstances the Guaranteeing Subsidiary shall execute and deliver to the Trustee and Collateral Agent a supplemental indenture pursuant to which the Guaranteeing Subsidiary shall unconditionally guarantee all of the Company's obligations under the Notes and the Indenture on the terms and conditions set forth herein and under the Indenture (the "**Guarantee**");

WHEREAS, Section 11.01 of the Indenture provides that the parties may amend or supplement the Indenture in order to add Guarantors pursuant to the Indenture, without the consent of the Holders; and

WHEREAS, all acts and things prescribed by the Indenture to make this Supplemental Indenture a valid instrument legally binding on the parties in accordance with its terms, have been duly done and performed;

NOW, THEREFORE, in compliance with the provisions of the Indenture and in consideration of the above premises, the parties covenant and agree for the equal and proportionate benefit of the respective Holders as follows:

(1) Capitalized Terms. Capitalized terms used herein without definition shall have the meanings assigned to them in the Indenture.

(2) Agreement to Guarantee. The Guaranteeing Subsidiary hereby agrees as follows:

(a) Along with all other Guarantors named in the Indenture (including pursuant to any supplemental indentures), to jointly and severally unconditionally guarantee to each Holder of a Note authenticated and delivered by the Trustee, the Trustee, the Collateral Agent and their respective successors and assigns, irrespective of the validity and enforceability of the Indenture, the Notes or the obligations of the Company hereunder or thereunder, that:

(i) the principal of and interest and premium, if any, on the Notes shall be promptly paid in full when due, whether at maturity, by acceleration, redemption

or otherwise, and interest on the overdue principal of and interest on the Notes, if any, if lawful, and all other obligations of the Company to the Holders, the Trustee or the Collateral Agent thereunder shall be promptly paid in full, all in accordance with the terms thereof; and

(ii) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same shall be promptly paid in full when due in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. Failing payment when due of any amount so guaranteed for whatever reason, the Guarantors and the Guaranteeing Subsidiary shall be jointly and severally obligated to pay the same immediately. This is a guarantee of payment and not a guarantee of collection.

(b) The obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or the Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder with respect to any provisions hereof or thereof, the recovery of any judgment against the Company or any other 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.

(c) The Guaranteeing Subsidiary hereby waives: diligence, presentment, demand of payment, 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.

(d) Except as provided in the Indenture and herein, the Guarantee shall not be discharged except by full payment of the obligations contained in the Notes, the Indenture and this Supplemental Indenture. The Guaranteeing Subsidiary accepts all obligations applicable to a Guarantor under the Indenture, including Article 13 of the Indenture (which is deemed incorporated in this Supplemental Indenture and applicable to this Guarantee). The Guaranteeing Subsidiary acknowledges that by executing this Supplemental Indenture, it shall become a Guarantor under the Indenture and subject to all the terms and conditions applicable to Guarantors contained therein.

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

(f) The Guaranteeing Subsidiary shall not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby.

(g) As between the Guaranteeing Subsidiary, on the one hand, and the Holders, the Trustee and Collateral Agent, on the other hand, (x) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article 6 of the Indenture for the purposes of this Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (y) in the event of any declaration of acceleration of such obligations as provided in Article 6 of the Indenture, such obligations (whether or not due and payable) shall forthwith become due and payable by the Guaranteeing Subsidiary for the purpose of this Guarantee.

(h) The Guaranteeing Subsidiary shall have the right to seek contribution from any non-paying Guarantor so long as the exercise of such right does not impair the rights of the Holders under this Guarantee.

(i) Pursuant to Section 13.02 of the Indenture, after giving effect to all other contingent and fixed liabilities that are relevant under any applicable Bankruptcy or fraudulent conveyance laws, or similar limitation, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Guarantor in respect of the obligations of such other Guarantor under Article 13 of the Indenture, this new Guarantee shall be limited to the maximum amount permissible such that the obligations of such Guarantor under this Guarantee shall not constitute a fraudulent transfer or conveyance, or similar limitation.

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

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

(l) This Guarantee shall be a general secured senior obligation of such Guaranteeing Subsidiary, ranking equally in right of payment with all existing and future Senior Indebtedness of the Guaranteeing Subsidiary, if any.

(m) Each payment to be made by the Guaranteeing Subsidiary in respect of this Guarantee shall be made without set-off, counterclaim, reduction or diminution of any kind or nature.

(3) Execution and Delivery. The Guaranteeing Subsidiary agrees that the Guarantee shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Guarantee on the Notes.

(4) No Recourse Against Others. No past, present or future director, officer, employee, incorporator, member, partner or stockholder of the Guaranteeing Subsidiary (other than the Company and the Guarantors) shall have any liability for any obligations of the Company or the Guarantors (including the Guaranteeing Subsidiary) under the Notes, any Guarantees, the Indenture or this Supplemental Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting Notes waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

(5) Governing Law, Jury Trial Waiver. THIS SUPPLEMENTAL INDENTURE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

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

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

(7) Effect of Headings. The Section headings herein are for convenience only and shall not affect the construction hereof.

(8) The Trustee and Collateral Agent. Neither the Trustee nor the Collateral Agent shall be responsible in any manner whatsoever for or in respect of the validity or sufficiency of this Supplemental Indenture, the Guarantee of the Guaranteeing Subsidiary or for or in respect of the recitals contained herein, all of which recitals are made solely by the Company and the Guaranteeing Subsidiary.

(9) Subrogation. The Guaranteeing Subsidiary shall be subrogated to all rights of Holders against the Company in respect of any amounts paid by the Guaranteeing Subsidiary pursuant to the provisions of Section 2.01 hereof and Section 13.01 of the Indenture; *provided* that, if an Event of Default has occurred and is continuing, the Guaranteeing Subsidiary shall not be entitled to enforce or receive any payments arising out of, or based upon, such right of

subrogation until all amounts then due and payable by the Company under the Indenture or the Notes shall have been paid in full.

(10) Benefits Acknowledged. The Guaranteeing Subsidiary's Guarantee is subject to the terms and conditions set forth in the Indenture. The Guaranteeing Subsidiary acknowledges that it shall receive direct and indirect benefits from the financing arrangements contemplated by the Indenture and this Supplemental Indenture and that the guarantee and waivers made by it pursuant to this Guarantee are knowingly made in contemplation of such benefits.

(11) Successors. All agreements of the Guaranteeing Subsidiary in this Supplemental Indenture shall bind its Successors, except as otherwise provided in this Supplemental Indenture. All agreements of the Trustee and the Collateral Agent in this Supplemental Indenture shall bind its successors.

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

[COMPANY]

[GUARANTEEING SUBSIDIARY]

By: ____
Name:
Title:

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

By: ____
Name:
Title:

PLEDGE AND SECURITY AGREEMENT

THIS PLEDGE AND SECURITY AGREEMENT (as it may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, this "Security Agreement") is entered into as of November 19, 2024, by and among Groupon, Inc., a Delaware corporation, (the "Company"), each Subsidiary of the Company listed on the signature pages hereof and each Subsidiary that becomes a party hereto from time to time (together with the Company, each a "Grantor", and collectively, the "Grantors"), and U.S. Bank Trust Company, National Association, a national banking association ("U.S. Bank"), solely in its capacity as collateral agent pursuant to the Indenture referred to below (in such capacity, together with any successors in such capacity, the "Collateral Agent").

PRELIMINARY STATEMENT

WHEREAS, in connection with the execution and delivery of this Security Agreement, the Company, the Collateral Agent, U.S. Bank, as trustee, and the other parties party thereto have entered into that certain Indenture, dated as of November 19, 2024 (as may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Indenture") pursuant to which the Company's 6.25% Convertible Senior Secured Notes due 2026 were issued (the "Notes");

WHEREAS, the Grantors will receive substantial direct and/or indirect benefits from the execution and delivery of the Indenture and the other Notes Documents (as defined in the Indenture) and is, therefore, willing to enter into this Security Agreement;

WHEREAS, this Security Agreement is made by and among the Grantors and the Collateral Agent to grant a Lien on the Collateral to the Collateral Agent for the benefit of the Secured Parties to secure the payment and performance of all of the Secured Obligations; and

WHEREAS, it is a condition to the issuance of the Notes that the Company and the other Grantors execute and deliver the applicable Notes Documents, including this Security Agreement;

ACCORDINGLY, the Grantors and the Collateral Agent, on behalf of the Secured Parties, hereby agree as follows:

ARTICLE I
DEFINITIONS

I.1 Terms Defined in Indenture. All capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Indenture.

I.2 Terms Defined in UCC. Terms defined in the UCC which are not otherwise defined in this Security Agreement are used herein as defined in the UCC.

I.3 Definitions of Certain Terms Used Herein. As used in this Security Agreement, in addition to the terms defined in the first paragraph hereof and in the Preliminary Statement, the following terms shall have the following meanings:

"Applicable Date" means (a) with respect to each Grantor party hereto on the Issue Date, the date of this Security Agreement, and (b) with respect to any Grantor joining the Security Agreement after the Issue Date, such later date on which such Grantor delivers to the Collateral Agent an amendment to the Security Agreement and a supplement to the schedules to this Security Agreement pursuant to Section 4.1(i).

"Article" means a numbered article of this Security Agreement, unless another document is specifically referenced.

"Collateral" shall have the meaning set forth in Article II.

"Control" shall have the meaning set forth in Article VIII or, if applicable, in Section 9-104, 9-105, 9-106 or 9-107 of Article 9 of the UCC.

"Copyrights" means, with respect to any Person, all of such Person's right, title, and interest in and to the following: (a) all copyrights, rights and interests in copyrights, works protectable by copyright, copyright registrations, and copyright applications; (b) all renewals of any of the foregoing; (c) all income, royalties, damages, and payments now or hereafter due and/or payable under any of the foregoing, including, without limitation, damages or payments for past or future infringements for any of the foregoing; (d) the right to sue for past, present, and future infringements of any of the foregoing; and (e) all rights corresponding to any of the foregoing throughout the world.

"Copyright Security Agreement" shall mean an agreement substantially in the form annexed hereto as Exhibit L.

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

"Event of Default" means an event described in Section 5.1.

"Excluded Assets" shall mean (A) any fee-owned Real Property or any leasehold interest in Real Property (it being understood there shall be no requirement to obtain any landlord waivers, estoppels or collateral access letters), (B) all vehicles and other assets covered by a certificate of title law of any state (except to the extent a security interest therein can be perfected by the filing of a UCC financing statement or the equivalent under other applicable law), (C) any lease, license or agreement or any Property subject to a purchase money security interest or Capital Lease obligation, in each case, to the extent that a grant of a security interest therein would violate or invalidate such lease, license or agreement or purchase money agreements or arrangement or Capital Lease or create a right of termination in favor of any other party thereto (other than any Grantor) after giving effect to the applicable anti-assignment provisions of the UCC or other applicable law, other than the proceeds and receivables thereof the assignment of

which is expressly deemed effective under the UCC or other applicable law notwithstanding such prohibition, (D) any Excluded Capital Stock, (E) any Property where the cost of obtaining a security interest in, or perfection of, such assets materially exceeds the practical benefit to the Secured Parties afforded thereby as determined in good faith by the Company, (F) any application for registration of a Trademark on the basis of the applicant's intent-to-use such Trademark, unless and until evidence of use of the Trademark has been filed with, and accepted by, the U.S. Patent and Trademark Office pursuant to Section 1(c) or Section 1(d) of the Lanham Act (15 U.S.C. §1051, et seq.), to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such Trademark application or any registration issuing therefrom under applicable federal law, (G) [reserved], (H) any governmental licenses or state, provincial, territorial, municipal or local franchises, charters and authorizations, to the extent security interests in such licenses, franchises, charters or authorizations are prohibited or restricted thereby after giving effect to the applicable anti-assignment provisions of the UCC or the equivalent under any applicable jurisdiction, (I) any assets to the extent a security interest in such assets would result in material adverse tax consequences to the Company and its Subsidiaries as reasonably determined by the Company and the Collateral Agent, (J) letter of credit rights in an aggregate stated amount less than $1,000,000 (except to the extent a security interest therein can be perfected by the filing of a UCC financing statement or the equivalent under other applicable law, (K) more than 65% of the voting stock (within the meaning of Section 1.9562(c)(2) of the United States Treasury Regulations) of any Foreign Subsidiary (other than (A) GI Luxembourg S.à.r.l., (B) any Foreign Subsidiary that is a Guarantor or (C) as otherwise required pursuant to Section 4.09 of the Indenture) and (L) any assets the grant of a security interest in which would be prohibited by applicable law but only, in each case, to the extent, and only for so long as, such prohibition is not terminated or rendered unenforceable or otherwise deemed ineffective by the UCC, any other laws (including the Debtor Relief Laws), or principles of equity, and, to the extent severable, shall attach immediately to any portion of such assets that do not result in such prohibition; *provided* that, immediately upon the ineffectiveness, lapse or termination of any such prohibition, the Collateral shall include, and such Grantor shall be deemed to have granted a security interest in, such assets as if such provision had never been in effect unless such asset or Property otherwise constitutes Excluded Assets.

"Excluded Capital Stock" means the Capital Stock of any non-Wholly Owned Subsidiary or entities that do not constitute Subsidiaries, in each case, solely to the extent the organizational documents or other agreements with the equity holders of such non-Wholly Owned Subsidiaries or other entities (x) restrict or do not permit the pledge of such Capital Stock or (y) provide for any termination right, repurchase obligation, or similar adverse consequence to the Grantors or such non-Wholly Owned Subsidiary or other entity as a result of the pledge of such Capital Stock, in each case to the extent such restriction, termination right, repurchase obligation, or other provision existed on the Issue Date or on the date of acquisition of such non-Wholly Owned Subsidiary or other entity and was not entered into in contemplation thereof.

"Exhibit" refers to a specific exhibit to this Security Agreement, in each case as such Exhibits may be amended or supplemented from time to time, unless another document is specifically referenced.

"Governmental Authority" means any federal, provincial, territorial, state, municipal, local, foreign, international or multinational court or governmental agency, authority, instrumentality, central bank or regulatory, taxing or legislative body, including any applicable supranational bodies (such as the European Union or the European Central Bank).

"Intellectual Property" means all intellectual property of every kind and nature now owned or hereafter acquired by any Grantor, including inventions, designs, Patents, Copyrights, Licenses, Trademarks, trade secrets, know-how, the intellectual property rights in software and databases and related documentation and all additions and improvements to the foregoing.

"Licenses" means, with respect to any Person, all of such Person's right, title, and interest in and to (a) any and all licensing agreements or similar arrangements in and to its Intellectual Property, (b) all income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect thereto, including, without limitation, damages and payments for past and future breaches thereof, and (c) all rights to sue for past, present, and future breaches thereof.

"Patents" means, with respect to any Person, all of such Person's right, title, and interest in and to: (a) any and all patents and patent applications; (b) all inventions and improvements described and claimed therein; (c) all reissues, divisions, continuations, renewals, extensions, and continuations-in-part thereof; (d) all income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect thereto, including, without limitation, damages and payments for past and future infringements thereof; (e) all rights to sue for past, present, and future infringements thereof; and (f) all rights corresponding to any of the foregoing throughout the world.

"Pledged Collateral" means all Instruments, Securities and other Investment Property of the Grantors, whether or not physically delivered to the Collateral Agent pursuant to this Security Agreement, to the extent such Instruments, Securities and other Investment Property constitute Collateral hereunder.

"Receivables" means, with respect to any Grantor, the Accounts, Chattel Paper, Documents, Investment Property, Instruments and any other rights or claims to receive money which are General Intangibles or which are otherwise included as Collateral.

"Required Noteholders" means the holders of a majority in principal amount of outstanding Notes, calculated in accordance with the provisions of the Indenture.

"Section" means a numbered section of this Security Agreement, unless another document is specifically referenced.

"Secured Obligations" means, collectively, the Obligations and the Guaranteed Obligations.

"Stock Rights" means all dividends, instruments or other distributions and any other right or property which the Grantors shall receive or shall become entitled to receive for any reason

whatsoever with respect to, in substitution for or in exchange for any Equity Interest constituting Collateral, any right to receive an Equity Interest and any right to receive earnings, in which the Grantors now have or hereafter acquire any right, issued by an issuer of such Equity Interest.

"Trademarks" means, with respect to any Person, all of such Person's right, title, and interest in and to the following: (a) all trademarks (including service marks but excluding any intent-to-use trademark application prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto), trade names, trade dress, and trade styles and the registrations and applications for registration thereof and the goodwill of the business symbolized by the foregoing; (b) all Licenses of the foregoing, whether as licensee or licensor; (c) all renewals of the foregoing; (d) all income, royalties, damages, and payments now or hereafter due or payable with respect thereto, including, without limitation, damages, claims, and payments for past and future infringements thereof; (e) all rights to sue for past, present, and future infringements of the foregoing, including the right to settle suits involving claims and demands for royalties owing; and (f) all rights corresponding to any of the foregoing throughout the world.

"Trademark Security Agreement" shall mean an agreement substantially in the form annexed hereto as Exhibit M.

"UCC" means the Uniform Commercial Code, as in effect from time to time, of the State of New York or of any other state the laws of which are required as a result thereof to be applied in connection with the attachment, perfection or priority of, or remedies with respect to, Collateral Agent's or any other Secured Party's Lien on any Collateral.

"USCO" means the United States Copyright Office.

"USPTO" means the United States Patent and Trademark Office.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms.

ARTICLE II
GRANT OF SECURITY INTEREST

Each Grantor hereby pledges, assigns and grants to the Collateral Agent, on behalf of and for the ratable benefit of the Secured Parties, a security interest in all of its right, title and interest in, to and under all personal property and other assets, whether now owned by or owing to, or hereafter acquired by or arising in favor of such Grantor (including under any trade name or derivations thereof), and regardless of where located (all of which will be collectively referred to as the "Collateral"), including:

(i) all Accounts;

(ii) all Chattel Paper;

(iii) all Intellectual Property;

(iv) all Documents;

(v) all Equipment;

(vi) all Fixtures;

(vii) all General Intangibles;

(viii) all Goods;

(ix) all Instruments;

(x) all Inventory;

(xi) all Investment Property;

(xii) all cash or cash equivalents;

(xiii) all letters of credit, Letter-of-Credit Rights and Supporting Obligations;

(xiv) all Deposit Accounts with any bank or other financial institution;

(xv) the Commercial Tort Claims listed on Exhibit E (including any supplements to Exhibit E delivered pursuant to Sections 4.1(c) or 4.1(i))

(xvi) the Pledged Collateral listed on Exhibit F (including any supplements to Exhibit F delivered pursuant to Sections 4.1(c) or 4.1(i); and

(xvii) all accessions to, substitutions for and replacements, proceeds (including Stock Rights), insurance proceeds and products of the foregoing, together with all books and records, customer lists, credit files, computer files, programs, printouts and other computer materials and records related thereto and any General Intangibles at any time evidencing or relating to any of the foregoing;

to secure the prompt and complete payment and performance of the Secured Obligations.

Notwithstanding anything to the contrary in this Security Agreement, (i) no Grantor shall be required to pledge more than 65% of the voting stock (within the meaning of Section 1.956 2(c)(2) of the United States Treasury Regulations) of any Foreign Subsidiary (other than (A) GI Luxembourg S.à.r.l., (B) any Foreign Subsidiary that is a Guarantor or (C) as otherwise required pursuant to Section 4.09 of the Indenture), (ii) immediately upon any Property of a Grantor ceasing to constitute Excluded Assets, the Collateral shall include, and the Issuer and the other Grantors, as applicable, shall be deemed to have granted a security interest in, such Property, and (iii) the security interest created by this Security Agreement shall not extend to, and the term “Collateral” shall not include any Excluded Assets (it being understood that such grant will be applicable at such time as any such Property ceases to constitute Excluded Assets).

ARTICLE III
REPRESENTATIONS AND WARRANTIES

Each Grantor represents and warrants to the Collateral Agent and the Secured Parties that:

III.1 Title, Authorization, Validity, Enforceability, Perfection and Priority. Such Grantor has good and valid rights in or the power to transfer the Collateral owned by it and title to the Collateral with respect to which it has purported to grant a security interest hereunder, except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such Collateral for its current uses, free and clear of all Liens except for Liens permitted under Section 4.12 of the Indenture, and has full power and authority to grant to the Collateral Agent the security interest in the Collateral pursuant hereto. The execution and delivery by such Grantor of this Security Agreement have been duly authorized by proper corporate proceedings or other organizational action of such Grantor, and this Security Agreement constitutes a legal valid and binding obligation of such Grantor and creates a security interest which is enforceable against such Grantor in all Collateral it now owns or hereafter acquires, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law. When financing statements have been filed in the appropriate offices against such Grantor in the locations listed on Exhibit G, the Collateral Agent will have a perfected first priority security interest in that Collateral of such Grantor in which a security interest may be perfected by filing, subject only to Liens permitted under Section 4.12 of the Indenture.

III.2 Type and Jurisdiction of Organization and Identification Number. The type of entity of each Grantor, its state of organization and its federal employer identification number are set forth on Exhibit A.

III.3 Principal Location. Each Grantor's mailing address, which shall be its address for notices and other communications provided for herein and the location of its place of business (if it has only one) or its chief executive office (if it has more than one place of business), are disclosed in Exhibit A. As of the Applicable Date, each such Grantor has no other places of business except those set forth in Exhibit A.

III.4 Collateral Locations. As of the Applicable Date, all of each Grantor's locations where tangible Collateral is located are listed on Exhibit A. All of said locations are owned by such Grantor except for locations (i) which are leased by the Grantor as lessee and designated in Part VI(b) of Exhibit A and (ii) at which Inventory is held in a public warehouse or is otherwise held by a bailee or on consignment as designated in Part VI(c) of Exhibit A.

III.5 [Reserved.].

III.6 Exact Names. Each Grantor's name in which it has executed this Security Agreement is the exact name as it appears in such Grantor's organizational documents, as amended, as filed with such Grantor's jurisdiction of organization. Such Grantor has not,

between the period commencing on the date that is five (5) years prior to the Applicable Date and such Applicable Date, (a) been known by or used any other corporate or fictitious name or changed its corporate form or (b) except as set forth in Exhibit A, merged or consolidated with any other Person.

III.7 Letter-of-Credit Rights and Chattel Paper. As of the Applicable Date, Exhibit C lists all Letter-of-Credit Rights and Chattel Paper of each Grantor which are Collateral.

III.8 Accounts and Chattel Paper.

(a) The names of the obligors, amounts owing, due dates and other information with respect to its Accounts and Chattel Paper are and will be correctly stated in all material respects in the records of each Grantor relating thereto and in the invoices with respect thereto furnished to the Collateral Agent by such Grantor from time to time. As of the time when each Account or each item of Chattel Paper arises, such Grantor shall be deemed to have represented and warranted that such Account or Chattel Paper, as the case may be, and all records relating thereto, are genuine and in all material respects what they purport to be.

(b) All material Accounts represent bona fide sales of Inventory or the rendering of services to Account Debtors in the ordinary course of each Grantor's business and are not evidenced by a judgment, Instrument or Chattel Paper.

III.9 Inventory. With respect to each Grantor's Inventory as of the Applicable Date, (a) such Inventory (other than (x) Inventory in transit, (y) Inventory out for repair and (z) other Inventory with a fair market value in an aggregate amount less than $1,000,000 at any one time) is located at one of such Grantor's locations set forth on Exhibit A, at third party vendor locations or at any other location disclosed in writing to the Collateral Agent, (b) no Inventory (other than (x) Inventory in transit, (y) Inventory out for repair and (z) other Inventory in an aggregate amount less than $1,000,000 at any one time) is now, or shall at any time or times hereafter be stored at any other location other than those listed on Exhibit A or any supplements thereto, (c) such Grantor has good, indefeasible and merchantable title to such Inventory and such Inventory is not subject to any Lien or security interest except for the security interest granted to the Collateral Agent hereunder, for the benefit of the Collateral Agent and Secured Parties, and Liens permitted under Section 4.12 of the Indenture, (d) such Inventory is of good and merchantable quality, free from any defects, (e) such Inventory is not subject to any licensing, patent, royalty, trademark, trade name or copyright agreements with any third parties which would require any consent of any third party upon sale or disposition of that Inventory or the payment of any monies to any third party upon such sale or other disposition, (f) such Inventory has been produced in accordance with the Federal Fair Labor Standards Act of 1938, as amended, and all rules, regulations and orders thereunder, and (g) the completion of manufacture, sale or other disposition of such Inventory by the Collateral Agent following and during the continuation of an Event of Default shall not require the consent of any Person and shall not constitute a breach or default under any contract or agreement to which such Grantor is a party or to which such property is subject.

III.10 Intellectual Property. Exhibit D sets forth all registered and applied for Patents, Trademarks and Copyrights owned by such Grantor as of the Applicable Date. This Security Agreement is effective to create a valid and continuing Lien and, upon filing of appropriate financing statements in the offices listed on Exhibit G and this Security Agreement with the USCO and the USPTO, fully perfected first priority security interests in favor of the Collateral Agent on such Grantor's Patents, Trademarks and Copyrights, subject to Liens permitted under Section 4.12 of the Indenture. Notwithstanding anything herein to the contrary, other than UCC filings and the filing of documents effecting the recordation of security interests in the USCO and USPTO, in no event shall the Grantors be required, nor shall the Collateral Agent be authorized, to make any other filings or take any other actions related to Intellectual Property Collateral, including actions to enter into any source code escrow arrangement, or to apply for the registration of any Intellectual Property in any jurisdiction, or to make any filings or take any actions to record or to perfect the Collateral Agent's lien on or security interest, in the Collateral.

III.11 No Financing Statements, Security Agreements. As of the Applicable Date, no financing statement or security agreement describing all or any portion of the Collateral which has not lapsed or been terminated (by a filing authorized by the secured party in respect thereof or as otherwise permitted by Section 9-509 of the UCC) naming such Grantor as debtor has been filed or is of record in any jurisdiction except for financing statements or security agreements (a) naming the Collateral Agent on behalf of the Secured Parties as the secured party and (b) in respect to other Liens permitted under Section 4.12 of the Indenture.

III.12 Pledged Collateral.

(a) Exhibit F sets forth a complete and accurate list of all of the Pledged Collateral owned by such Grantor on the Applicable Date. Such Grantor is the direct, sole beneficial owner and sole holder of record of the Pledged Collateral listed on Exhibit F as being owned by it, free and clear of any Liens, except for the security interest granted to the Collateral Agent for the benefit of the Secured Parties hereunder and Liens permitted under Section 4.12 of the Indenture. Such Grantor further represents and warrants that (i) all Pledged Collateral owned by it constituting an Equity Interest has been (to the extent such concepts are relevant with respect to such Pledged Collateral) duly authorized, validly issued, are fully paid and non-assessable, (ii) with respect to any certificates delivered to the Collateral Agent representing an Equity Interest, either such certificates are Securities as defined in Article 8 of the UCC as a result of actions by the issuer or otherwise, or, if such certificates are not Securities, such Grantor has so informed the Collateral Agent and has taken steps to cause the Collateral Agent's security interest therein to be perfected as a General Intangible, and (iii) all Pledged Collateral which represents Indebtedness owed to such Grantor has been duly authorized, authenticated or issued and delivered by the issuer of such Indebtedness, is the legal, valid and binding obligation of such issuer and such issuer is not in default thereunder.

(b) In addition, (i) none of the Pledged Collateral owned by any Grantor as of the Applicable Date has been issued or transferred in violation of the securities registration, securities disclosure or similar laws of any jurisdiction to which such issuance or transfer is subject, (ii) with respect to any Equity Interests included in the Pledged Collateral issued by any

Subsidiary, no options, warrants, calls or commitments of any character whatsoever (other than (x) customary rights to purchase or requirements to sell Equity Interests in respect of any Investment in a joint venture permitted under the Indenture and (y) agreements to sell or dispose of such Pledged Collateral to the extent such sale or disposition would be permitted by the Indenture) (A) exist relating to such Pledged Collateral or (B) obligate any such Subsidiary to issue additional Equity Interests, and (iii) no consent, approval, authorization, or other action by, and no giving of notice to or filing with any Governmental Authority or any other Person is required for the pledge by such Grantor of such Pledged Collateral pursuant to this Security Agreement or for the execution, delivery and performance of this Security Agreement by such Grantor, or, in the case of any Equity Interests included in the Pledged Collateral issued by any Subsidiary (other than customary rights of first offer, rights of first refusal and similar rights in respect of any Investment in the Equity Interests of a joint venture permitted under the Indenture), for the exercise by the Collateral Agent of the voting or other rights provided for in this Security Agreement or for the remedies in respect of the Pledged Collateral pursuant to this Security Agreement, except in each case for any consent, approval, authorization or other action that has already been obtained or as may be required in connection with such disposition by laws affecting the offering and sale of securities generally.

(c) Except as set forth in Exhibit F (as amended or supplemented from time to time by such Grantor by delivery of an amendment to this Security Agreement in the form of Exhibit I hereto), each Grantor owns 100% of the issued and outstanding Equity Interests which constitute Pledged Collateral owned by it and none of the Pledged Collateral which represents Indebtedness owed to such Grantor is subordinated in right of payment to other Indebtedness or subject to the terms of an indenture.

ARTICLE IV
COVENANTS

From the date of this Security Agreement, and thereafter until this Security Agreement is terminated, each Grantor agrees that:

IV.1 General.

(a) Collateral Records. Each Grantor will maintain, in all material respects, complete and accurate books and records with respect to the Collateral owned by it, and furnish to the Collateral Agent, such reports relating to such Collateral as the Collateral Agent shall from time to time reasonably request in writing; provided that unless an Event of Default has occurred and is continuing, such request may be made by the Collateral Agent no more than once per calendar year.

(b) Authorization to File Financing Statements; Ratification. Each Grantor hereby authorizes the Collateral Agent to file (but the Collateral Agent shall have no duty to file), and will deliver to the Collateral Agent (as applicable), all financing statements and other documents and take such other actions as may from time to time be required, or as reasonably requested by the Collateral Agent, in order for the Collateral Agent to maintain a first priority perfected security interest in the Collateral owned by such Grantor, subject to Liens permitted

under Section 4.12 of the Indenture. Any financing statement filed by the Collateral Agent may be filed in the appropriate filing office in the appropriate UCC jurisdiction and may (i) indicate such Grantor's Collateral (1) as all assets of the Grantor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC of such jurisdiction, or (2) by any other description which reasonably approximates the description contained in this Security Agreement, and (ii) contain any other information required by part 5 of Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including (A) whether such Grantor is an organization and (B) the type of organization. Such Grantor also agrees to furnish any such information described in the foregoing sentence to the Collateral Agent promptly upon written request.

(c) Further Assurances. Each Grantor will, upon the reasonable written request of the Collateral Agent, furnish to the Collateral Agent, statements and schedules further identifying and describing the Collateral owned by it and such other reports and information in connection with its Collateral as the Collateral Agent may reasonably request in writing, all in such detail as the Collateral Agent may reasonably specify. Such Grantor also agrees to take commercially reasonable actions to defend title to the Collateral against all Persons and to defend the security interest of the Collateral Agent in its Collateral and the priority thereof against any Lien not expressly permitted hereunder, unless in each case such Grantor shall reasonably determine in good faith that such Collateral is not material to the conduct of its business or operations. Concurrently with the delivery of each compliance certificate delivered pursuant to Section 4.08 of the Indenture, each Grantor shall notify the Collateral Agent of (i) any additional Copyrights acquired or arising after the Closing Date that would be required to be set forth on Exhibit D, and shall submit to the Collateral Agent a supplement to Exhibit D, in the form of Exhibit J hereto, to reflect such additional Copyrights, (ii) any additional Pledged Collateral acquired or arising after the Closing Date that would be required to be set forth on Exhibit F, and shall submit to the Collateral Agent a supplement to Exhibit F, in the form of Exhibit I hereto, to reflect such additional Certificated Securities; and (iii) the transfer of any Pledged Collateral to a securities intermediary to be held by it; provided that such Grantor's failure to notify the Collateral Agent of any newly acquired or arising Collateral shall not impair the Collateral Agent's Lien thereon. Notwithstanding anything contained herein to the contrary (and other than with respect those certain obligations governed by Section 4.09(c) or 4.09(e) of the Indenture), no Grantor shall be required to perfect or to maintain the perfection and priority of the Collateral Agent's security interest in any Collateral held outside of the United States by any Grantor.

(d) Disposition of Collateral. Such Grantor will not sell, lease or otherwise dispose of the Collateral owned by it, except for dispositions specifically permitted pursuant to Section 4.16 of the Indenture.

(e) Liens. Such Grantor will not create, incur, or suffer to exist any Lien on the Collateral except (i) the security interest created by this Security Agreement, and (ii) Liens permitted under Section 4.12 of the Indenture.

(f) Other Financing Statements. Such Grantor will not authorize the filing of any financing statement naming it as debtor covering all or any portion of the Collateral owned

by it, except for financing statements (i) naming the Collateral Agent on behalf of the Secured Parties as the secured party, and (ii) in respect of Liens permitted under Section 4.12 of the Indenture not covered by clause (i) above. Such Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement filed in connection herewith without the prior written consent of the Collateral Agent, subject to such Grantor's rights under Section 9-509(d)(2) of the UCC.

(g) Compliance with Terms. Such Grantor will perform and comply in all material respects with all obligations in respect of the Collateral owned by it and all agreements to which it is a party or by which it is bound relating to such Collateral.

(h) Each Grantor hereby authorizes the Collateral Agent (or its designee) to file (but the Collateral Agent shall have no duty to file) instruments with the USPTO or USCO (or any successor office), including Copyright Security Agreements and Trademark Security Agreements, or other documents that are necessary for the purpose of perfecting, confirming, continuing, enforcing or protecting the pledge and security interest granted by such Grantor hereunder in any Intellectual Property owned by Grantor and applied for, registered or issued in the United States naming such Grantor , as debtor, and the Collateral Agent, as secured party.

(i) Additional Grantors. From time to time subsequent to the date hereof, Subsidiaries of the Company may become parties hereto as Grantors in accordance with Section 4.09(b) of the Indenture by executing a Security Joinder Agreement in the form of Exhibit N attached hereto. Upon delivery of any such Security Joinder Agreement, each new Grantor will be a party hereto as if such Grantor were an original signatory hereto. Each Grantor expressly agrees that its obligations arising hereunder will not be affected or diminished by the addition or release of any other Grantor hereunder. This Agreement will be fully effective as to any Grantor that is or becomes a party hereto regardless of whether any other Person becomes or fails to become or ceases to be a Grantor hereunder.

IV.2 Receivables.

(a) Certain Agreements on Receivables. Each Grantor will not make or agree to make any discount, credit, rebate or other reduction in the original amount owing on a Receivable or accept in satisfaction of a Receivable less than the original amount thereof, except that such Grantor may discount, credit, rebate or reduce the amount owning on any Receivable in accordance with its present practices and in the ordinary course of business.

(b) Collection of Receivables. Except as otherwise provided in this Security Agreement, each Grantor will collect and enforce, at such Grantor's sole expense, all amounts due or hereafter due to such Grantor under the Receivables owned by it.

(c) Delivery of Invoices. Each Grantor will deliver to the Collateral Agent promptly upon written request and after the occurrence and during the continuation of an Event of Default duplicate invoices with respect to each Account owned by such Grantor bearing such language of assignment as the Collateral Agent shall specify.

(i) Disclosure of Counterclaims on Receivables. Upon the occurrence and during the continuance of an Event of Default, if (i) any material discount, credit or agreement to make a rebate or to otherwise reduce the amount owing on any Receivable owned by such Grantor exists or (ii) to the knowledge of such Grantor, any material dispute, setoff, claim, counterclaim or defense exists or has been asserted or threatened with respect to any such Receivable, such Grantor will promptly disclose such fact to the Collateral Agent in writing.

IV.3 Inventory and Equipment.

Each Grantor will do all things reasonably necessary to maintain, preserve, protect and keep its Inventory and the Equipment in good repair and working and saleable condition, except for damaged or defective goods arising in the ordinary course of such Grantor's business and except for ordinary wear and tear in respect of the Equipment.

IV.4 Delivery of Instruments, Chattel Paper and Documents. To the extent any Receivable or other item of Collateral with a face amount in excess of $1,000,000 is evidenced by an Instrument or tangible Chattel Paper, each Grantor will (a) deliver to the Collateral Agent promptly (and in any event, within fifteen (15) Business Days of the Issue Date) upon execution of this Security Agreement the originals of all Chattel Paper and Instruments constituting Collateral owned by it (if any then exist), together with duly executed instruments or transfer or assignments in blank and (b) hold in trust for the Collateral Agent upon receipt and promptly thereafter (and in any event, no later than 15 days after receipt) deliver to the Collateral Agent any Chattel Paper and Instruments constituting Collateral, together with duly executed instruments or transfer or assignments in blank. Upon the Collateral Agent's written request, such Grantor will deliver to the Collateral Agent (and thereafter hold in trust for the Collateral Agent upon receipt and promptly deliver to the Collateral Agent) any Document evidencing or constituting Collateral.

IV.5 Uncertificated Securities. With respect to any uncertificated security issued by a Subsidiary (other than an uncertificated security credited on the books of a Securities Intermediary) existing on or acquired after the Issue Date and held by any Grantor that constitutes Collateral, such Grantor shall execute, and cause the issuer of such uncertificated security to duly authorize, execute and deliver to the Collateral Agent, on the date hereof or, with respect to any uncertificated security issued by a Subsidiary that is acquired after the Issue Date, within thirty (30) days of acquiring such uncertificated security, as applicable, an agreement in form attached as Exhibit K hereto pursuant to which such issuer agrees to comply with any and all instructions originated by the Collateral Agent without further consent by such Grantor.

IV.6 Pledged Collateral.

(a) Changes in Capital Structure of Issuers. Except as permitted by the Indenture, each Grantor will not (i) permit or suffer any issuer of an Equity Interest constituting Pledged Collateral owned by it to dissolve, merge, liquidate, retire any of its Equity Interests or other Instruments or Securities evidencing ownership, reduce its capital, sell or encumber all or substantially all of its assets or merge or consolidate with any other entity, or (ii) vote any such

Pledged Collateral in favor of any of the foregoing, in each case, without the prior written consent of the Collateral Agent (such consent to be delivered at the direction of Required Noteholders in accordance with the Indenture).

(b) Issuance of Additional Securities. Except as permitted under the Indenture, each Grantor will not permit or suffer the issuer of an Equity Interest constituting Pledged Collateral owned by it to issue additional Equity Interests, any right to receive the same or any right to receive earnings, except to such Grantor.

(c) Exercise of Rights in Pledged Collateral.

(i) Without in any way limiting the foregoing and subject to clause (ii) below, each Grantor shall have the right to exercise all voting rights or other rights relating to the Pledged Collateral owned by it for all purposes not inconsistent with this Security Agreement or the Indenture; *provided however*, that no vote or other right shall be exercised or action taken which would have the effect of impairing the rights of the Collateral Agent in respect of such Pledged Collateral.

(ii) Each Grantor will permit the Collateral Agent or its nominee at any time after the occurrence and during the continuation of an Event of Default, upon not less contemporaneous written notice, to exercise all voting rights or other rights relating to the Pledged Collateral owned by it, including, without limitation, exchange, subscription or any other rights, privileges, or options pertaining to any Equity Interest or Investment Property constituting Pledged Collateral as if it were the absolute owner thereof.

(iii) Each Grantor shall be entitled to collect and receive for its own use all cash dividends, interest, and any other distributions and other payments made in respect of the Pledged Collateral owned by it to the extent not in violation of the Indenture.

(iv) Any and all dividends, interest, payments or distributions in respect of any of the Pledged Collateral owned by any Grantor, made in contravention of Section 4.6(c)(iii) whenever paid or made, shall, if received by such Grantor, be received in trust for the benefit of the Collateral Agent and be segregated from the other property or funds of such Grantor, and be forthwith delivered to the Collateral Agent as Pledged Collateral in the same form as so received (with any necessary endorsement).

(v) Upon the occurrence and during the continuation of an Event of Default, each Grantor will permit any registerable Pledged Collateral to be registered in the name of the Collateral Agent or its nominee.

(d) RESERVED.

(e) Delivery of Stock Certificates. Each Grantor will (a) deliver to the Collateral Agent promptly (and in any event, no later than twenty (20) Business Days after the

Issue Date) upon execution of this Security Agreement the originals of (i) all certificates representing pledged Equity Interests constituting Collateral, together with duly executed instruments or transfer or assignments in blank and (b) hold in trust for the Collateral Agent upon receipt and promptly thereafter deliver to the Collateral Agent any certificates representing pledged Equity Interests constituting Collateral, together with duly executed instruments or transfer or assignments in blank.

IV.7 Intellectual Property.

(a) After the occurrence and during the continuation of an Event of Default, upon the written request of the Collateral Agent, each Grantor will use commercially reasonable efforts to secure all consents and approvals necessary or appropriate for the assignment to or benefit of the Collateral Agent of any material License held by such Grantor and to enforce the security interests granted hereunder.

(b) Each Grantor shall notify the Collateral Agent promptly if it knows that any application or registration relating to any Material Intellectual Property material to the conduct of its business or operations (now or hereafter existing) will become abandoned or dedicated to the public domain, or of any material adverse determination regarding such Grantor's ownership of any Material Intellectual Property material to the conduct of its business or operations, its right to register the same, or to keep and maintain the same.

(c) If any Grantor, either directly or through any agent, employee, licensee or designee, shall file an application for the registration of any Copyright with the United States Copyright Office or any similar office or agency, such Grantor shall give notice with respect to the same to the Collateral Agent in accordance with Section 4.1(c), and, upon the written request of the Collateral Agent, such Grantor shall execute and deliver any and all security agreements as are necessary, or that the Collateral Agent may request, to evidence the Collateral Agent's first priority security interest on such Copyright, and the General Intangibles of such Grantor relating thereto or represented thereby, subject to Liens permitted under Section 4.12 of the Indenture.

(d) Each Grantor shall take all actions necessary, or reasonably requested by the Collateral Agent, to maintain and pursue each application, to obtain the relevant registration and to maintain its Material Intellectual Property and the registration of its Material Intellectual Property (now or hereafter existing), including the filing of applications for renewal, affidavits of use, affidavits of noncontestability and opposition and interference and cancellation proceedings, unless such Grantor shall reasonably determine that any such Material Intellectual Property (or application therefor) is not material to the conduct of its business or operations.

(e) Each Grantor shall, unless it shall reasonably determine that such Material Intellectual Property is not material to the conduct of its business or operations, or determines that the following actions would reasonably be expected to create a material risk or detriment to such Grantor's business, promptly sue for any material infringement, misappropriation or dilution with respect to any Material Intellectual Property and to recover any and all damages for such material infringement, misappropriation or dilution, and shall take such other actions as the Grantor shall deem reasonably appropriate under the circumstances to protect such Material

Intellectual Property. In the event that such Grantor institutes suit because any of its Material Intellectual Property constituting Collateral is infringed upon, or misappropriated or diluted by a third party, such Grantor shall comply with Section 4.8.

IV.8 Commercial Tort Claims. Each Grantor shall promptly, and in any event within fifteen (15) Business Days after the same is acquired by it, notify the Collateral Agent of any Commercial Tort Claim with a value exceeding $1,000,000 acquired by it and, such Grantor shall enter into an amendment to this Security Agreement, in the form of Exhibit H hereto, granting to Collateral Agent a first priority security interest in such Commercial Tort Claim, subject to Liens permitted under Section 4.12 of the Indenture.

IV.9 Letter-of-Credit Rights. If any Grantor is or becomes the beneficiary of a letter of credit in an amount in excess of $1,000,000, it shall promptly, and in any event within fifteen (15) Business Days after becoming a beneficiary, notify the Collateral Agent thereof.

IV.10 Federal, State or Municipal Claims. Each Grantor will promptly notify the Collateral Agent of any Collateral owned by such Grantor which constitutes a claim (other than any claim in respect of Taxes to be refunded to such Grantor) in excess of $1,000,000 against the United States government or any state or local government or any instrumentality or agency thereof, the assignment of which claim is restricted by federal, state or municipal law.

IV.11 No Interference. Such Grantor agrees that it will not interfere with any right, power and remedy of the Collateral Agent provided for in this Security Agreement or now or hereafter existing at law or in equity or by statute or otherwise, or the exercise or beginning of the exercise by the Collateral Agent of any one or more of such rights, powers or remedies.

IV.12 Insurance.

(a) All insurance policies required under Section 4.10 of the Indenture with respect to the Collateral shall name the Collateral Agent (for the benefit of the Collateral Agent and the other Secured Parties) as an additional insured or as lender's loss payee, as applicable, and shall contain loss payable clauses, through endorsements in form and substance reasonably satisfactory to the Collateral Agent, which provide that such policy and lender loss payable clauses may be canceled, amended, or terminated prior to the expiration date of such policy only upon at least thirty (30) days prior written notice (or at least ten (10) days for cancellation for non-payment) given to the Collateral Agent.

(b) All premiums on any such insurance shall be paid when due by such Grantor, and copies of the policies delivered to the Collateral Agent. If such Grantor fails to obtain or maintain any insurance as required by this Section, the Collateral Agent may (but shall not be obligated to), upon thirty (30) days' written notice to Company, obtain such insurance at the Company's expense. By purchasing such insurance, the Collateral Agent shall not be deemed to have waived any Default arising from the Grantor's failure to maintain such insurance or pay any premiums therefor. Any amounts incurred by the Collateral Agent shall be additional Secured Obligations reimbursable by the Grantor on demand.

IV.13 Change of Name or Location. Each Grantor shall not (a) change its name as it appears in official filings in the state of its incorporation or organization, (b) change its chief executive office, principal place of business, mailing address, corporate offices or warehouses or locations at which any material portion of the Collateral is held or stored, or the location of its records concerning the Collateral as set forth in this Security Agreement, (c) change the type of entity that it is or (d) change its state of incorporation or organization, in each case, unless the Collateral Agent shall have received written notice of such change and only after the Grantor has delivered to the Collateral Agent in form for filing all necessary financing statements or financing statement amendments necessary to maintain the perfection of the Collateral Agent's Liens. The Grantor shall make such filings contemporaneously with the effective date of the changes referred to in this Section 4.13.

ARTICLE V
EVENTS OF DEFAULT AND REMEDIES

V.1 Events of Default. The occurrence of any "Event of Default" under, and as defined in, Section 6.01 of the Indenture shall constitute an Event of Default hereunder.

V.2 Remedies.

(a) Upon the occurrence and during the continuation of an Event of Default, the Collateral Agent may (but shall not be obligated to) exercise any or all of the following rights and remedies:

(i) those rights and remedies provided in this Security Agreement or the Indenture; *provided that*, this Section 5.2(a) shall not be understood to limit any rights or remedies available to the Collateral Agent and the other Secured Parties prior to an Event of Default;

(ii) those rights and remedies available to a secured party under the UCC (whether or not the UCC applies to the affected Collateral) or under any other applicable law (including, without limitation, any law governing the exercise of a bank's right of setoff or bankers' lien) when a debtor is in default under a security agreement;

(iii) [reserved];

(iv) Upon not less than contemporaneous written notice (except as provided in Section 8.1 or elsewhere herein), demand or advertisement of any kind to any Grantor or any other Person, enter the premises of any Grantor where any Collateral is located (through self-help and without judicial process) to collect, receive, assemble, process, appropriate, sell, lease, assign, grant an option or options to purchase or otherwise dispose of, deliver, or realize upon, the Collateral or any part thereof in one or more parcels at public or private sale or sales (which sales may be adjourned or continued from time to time with or without notice and may take place at any Grantor's premises or elsewhere), for cash, on credit or for future delivery without assumption of any credit

risk, and upon such other terms as the Collateral Agent may deem commercially reasonable; and

(v) Upon not less than contemporaneous written notice to the applicable Grantor, transfer and register in its name or in the name of its nominee the whole or any part of the Pledged Collateral, exchange certificates or instruments representing or evidencing Pledged Collateral for certificates or instruments of smaller or larger denominations, exercise the voting and all other rights as a holder with respect thereto, to collect and receive all cash dividends, interest, principal and other distributions made thereon and to otherwise act with respect to the Pledged Collateral as though the Collateral Agent was the outright owner thereof.

(b) The Collateral Agent, on behalf of the Secured Parties, may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(c) The Collateral Agent shall have the right (but not the obligation) upon any such public sale or sales and, to the extent permitted by law, upon any such private sale or sales, to purchase for the benefit of the Collateral Agent and the other Secured Parties, the whole or any part of the Collateral so sold, free of any right of equity redemption, which equity redemption the Grantor hereby expressly releases.

(d) Until the Collateral Agent is able to effect a sale, lease, or other disposition of Collateral, the Collateral Agent shall have the right to hold or use Collateral, or any part thereof, to the extent that it deems appropriate for the purpose of preserving Collateral or its value or for any other purpose deemed appropriate by the Collateral Agent. The Collateral Agent may, if it so elects, seek the appointment of a receiver or keeper to take possession of Collateral and to enforce any of the Collateral Agent's remedies (for the benefit of the Collateral Agent and the other Secured Parties), with respect to such appointment without prior notice or hearing as to such appointment.

(e) [Reserved.]

(f) Notwithstanding the foregoing, neither the Collateral Agent nor any other Secured Party shall be required to (i) make any demand upon, or pursue or exhaust any of its rights or remedies against, any Grantor, any other obligor, guarantor, pledgor or any other Person with respect to the payment of the Secured Obligations or to pursue or exhaust any of its rights or remedies with respect to any Collateral therefor or any direct or indirect guarantee thereof, (ii) marshal the Collateral or any guarantee of the Secured Obligations or to resort to the Collateral or any such guarantee in any particular order, or (iii) effect a public sale of any Collateral.

(g) Each Grantor recognizes that the Collateral Agent may be unable to effect a public sale of any or all the Pledged Collateral and may be compelled to resort to one or more private sales thereof in accordance with clause (a) above. Each Grantor also acknowledges that any private sale may result in prices and other terms less favorable to the seller than if such sale

were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall not be deemed to have been made in a commercially unreasonable manner solely by virtue of such sale being private. The Collateral Agent shall be under no obligation to delay a sale of any of the Pledged Collateral for the period of time necessary to permit any Grantor or the issuer of the Pledged Collateral to register such securities for public sale under the Securities Act of 1933, as amended, or under applicable state securities laws, even if the applicable Grantor and the issuer would agree to do so.

V.3 Grantor's Obligations Upon Event of Default. Upon the written request of the Collateral Agent after the occurrence and during the continuation of an Event of Default, each Grantor will:

(a) assemble and make available to the Collateral Agent the Collateral and all books and records relating thereto at any place or places specified by the Collateral Agent, whether at a Grantor's premises or elsewhere;

(b) to the extent permitted by applicable law, permit the Collateral Agent, by the Collateral Agent's representatives and agents, to enter, occupy and use any premises where all or any part of the Collateral, or the books and records relating thereto, or both, are located, to take possession of all or any part of the Collateral or the books and records relating thereto, or both, to remove all or any part of the Collateral or the books and records relating thereto, or both, and to conduct sales of the Collateral, without any obligation to pay the Grantor for such use and occupancy;

(c) prepare and file, or cause an issuer of Pledged Collateral to prepare and file, with the Securities and Exchange Commission or any other applicable government agency, registration statements, a prospectus and such other documentation in connection with the Pledged Collateral as the Collateral Agent may request in writing, all in form and substance satisfactory to the Collateral Agent, and furnish to the Collateral Agent, or cause an issuer of Pledged Collateral to furnish to the Collateral Agent, any information regarding the Pledged Collateral in such detail as the Collateral Agent may specify;

(d) take, or cause an issuer of Pledged Collateral to take, any and all actions necessary to register or qualify the Pledged Collateral to enable the Collateral Agent to consummate a public sale or other disposition of the Pledged Collateral; and

(e) at its own expense, cause the independent certified public accountants then engaged by each Grantor to prepare and deliver to the Collateral Agent and each Secured Party, at any time, and from time to time, promptly upon the Collateral Agent's written request, the following reports with respect to the applicable Grantor: (i) a reconciliation of all Accounts; (ii) an aging of all Accounts; (iii) trial balances; and (iv) a test verification of such Accounts.

V.4 Grant of Intellectual Property License. To the extent permitted under all applicable leases, licenses, agreements or arrangements related thereupon, for the purpose of enabling the Collateral Agent to exercise the rights and remedies under this Article V at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies

consistent with the terms of this Security Agreement, each Grantor hereby (a) grants to the Collateral Agent, for the benefit of the Collateral Agent and the other Secured Parties, an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to any Grantor) to use, license or sublicense any Intellectual Property rights now owned or hereafter acquired by such Grantor, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof, provided that (x) such license shall not be exercisable unless an Event of Default shall have occurred and be continuing and (y) such license and sublicense with respect to Trademarks shall be subject to the maintenance of quality standards with respect to the goods and services on which such Trademarks are used sufficient to preserve the validity and enforceability of such Trademarks and (b) irrevocably agrees that the Collateral Agent may sell any of such Grantor's Inventory directly to any Person, including without limitation Persons who have previously purchased the Grantor's Inventory from such Grantor and in connection with any such sale or other enforcement of the Collateral Agent's rights under this Security Agreement, may sell Inventory which bears any Trademark owned by or licensed to such Grantor and any Inventory that is covered by any Copyright owned by or licensed to such Grantor and the Collateral Agent may finish any work in process and affix any Trademark owned by or licensed to such Grantor and sell such Inventory as provided herein.

ARTICLE VI
ACCOUNT VERIFICATION; ATTORNEY IN FACT; PROXY

VI.1 Account Verification. The Collateral Agent may at any time after the occurrence and during the continuation of an Event of Default, in the Collateral Agent's own name, in the name of a nominee of the Collateral Agent, or in the name of any Grantor, communicate (by mail, telephone, facsimile or otherwise) with the Account Debtors of any such Grantor, parties to contracts with any such Grantor and obligors in respect of Instruments of any such Grantor to verify with such Persons, to the Collateral Agent's reasonable satisfaction, the existence, amount, terms of, and any other matter relating to, Accounts, Instruments, Chattel Paper, payment intangibles and/or other Receivables.

VI.2 Authorization for Collateral Agent to Take Certain Action.

(a) Each Grantor irrevocably authorizes the Collateral Agent at any time after the occurrence and during the continuation of an Event of Default (other than clause (ii) below, which may be done irrespective of whether an Event of Default has occurred and is continuing) in the sole discretion of the Collateral Agent and appoints the Collateral Agent as its attorney-in-fact (i) to endorse and collect any cash proceeds of the Collateral, (ii) to file any financing statement with respect to the Collateral and to file any other financing statement or amendment of a financing statement (which does not add new collateral or add a debtor) in such offices as the Collateral Agent in its sole discretion deems necessary or desirable to perfect and to maintain the perfection and priority of the Collateral Agent's security interest in the Collateral, (iii) in the case of any Material Intellectual Property owned by a Grantor, execute, deliver and have recorded any document that the Collateral Agent may request to evidence, effect, publicize or

record the Collateral Agent's security interest in such Material Intellectual Property, (iv) to contact and enter into one or more agreements with securities intermediaries holding Pledged Collateral as may be necessary or advisable to give the Collateral Agent Control over such Pledged Collateral, (v) to discharge past due taxes, assessments, charges, fees or Liens on the Collateral (except for such Liens that are permitted under Section 4.12 of the Indenture), (vi) to contact Account Debtors for any reason, (vii) to demand payment or enforce payment of the Receivables in the name of the Collateral Agent or such Grantor and to endorse any and all checks, drafts, and other instruments for the payment of money relating to the Receivables, (viii) to sign such Grantor's name on any invoice or bill of lading relating to the Receivables, drafts against any Account Debtor of such Grantor, assignments and verifications of Receivables, (ix) to exercise all of such Grantor's rights and remedies with respect to the collection of the Receivables and any other Collateral, (x) to settle, adjust, compromise, extend or renew the Receivables, (xi) to settle, adjust or compromise any legal proceedings brought to collect Receivables, (xii) to prepare, file and sign such Grantor's name on a proof of claim in bankruptcy or similar document against any Account Debtor of such Grantor, (xiii) to prepare, file and sign such Grantor's name on any notice of Lien, assignment or satisfaction of Lien or similar document in connection with the Receivables, (xiv) to change the address for delivery of mail addressed to such Grantor to such address as the Collateral Agent may designate and to receive, open and dispose of all mail addressed to such Grantor, and (xv) to do all other acts and things necessary to carry out this Security Agreement; and such Grantor agrees to reimburse the Collateral Agent on demand for any reasonable expense incurred by the Collateral Agent in connection with the foregoing clause (a); *provided that*, this authorization shall not relieve such Grantor of any of its obligations under this Security Agreement or under the Indenture.

(b) All acts of said attorney or designee are hereby ratified and approved. The powers conferred on the Collateral Agent, for the benefit of the Collateral Agent and Secured Parties, under this Section 6.2 are solely to protect the Collateral Agent's interests in the Collateral and shall not impose any duty upon the Collateral Agent or any other Secured Party to exercise any such powers. The Collateral Agent agrees that it shall not exercise any power or authority granted to it unless an Event of Default has occurred and is continuing.

VI.3 Proxy. EACH GRANTOR HEREBY IRREVOCABLY CONSTITUTES AND APPOINTS THE COLLATERAL AGENT AS ITS PROXY AND ATTORNEY-IN-FACT (AS SET FORTH IN SECTION 6.2 ABOVE) OF THE GRANTOR WITH RESPECT TO ITS PLEDGED COLLATERAL, INCLUDING THE RIGHT TO VOTE SUCH PLEDGED COLLATERAL, WITH FULL POWER OF SUBSTITUTION TO DO SO. IN ADDITION TO THE RIGHT TO VOTE ANY SUCH PLEDGED COLLATERAL, THE APPOINTMENT OF THE COLLATERAL AGENT AS PROXY AND ATTORNEY-IN-FACT SHALL INCLUDE THE RIGHT TO EXERCISE ALL OTHER RIGHTS, POWERS, PRIVILEGES AND REMEDIES TO WHICH A HOLDER OF SUCH PLEDGED COLLATERAL WOULD BE ENTITLED (INCLUDING GIVING OR WITHHOLDING WRITTEN CONSENTS OF SHAREHOLDERS, CALLING SPECIAL MEETINGS OF SHAREHOLDERS AND VOTING AT SUCH MEETINGS). SUCH PROXY SHALL BE EFFECTIVE, AUTOMATICALLY AND WITHOUT THE NECESSITY OF ANY ACTION (INCLUDING ANY TRANSFER OF ANY SUCH PLEDGED COLLATERAL ON THE RECORD BOOKS OF THE ISSUER THEREOF)

BY ANY PERSON (INCLUDING THE ISSUER OF SUCH PLEDGED COLLATERAL OR ANY OFFICER OR AGENT THEREOF), UPON THE OCCURRENCE AND DURING THE CONTINUATION OF AN EVENT OF DEFAULT.

VI.4 Nature of Appointment; Limitation of Duty. THE APPOINTMENT OF THE COLLATERAL AGENT AS PROXY AND ATTORNEY-IN-FACT IN THIS ARTICLE VI IS COUPLED WITH AN INTEREST AND SHALL BE IRREVOCABLE UNTIL THE DATE ON WHICH THIS SECURITY AGREEMENT IS TERMINATED IN ACCORDANCE WITH SECTION 7.13. NOTWITHSTANDING ANYTHING CONTAINED HEREIN, NONE OF THE COLLATERAL AGENT, ANY HOLDER, ANY OTHER SECURED PARTY, ANY OF THEIR RESPECTIVE AFFILIATES, OR ANY OF THEIR OR THEIR AFFILIATES' RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL HAVE ANY DUTY TO EXERCISE ANY RIGHT OR POWER GRANTED HEREUNDER OR OTHERWISE OR TO PRESERVE THE SAME AND SHALL NOT BE LIABLE FOR ANY FAILURE TO DO SO OR FOR ANY DELAY IN DOING SO, EXCEPT IN RESPECT OF DAMAGES ATTRIBUTABLE SOLELY TO ITS OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION; PROVIDED THAT, IN NO EVENT SHALL THEY BE LIABLE FOR ANY PUNITIVE, EXEMPLARY, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES.

ARTICLE VII
GENERAL PROVISIONS

VII.1 Waivers. Each Grantor hereby waives notice of the time and place of any public sale or the time after which any private sale or other disposition of all or any part of the Collateral may be made. To the extent such notice may not be waived under applicable law, any notice made shall be deemed reasonable if sent to Grantors, addressed as set forth in Exhibit A, at least ten (10) days prior to (i) the date of any such public sale or (ii) the time after which any such private sale or other disposition may be made. To the maximum extent permitted by applicable law, each Grantor waives all claims, damages, and demands against the Collateral Agent or any Secured Party arising out of the repossession, retention or sale of the Collateral, except such as arise solely out of the gross negligence or willful misconduct of the Collateral Agent or such Secured Party (or its successors, assigns or agents) as finally determined by a court of competent jurisdiction. To the extent it may lawfully do so, each Grantor absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against the Collateral Agent or any other Secured Party, any valuation, stay, appraisal, extension, moratorium, redemption or similar laws and any and all rights or defenses it may have as a surety now or hereafter existing which, but for this provision, might be applicable to the sale of any Collateral made under the judgment, order or decree of any court, or privately under the power of sale conferred by this Security Agreement, or otherwise. Except as otherwise specifically provided herein, each Grantor hereby waives presentment, demand, protest or any notice (to the maximum extent permitted by applicable law) of any kind in connection with this Security Agreement or any Collateral.

VII.2 Limitation on Collateral Agent's and Secured Parties' Duty with Respect to the Collateral. The Collateral Agent shall have no obligation to clean-up or otherwise prepare the Collateral for sale. The Collateral Agent and each other Secured Party shall use reasonable care with respect to the Collateral in its possession or under its control. Neither the Collateral Agent nor any other Secured Party shall have any other duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of the Collateral Agent or such other Secured Party, or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. To the extent that applicable law imposes duties on the Collateral Agent to exercise remedies in a commercially reasonable manner, each Grantor acknowledges and agrees that it is commercially reasonable for the Collateral Agent (i) to fail to incur expenses deemed significant by the Collateral Agent to prepare Collateral for disposition or otherwise to transform raw material or work in process into finished goods or other finished products for disposition, (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (iii) to fail to exercise collection remedies against Account Debtors or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral, (iv) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (vi) to contact other Persons, whether or not in the same business as such Grantor, for expressions of interest in acquiring all or any portion of such Collateral, (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature, (viii) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets, (ix) to dispose of assets in wholesale rather than retail markets, (x) to disclaim disposition warranties, such as title, possession or quiet enjoyment, (xi) to purchase insurance or credit enhancements to insure the Collateral Agent against risks of loss, collection or disposition of Collateral or to provide to the Collateral Agent a guaranteed return from the collection or disposition of Collateral, or (xii) to the extent deemed appropriate by the Collateral Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Collateral Agent in the collection or disposition of any of the Collateral. The Grantor acknowledges that the purpose of this Section 7.2 is to provide non-exhaustive indications of what actions or omissions by the Collateral Agent would be commercially reasonable in the Collateral Agent's exercise of remedies against the Collateral and that other actions or omissions by the Collateral Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 7.2. Without limitation upon the foregoing, nothing contained in this Section 7.2 shall be construed to grant any rights to the Grantor or to impose any duties on the Collateral Agent that would not have been granted or imposed by this Security Agreement or by applicable law in the absence of this Section 7.2.

VII.3 Compromises and Collection of Collateral. The Grantors and the Collateral Agent recognize that setoffs, counterclaims, defenses and other claims may be asserted by obligors with respect to certain of the Receivables, that certain of the Receivables may be or become

uncollectible in whole or in part and that the expense and probability of success in litigating a disputed Receivable may exceed the amount that reasonably may be expected to be recovered with respect to a Receivable. In view of the foregoing, each Grantor agrees that the Collateral Agent may at any time and from time to time, if an Event of Default has occurred and is continuing, compromise with the obligor on any Receivable, accept in full payment of any Receivable such amount as the Collateral Agent in its sole discretion shall determine or abandon any Receivable, and any such action by the Collateral Agent shall be commercially reasonable so long as the Collateral Agent acts in good faith and without gross negligence or willful misconduct based on information known to it at the time it takes any such action.

VII.4 Secured Party Performance of Debtor Obligations. Without having any obligation to do so, the Collateral Agent may (but shall not be obligated to), upon written notice to the Company, perform or pay any obligation which any Grantor has agreed to perform or pay in this Security Agreement but has failed to perform or pay within the time periods afforded in this Security Agreement, and the Grantors shall reimburse the Collateral Agent for any amounts paid by the Collateral Agent pursuant to this Section 7.4. The Grantors' obligation to reimburse the Collateral Agent pursuant to the preceding sentence shall be a Secured Obligation payable on demand.

VII.5 Specific Performance of Certain Covenants. Each Grantor acknowledges and agrees that a breach of any of the covenants contained in Sections 4.1(d), 4.1(e), 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.12, 4.13, 5.3, or 7.7 will cause irreparable injury to the Collateral Agent and the other Secured Parties, that the Collateral Agent and the other Secured Parties have no adequate remedy at law in respect of such breaches and therefore agrees, without limiting the right of the Collateral Agent or the other Secured Parties to seek and obtain specific performance of other obligations of the Grantors contained in this Security Agreement, that the covenants of the Grantors contained in the Sections referred to in this Section 7.5 shall be specifically enforceable against the Grantors.

VII.6 Dispositions of Collateral. No Grantor is authorized to sell or otherwise dispose of the Collateral except as set forth in Section 4.1(d) or as otherwise permitted under the Indenture, and notwithstanding any course of dealing between any Grantor and the Collateral Agent or other conduct of the Collateral Agent, no authorization to sell or otherwise dispose of the Collateral (except as set forth in Section 4.1(d)) shall be binding upon the Collateral Agent or the other Secured Parties unless such authorization is in writing signed by the Collateral Agent with the consent or at the direction of the Required Noteholders.

VII.7 No Waiver; Amendments; Cumulative Remedies. No failure or delay by the Collateral Agent or any other Secured Party in exercising any right or power under this Security Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Collateral Agent and the other Secured Parties hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Security Agreement or consent to any departure by the Grantor

therefrom shall in any event be effective unless in writing signed by the Collateral Agent with the concurrence or at the direction of the Required Noteholders required under Section 8.05 of the Indenture and then only to the extent specifically set forth in such writing; *provided* that this Security Agreement may be supplemented through amendments substantially in the forms of Exhibits H, I, and J hereto, in each case duly executed by the Grantor directly affected thereby and acknowledged and agreed to by the Collateral Agent. Section 4.16 of the Indenture is incorporated by reference *mutatis mutandis*.

VII.8 Limitation by Law; Severability of Provisions. All rights, remedies and powers provided in this Security Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Security Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they shall not render this Security Agreement invalid, unenforceable or not entitled to be recorded or registered, in whole or in part. Any provision in this Security Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction, and to this end the provisions of this Security Agreement are declared to be severable.

VII.9 Reinstatement. This Security Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against any Grantor for liquidation or reorganization, should any Grantor become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver or trustee be appointed for all or any significant part of any Grantor's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Secured Obligations, or any part thereof (including a payment effected through exercise of a right of setoff), is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise (including pursuant to any settlement entered into by a Secured Party in its discretion), all as though such payment or performance had not been made. In the event that any payment, or any part thereof (including a payment effected through exercise of a right of setoff), is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

VII.10 Benefit of Agreement. The terms and provisions of this Security Agreement shall be binding upon and inure to the benefit of the Grantors, the Collateral Agent and the other Secured Parties and their respective successors and permitted assigns (including all Persons who become bound as a debtor to this Security Agreement), except that no Grantor shall have the right to assign its rights or delegate its obligations under this Security Agreement or any interest herein, except as permitted by the Indenture or without the prior written consent of the Collateral Agent (acting at the direction of Required Noteholders). No sales of participations, assignments, transfers, or other dispositions of any agreement governing the Secured Obligations or any

portion thereof or interest therein shall in any manner impair the Lien granted to the Collateral Agent, for the benefit of the Collateral Agent and the other Secured Parties, hereunder.

VII.11 Survival of Representations. All representations and warranties of the Grantors contained in Article III of this Security Agreement shall survive the execution and delivery of this Security Agreement.

VII.12 Headings. The title of and section headings in this Security Agreement are for convenience of reference only, and shall not govern the interpretation of any of the terms and provisions of this Security Agreement.

VII.13 Termination. This Security Agreement shall continue in effect (notwithstanding the fact that from time to time there may be no Secured Obligations outstanding) until (i) the Indenture has terminated pursuant to its express terms and (ii) all of the Secured Obligations (other than contingent indemnification obligations as to which no claim has been made) have been paid and performed in full and no commitments of the Collateral Agent or the other Secured Parties which would give rise to any Secured Obligations are outstanding.

VII.14 Entire Agreement. This Security Agreement and the Indenture embody the entire agreement and understanding between the Grantors and the Collateral Agent relating to the Collateral and supersedes all prior agreements and understandings between the Grantors and the Collateral Agent relating to the Collateral.

VII.15 [Reserved].

VII.16 **CHOICE OF LAW; CONSENT TO JURISDICTION. SECTION 18.04 OF THE INDENTURE IS HEREBY INCORPORATED BY REFERENCE *MUTATIS MUTANDIS*.**

VII.17 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS SECURITY AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

VII.18 Indemnity. Each Grantor hereby agrees to indemnify the Collateral Agent and the other Secured Parties, and their respective successors, permitted assigns, agents and employees (each such Person being called an "Indemnitee"), from and against any and all losses, claims, damages, liabilities and related expenses, including the reasonable fees, charges and

disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of or in connection with, this Security Agreement, in each case except such as arise from the gross negligence or willful misconduct of such Indemnitee as finally determined by a court of competent jurisdiction.

VII.19 Counterparts. This Security Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Security Agreement by signing any such counterpart, including by electronic signature. Delivery of an executed counterpart of a signature page of this Security Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Security Agreement.

ARTICLE VIII
NOTICES

VIII.1 Sending Notices. Any notice required or permitted to be given under this Security Agreement shall be sent in accordance with Section 18.03 of the Indenture, provided that notices to each Grantor shall be sent to such Grantor at its mailing address set forth in Exhibit A hereto (as the same may be supplemented from time to time by such Grantor).

VIII.2 Change in Address for Notices. Each of the Grantors and the Collateral Agent may change the address for service of notice upon it by a notice in writing to the other parties.

ARTICLE IX
THE COLLATERAL AGENT

U.S. Bank Trust Company, National Association is entering into this Security Agreement and each other Notes Document not in its individual or corporate capacity but solely in its capacity as Collateral Agent under the Indenture and in acting hereunder and under each other Notes Document, whether or not expressly provided herein or therein, shall be entitled to all of the rights, privileges, immunities and indemnities granted to the Collateral Agent under the Indenture, including without limitation those set forth in Article 8 of the Indenture, as if such rights, privileges, immunities and indemnities were set forth herein. Whenever in this Security Agreement the Collateral Agent is granted the power to request or demand a document, instrument or action, exercise discretion or otherwise take actions with respect to the Collateral, the Collateral Agent shall be entitled to seek direction from Required Noteholders and shall have no liability for acting in accordance with such direction or any delays caused by seeking such direction. In the case of a conflict between this Agreement or any other Notes Document and the Indenture with respect to the Collateral Agent's rights, the Indenture shall control.

[Signature Page Follows]

IN WITNESS WHEREOF, the Grantors and the Collateral Agent have executed this Security Agreement as of the date first above written.

GROUPON, INC., as a Grantor

By: /S/ Jiri Ponrt
Name: Jiri Ponrt
Title: Chief Financial Officer

GROUPON GOODS, INC., as a Grantor

By: /S/ Jiri Ponrt
Name: Jiri Ponrt
Title: President

GI INTERNATIONAL HOLDINGS, INC.,
as a Grantor

By: /S/ Jiri Ponrt
Name: Jiri Ponrt
Title: President

GROUPON MERCHANT SERVICES, LLC, as a Grantor

By: /S/ Jiri Ponrt
Name: Jiri Ponrt
Title: President

GROUPON ACTIVITIES, LLC, as a Grantor

By: Groupon, Inc., its sole member

By: /S/ Jiri Ponrt
Name: Jiri Ponrt
Title: Chief Financial Officer

LIVINGSOCIAL, LLC, as a Grantor

By: /S/ Jiri Ponrt
Name: Jiri Ponrt
Title: President

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

By: /S/ Linda Garcia
Name: Linda Garcia
Title: Vice President

EXHIBIT A

NOTICE ADDRESS FOR ALL GRANTORS

[See Attached.]

AMERICASACTIVE:20656773.3

EXHIBIT B

[Reserved.]

EXHIBIT C

LETTER OF CREDIT RIGHTS

CHATTEL PAPER

[See Attached.]

EXHIBIT D

INTELLECTUAL PROPERTY RIGHTS

[See Attached.]

EXHIBIT E

LIST OF COMMERCIAL TORT CLAIMS

[See Attached.]

EXHIBIT F

[See Attached.]

EXHIBIT G

UCC FILING JURISDICTIONS

[See Attached.]

EXHIBIT H

AMENDMENT – COMMERCIAL TORT CLAIMS

[See Attached.]

EXHIBIT I

AMENDMENT – PLEDGED COLLATERAL

[See Attached.]

EXHIBIT J

AMENDMENT – COPYRIGHTS

[See Attached.]

EXHIBIT K

FORM OF ISSUER ACKNOWLEDGMENT

[See Attached.]

EXHIBIT L

FORM OF COPYRIGHT SECURITY AGREEMENT

[See Attached.]

EXHIBIT M

FORM OF TRADEMARK SECURITY AGREEMENT

[See Attached.]

EXHIBIT N

FORM OF SECURITY AGREEMENT JOINDER

SUPPLEMENT NO. _ dated as of [-] (this "Supplement"), to the Pledge and Security Agreement dated as of November 19, 2024 (the "Security Agreement"), by and among Groupon, Inc., a Delaware corporation, (the "Company"), each Subsidiary of the Company listed on the signature pages thereof (together with the Company, each a "Grantor", and collectively, the "Grantors"), and U.S. Bank Trust Company, National Association, a national banking association ("U.S. Bank"), solely in its capacity as collateral agent pursuant to that certain Indenture referred to below (in such capacity, together with any successors in such capacity, the "Collateral Agent").

A. Reference is made to the Indenture dated as of November 19, 2024 (as amended, restated, supplemented or otherwise modified from time to time, the "Indenture") among the Company, the Grantors, the guarantors party thereto, the Collateral Agent and U.S. Bank, as trustee.

B. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Indenture and the Security Agreement, as applicable.

C. Section 4.1(i) of the Security Agreement provides that additional Subsidiaries may become Grantors under the Security Agreement by execution and delivery of an instrument in the form of this Supplement. The undersigned Subsidiary (the "New Grantor") is executing this Supplement in accordance with the requirements of the Indenture to become a Grantor under the Security Agreement.

Accordingly, the Collateral Agent and the New Grantor agree as follows:

In accordance with Section 4.1(i) of the Security Agreement, the New Grantor by its signature below becomes a Grantor under the Security Agreement with the same force and effect as if originally named therein as a Grantor, and the New Grantor hereby (a) agrees to all the terms and provisions of the Security Agreement applicable to it as a Grantor thereunder and (b) represents and warrants that the representations and warranties made by it as a Grantor thereunder (as supplemented by the attached supplemental schedules to the Security Agreement) are true and correct, in all material respects, on and as of the date hereof. In furtherance of the foregoing, the New Grantor, as security for the payment and performance in full of the Secured Obligations, does hereby create and grant to the Collateral Agent, its successors and assigns, for the ratable benefit of the Secured Parties, their successors and assigns, a security interest in and Lien on all the New Grantor's right, title and interest in and to the Collateral of the New Grantor. Each reference to a "Grantor" in the Security Agreement shall be deemed to include the New Grantor. The Security Agreement is hereby incorporated herein by reference.

The New Grantor represents and warrants to the Collateral Agent and the other Secured Parties that this Supplement has been duly authorized, executed and delivered by it and constitutes its

legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to (i) the effects of bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or other similar laws affecting creditors' rights generally, (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and (iii) implied covenants of good faith and fair dealing.

This Supplement may be executed in two or more counterparts, each of which shall constitute an original but all of which when taken together shall constitute but one contract. This Supplement shall become effective when (a) the Collateral Agent shall have received a counterpart of this Supplement that bears the signature of the New Grantor and (b) the Collateral Agent has executed a counterpart hereof.

The New Grantor has attached hereto any supplemental schedules to the Security Agreement which require updates pursuant to the New Grantor becoming a Grantor hereunder, and the New Grantor hereby represents and warrants that the attached schedules are complete and correct with respect to the New Grantor.

Except as expressly supplemented hereby, the Security Agreement shall remain in full force and effect.

THIS SUPPLEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS SUPPLEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK.

In the event any one or more of the provisions contained in this Supplement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and in the Security Agreement shall not in any way be affected or impaired thereby. The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

All communications and notices hereunder shall be in writing and given as provided in Article VIII of the Security Agreement.

The New Grantor agrees to reimburse the Collateral Agent for its reasonable expenses in connection with this Supplement, including the reasonable fees, disbursements and other charges of counsel for the Collateral Agent in accordance with Section 7.06 of the Indenture.

). U.S. Bank Trust Company, National Association is entering into this Supplement not in its individual or corporate capacity but solely in its capacity as Collateral Agent under the Indenture and in acting hereunder and under the Security Agreement and each other Notes Document, whether or not expressly provided herein or therein, shall be entitled to all of the rights, privileges, immunities and indemnities granted to the Collateral Agent under the Indenture, including without limitation those set forth in Article 8 of the Indenture, as if such rights, privileges, immunities and indemnities were set forth herein.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the New Grantor and the Collateral Agent have duly executed this Supplement to the Security Agreement as of the day and year first above written.

[Name of New Grantor]

By:

Name:

Title:

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

By:
Name:
Title: