

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended June 30, 2024

or

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

For the transition period from to

Commission file number 001-38791

LUMINAR TECHNOLOGIES, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

2603 Discovery Drive

(Address of Principal Executive Offices)

Suite 100

Orlando

Florida

83-1804317

(I.R.S. Employer Identification No.)

32826

(Zip Code)

(800) 532-2417

Registrant's telephone number, including area code

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

Title of each class	Trading symbol(s)	Name of each exchange on which registered
Class A common stock, par value of \$0.0001 per share	LAZR	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports); and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

As of July 31, 2024, the registrant had 396,671,867 shares of Class A common stock and 97,088,670 shares of Class B common stock, par value \$0.0001 per share, outstanding.

LUMINAR TECHNOLOGIES, INC. AND SUBSIDIARIES
FORM 10-Q
TABLE OF CONTENTS

	<u>Page</u>
CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS	2
PART I. FINANCIAL INFORMATION	
Item 1. Financial Statements.	4
Condensed Consolidated Balance Sheets (Unaudited)	4
Condensed Consolidated Statements of Operations and Comprehensive Loss (Unaudited)	5
Condensed Consolidated Statements of Stockholders' Deficit (Unaudited)	6
Condensed Consolidated Statements of Cash Flows (Unaudited)	8
Notes to Condensed Consolidated Financial Statements (Unaudited)	9
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.	33
Overview	33
Industrialization and Business Update	33
Basis of Presentation	34
Components of Results of Operations	34
Results of Operations	36
Liquidity and Capital Resources	38
Critical Accounting Policies and Estimates	39
Recent Accounting Pronouncements	39
Item 3. Quantitative and Qualitative Disclosures About Market Risk.	40
Item 4. Controls and Procedures.	40
PART II. OTHER INFORMATION	
Item 1. Legal Proceedings.	41
Item 1A. Risk Factors.	41
Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.	43
Item 3. Defaults Upon Senior Securities.	43
Item 4. Mine Safety Disclosures.	43
Item 5. Other Information.	43
Item 6. Exhibits.	44
SIGNATURES	45

CAUTIONARY NOTE REGARDING FORWARD LOOKING STATEMENTS

This Quarterly Report on Form 10-Q (this “Form 10-Q”) includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”) and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), which involve substantial risks and uncertainties. These statements reflect the current views of management with respect to future events and our financial performance. These forward-looking statements include statements regarding the estimated costs and expected benefits of the restructuring plan initiated in May 2024, product plans, future growth, sales estimates/Order Book numbers, market opportunities, strategic initiatives, industry positioning, customer acquisition and retention, revenue growth and anticipated impacts on our business of any future health epidemics and outbreaks. In some cases, you can identify these statements by forward-looking words such as “outlook,” “believes,” “expects,” “future,” “potential,” “continues,” “may,” “will,” “should,” “could,” “seeks,” “approximately,” “predicts,” “intends,” “plans,” “estimates,” “anticipates” or the negative version of these words or other comparable words or phrases, but the absence of these words does not mean that a statement is not forward-looking. These forward-looking statements, which are subject to risks, uncertainties and assumptions about us, may include projections of our future financial performance, our anticipated growth strategies and anticipated trends in our business.

These statements are only predictions based on our current expectations and projections about future events. There are important factors that could cause our actual results, level of activity, performance or achievements to differ materially from the results, level of activity, performance or achievements expressed or implied by the forward-looking statements, including our history of losses and our expectation that we will continue to incur significant expenses, including substantial R&D costs, and continuing losses for the foreseeable future as well as our limited operating history which makes it difficult to evaluate our future prospects and the risks and challenges we may encounter; our strategic initiatives which may prove more costly than we currently anticipate and potential failure to increase our revenue to offset these initiatives; whether our LiDAR products are selected for inclusion in autonomous driving or Advanced Driving Assistance Systems (“ADAS”) by automotive original equipment manufacturers (“OEMs”) or their suppliers, and whether we will be de-selected by any customers; the lengthy period of time from a major commercial win to implementation and the risks of cancellation or postponement of the contract or unsuccessful implementation; potential inaccuracies in our forward looking estimates of certain metrics, including Order Book, our future cost of goods sold (“COGS”) and bill of materials (“BOM”) and total addressable market; the discontinuation, lack of success of our customers in developing and commercializing products using our solutions or loss of business with respect to a particular vehicle model or technology package and whether end automotive consumers will demand and be willing to pay for such features; our ability to successfully fund our growth if there are considerable delays in product introductions by us or our customers; our inability to reduce and control the cost of the inputs on which we rely, which could negatively impact the adoption of our products and our profitability; the effect of continued pricing pressures, competition from other LiDAR manufacturers, OEM cost reduction initiatives and the ability of automotive OEMs to re-source or cancel vehicle or technology programs which may result in lower than anticipated margins, or losses, which may adversely affect our business; the effect of general economic conditions, including inflation, recession risks and rising interest rates, generally and on our industry and us in particular, including the level of demand and financial performance of the autonomous vehicle industry and the decline in fair value of available-for-sale debt securities in a rising interest rate environment; market adoption of LiDAR as well as developments in alternative technology and the increasingly competitive environment in which we operate, which includes established competitors and market participants that have substantially greater resources; our ability to achieve technological feasibility and commercialize our software products and the requirement to continue to develop new products and product innovations due to rapidly changing markets and government regulations of such technologies; our ability to build, launch, receive regulatory approval, sell, and service insurance products as well as market and differentiate the benefits of LiDAR-based ADAS to consumers; our ability to manage our growth and expand our business operations effectively, including into international markets, such as China, which exposes us to operational, financial, regulatory and geopolitical risks; changes in our government contracts business and our defense customers’ business due to political change and global conflicts; adverse impacts due to limited availability and quality of materials, supplies, and capital equipment, or dependency on third-party service providers and single-source suppliers; the project-based nature of our orders, which can cause our results of operations to fluctuate on a quarterly and annual basis; whether we will be able to successfully transition our engineering designs into high volume manufacturing, including our ability to transition to an outsourced manufacturing business model and whether we and our outsourcing partners and suppliers can successfully operate complex machinery; whether we can successfully select, execute or integrate our acquisitions; whether the complexity of our products results in undetected defects and reliability issues which could reduce market adoption of our new products, limit our ability to manufacture, damage our reputation and expose us to product liability, warranty and other claims; our ability to maintain and adequately manage our inventory; our ability to maintain an effective system of internal control over financial reporting; our ability to protect and enforce our intellectual property rights; availability of qualified personnel, loss of highly skilled personnel and dependence on Austin Russell, our Founder, President and Chief Executive Officer; the impact of inflation and our stock price on our ability to hire and retain highly skilled personnel; the amount and timing of future sales and whether the average selling prices of our products could decrease rapidly over the life of the product as well as our dependence on a few key customers, who are often large corporations with substantial negotiating power; our ability to establish and maintain confidence in our long-term business

prospects among customers and analysts and within our industry; whether we are subject to negative publicity; the effects of COVID-19 or other infectious diseases, health epidemics, pandemics and natural disasters on Luminar's business; interruption or failure of our information technology and communications systems; cybersecurity risks to our operational systems, security systems, infrastructure, integrated software in our LiDAR solutions; market instability exacerbated by geopolitical conflicts, including the Israel-Hamas war and the conflict between Russia and Ukraine, as well as trade disputes with China and including the effect of sanctions and trade restrictions that may affect supply chain or sales opportunities; and those other factors discussed in Part 1, Item 1A, of our Annual Report on Form 10-K for the fiscal year ended December 31, 2023 (our "2023 Annual Report") under the heading "Risk Factors" and in subsequent reports filed with the SEC which we encourage you to carefully read. Given these risks, uncertainties and other factors, you should not place undue reliance on these forward-looking statements. Although we believe the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, level of activity, performance or achievements. We undertake no obligation to update any forward-looking statements made in this Form 10-Q to reflect events or circumstances after the date of this Form 10-Q or to reflect new information or the occurrence of unanticipated events, except as required by law.

In addition, statements that "we believe" and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based upon information available to us as of the date of this Quarterly Report on Form 10-Q, and while we believe such information forms a reasonable basis for such statements, such information may be limited or incomplete, and our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all potentially available relevant information. These statements are inherently uncertain, and investors are cautioned not to unduly rely upon these statements.

WEBSITE AND SOCIAL MEDIA DISCLOSURE

We use our website (<https://www.luminartech.com/>) and various social media channels as a means of disclosing information about the Company and its products to its customers, investors and the public (e.g., @luminartech on X (formerly Twitter), Luminartech on YouTube, and Luminar Technologies on LinkedIn). The information on our website (or any webpages referenced in this Quarterly Report on Form 10-Q) or posted on social media channels is not part of this or any other report that the Company files with, or furnishes to, the Securities and Exchange Commission (the "SEC"). The information we post through these channels may be deemed material. Accordingly, investors should monitor these channels, in addition to following our press releases, SEC filings and public conference calls and webcasts.

PART I. FINANCIAL INFORMATION

Item 1. Financial Statements.

LUMINAR TECHNOLOGIES, INC. AND SUBSIDIARIES

Condensed Consolidated Balance Sheets
(In thousands)

	June 30, 2024 (Unaudited)	December 31, 2023
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 52,335	\$ 139,095
Restricted cash	1,758	1,529
Marketable securities	108,989	150,727
Accounts receivable	19,752	14,124
Inventory	14,026	12,196
Prepaid expenses and other current assets	33,175	32,950
Total current assets	230,035	350,621
Property and equipment, net	58,190	66,300
Operating lease right-of-use assets	44,408	42,706
Intangible assets, net	20,994	22,994
Goodwill	7,390	7,390
Other non-current assets	20,792	22,356
Total assets	\$ 381,809	\$ 512,367
LIABILITIES AND STOCKHOLDERS' DEFICIT		
Current liabilities:		
Accounts payable	\$ 20,506	\$ 21,113
Accrued and other current liabilities	37,402	52,605
Operating lease liabilities	11,370	10,154
Total current liabilities	69,278	83,872
Warrant liabilities	84	1,069
Convertible senior notes	617,046	615,428
Operating lease liabilities, non-current	36,207	35,079
Other non-current liabilities	1,343	1,667
Total liabilities	723,958	737,115
Commitments and contingencies (Note 15)		
Stockholders' deficit:		
Class A common stock	39	34
Class B common stock	10	10
Additional paid-in capital	2,066,404	1,927,378
Accumulated other comprehensive income (loss)	(109)	2
Treasury stock	(312,477)	(312,477)
Accumulated deficit	(2,096,016)	(1,839,695)
Total stockholders' deficit	(342,149)	(224,748)
Total liabilities and stockholders' deficit	\$ 381,809	\$ 512,367

See accompanying notes to the unaudited condensed consolidated financial statements.

LUMINAR TECHNOLOGIES, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Operations and Comprehensive Loss
(Unaudited)
(In thousands, except share and per share data)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Revenue:				
Products	\$ 15,739	\$ 9,923	\$ 31,041	\$ 17,290
Services	712	6,274	6,378	13,416
Total revenue	16,451	16,197	37,419	30,706
Cost of sales:				
Products	19,969	25,059	44,476	44,262
Services	10,162	9,473	17,078	19,403
Total cost of sales	30,131	34,532	61,554	63,665
Gross loss	(13,680)	(18,335)	(24,135)	(32,959)
Operating expenses:				
Research and development	65,850	67,483	133,600	136,535
Sales and marketing	12,140	15,654	26,655	29,383
General and administrative	29,790	42,420	62,839	86,910
Restructuring costs	6,262	—	6,262	—
Total operating expenses	114,042	125,557	229,356	252,828
Loss from operations	(127,722)	(143,892)	(253,491)	(285,787)
Other income (expense), net:				
Change in fair value of warrant liabilities	163	26	985	(1,028)
Interest expense	(2,757)	(1,273)	(5,514)	(2,938)
Interest income	2,519	1,605	5,949	3,510
Gain from acquisition of EM4, LLC (“EM4”)	—	—	1,752	—
(Losses)/gains related to investments and certain other assets, and other income (expense)	(3,376)	1,787	(5,981)	(2,278)
Total other income (expense), net	(3,451)	2,145	(2,809)	(2,734)
Loss before provision for income taxes	(131,173)	(141,747)	(256,300)	(288,521)
Provision for (benefit from) income taxes	(566)	9	21	9
Net loss	\$ (130,607)	\$ (141,756)	\$ (256,321)	\$ (288,530)
Net loss per share:				
Basic and diluted	\$ (0.29)	\$ (0.37)	\$ (0.58)	\$ (0.77)
Shares used in computing net loss per share:				
Basic and diluted	453,978,904	382,424,675	439,454,034	376,616,066
Comprehensive Loss:				
Net loss	\$ (130,607)	\$ (141,756)	\$ (256,321)	\$ (288,530)
Net unrealized gain (loss) on available-for-sale debt securities	(41)	1,192	(111)	3,418
Comprehensive loss	\$ (130,648)	\$ (140,564)	\$ (256,432)	\$ (285,112)

See accompanying notes to the unaudited condensed consolidated financial statements.

LUMINAR TECHNOLOGIES, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Stockholders' Deficit
(Unaudited)
(In thousands, except share data)

	Class A Common Stock		Class B Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Treasury Stock	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount					
Balance as of March 31, 2023	301,045,203	\$ 30	97,088,670	\$ 10	\$ 1,647,357	\$ (2,000)	\$ (312,477)	\$ (1,415,200)	\$ (82,280)
Issuance of Class A common stock upon exercise of stock options and vesting of restricted stock units	4,009,392	—	—	—	610	—	—	—	610
Issuance of Class A common stock under employee stock purchase plan ("ESPP")	272,524	—	—	—	1,406	—	—	—	1,406
Issuance of Class A common stock under the Equity Financing Program	1,005,603	—	—	—	6,939	—	—	—	6,939
Issuance of Class A common stock to a wholly owned subsidiary of TPK Universal Solutions Limited ("TPK")	1,652,892	—	—	—	10,000	—	—	—	10,000
Vendor payments under the stock-in-lieu of cash program	4,487,402	1	—	—	16,853	—	—	—	16,854
Milestone awards related to acquisitions	1,415,613	—	—	—	9,320	—	—	—	9,320
Share-based compensation	—	—	—	—	48,568	—	—	—	48,568
Other comprehensive income	—	—	—	—	—	1,192	—	—	1,192
Net loss	—	—	—	—	—	—	—	(141,756)	(141,756)
Balance as of June 30, 2023	<u>313,888,629</u>	<u>\$ 31</u>	<u>97,088,670</u>	<u>\$ 10</u>	<u>\$ 1,741,053</u>	<u>\$ (808)</u>	<u>\$ (312,477)</u>	<u>\$ (1,556,956)</u>	<u>\$ (129,147)</u>
Balance as of March 31, 2024	365,309,068	\$ 36	97,088,670	\$ 10	\$ 1,998,063	\$ (68)	\$ (312,477)	\$ (1,965,409)	\$ (279,845)
Issuance of Class A common stock upon exercise of Private Warrants	—	—	—	—	—	—	—	—	—
Issuance of Class A common stock upon exercise of stock options and vesting of restricted stock units	10,712,932	1	—	—	33	—	—	—	34
Issuance of Class A common stock under employee stock purchase plan ("ESPP")	529,648	—	—	—	799	—	—	—	799
Issuance of Class A common stock under the Equity Financing Program	10,356,990	1	—	—	18,674	—	—	—	18,675
Vendor payments under the stock-in-lieu of cash program	1,440,549	—	—	—	2,784	—	—	—	2,784
Milestone awards related to acquisition	3,167,190	1	—	—	5,614	—	—	—	5,615
Share-based compensation, including restructuring costs	—	—	—	—	40,392	—	—	—	40,392
Expense related to Volvo Warrants	—	—	—	—	135	—	—	—	135
Payments of employee taxes related to vested restricted stock units	—	—	—	—	(90)	—	—	—	(90)
Other comprehensive loss	—	—	—	—	—	(41)	—	—	(41)
Net loss	—	—	—	—	—	—	—	(130,607)	(130,607)
Balance as of June 30, 2024	<u>391,516,377</u>	<u>\$ 39</u>	<u>97,088,670</u>	<u>\$ 10</u>	<u>\$ 2,066,404</u>	<u>\$ (109)</u>	<u>\$ (312,477)</u>	<u>\$ (2,096,016)</u>	<u>\$ (342,149)</u>

See accompanying notes to the unaudited condensed consolidated financial statements.

LUMINAR TECHNOLOGIES, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Stockholders' Deficit
(Unaudited)
(In thousands, except share data)

	Class A Common Stock		Class B Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Loss	Treasury Stock	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount					
Balance as of December 31, 2022	291,942,087	\$ 29	97,088,670	\$ 10	\$ 1,558,685	\$ (4,226)	\$ (312,477)	\$ (1,268,426)	\$ (26,405)
Issuance of Class A common stock upon exercise of stock options and vesting of restricted stock units	8,725,129	1	—	—	1,648	—	—	—	1,649
Issuance of Class A common stock under employee stock purchase plan ("ESPP")	272,524	—	—	—	1,406	—	—	—	1,406
Vendor payments under the stock-in-lieu of cash program	6,115,092	1	—	—	33,594	—	—	—	33,595
Issuance of Class A common stock to a wholly owned subsidiary of TPK	1,652,892	—	—	—	10,000	—	—	—	10,000
Milestone awards related to acquisitions	1,415,613	—	—	—	9,320	—	—	—	9,320
Issuance of Class A common stock under the Equity Financing Program	3,765,292	—	—	—	29,604	—	—	—	29,604
Share-based compensation	—	—	—	—	97,368	—	—	—	97,368
Payments of employee taxes related to stock-based awards	—	—	—	—	(572)	—	—	—	(572)
Other comprehensive income	—	—	—	—	—	3,418	—	—	3,418
Net loss	—	—	—	—	—	—	—	(288,530)	(288,530)
Balance as of June 30, 2023	<u>313,888,629</u>	<u>\$ 31</u>	<u>97,088,670</u>	<u>\$ 10</u>	<u>\$ 1,741,053</u>	<u>\$ (808)</u>	<u>\$ (312,477)</u>	<u>\$ (1,556,956)</u>	<u>\$ (129,147)</u>
Balance as of December 31, 2023	344,606,104	\$ 34	97,088,670	\$ 10	\$ 1,927,378	\$ 2	\$ (312,477)	\$ (1,839,695)	\$ (224,748)
Issuance of Class A common stock upon exercise of Private Warrants	—	—	—	—	—	—	—	—	—
Issuance of Class A common stock upon exercise of stock options and vesting of restricted stock units	16,706,256	2	—	—	405	—	—	—	407
Issuance of Class A common stock under ESPP	529,648	—	—	—	800	—	—	—	800
Issuance of Class A common stock under the Equity Financing Program	20,001,276	2	—	—	35,903	—	—	—	35,905
Issuance of Class A common stock under 401(k) Plan	1,500,000	—	—	—	2,550	—	—	—	2,550
Issuance of Class A common stock in settlement of certain claims	704,691	—	—	—	1,842	—	—	—	1,842
Vendor payments under the stock-in-lieu of cash program	1,591,755	1	—	—	5,004	—	—	—	5,005
Milestone awards related to acquisitions	5,876,647	—	—	—	11,249	—	—	—	11,249
Share-based compensation, including restructuring costs	—	—	—	—	81,354	—	—	—	81,354
Expense related to Volvo Warrants	—	—	—	—	135	—	—	—	135
Payments of employee taxes related to stock-based awards	—	—	—	—	(216)	—	—	—	(216)
Other comprehensive loss	—	—	—	—	—	(111)	—	—	(111)
Net loss	—	—	—	—	—	—	—	(256,321)	(256,321)
Balance as of June 30, 2024	<u>391,516,377</u>	<u>\$ 39</u>	<u>97,088,670</u>	<u>\$ 10</u>	<u>\$ 2,066,404</u>	<u>\$ (109)</u>	<u>\$ (312,477)</u>	<u>\$ (2,096,016)</u>	<u>\$ (342,149)</u>

See accompanying notes to the unaudited condensed consolidated financial statements.

LUMINAR TECHNOLOGIES, INC. AND SUBSIDIARIES
Condensed Consolidated Statements of Cash Flows
(Unaudited)
(In thousands)

	Six Months Ended June 30,	
	2024	2023
Cash flows from operating activities:		
Net loss	\$ (256,321)	\$ (288,530)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	14,458	7,536
Amortization of operating lease right-of-use assets	4,230	3,303
Amortization of premium on marketable securities	(1,278)	(1,611)
Loss on marketable securities	1,976	1,859
Change in fair value of private warrants	(985)	1,028
Vendor stock-in-lieu of cash program	8,448	21,114
Gain from acquisition of EM4	(1,752)	—
Amortization of debt discount and issuance costs	1,618	1,618
Inventory write-offs and write-downs	17,806	13,432
Share-based compensation, including restructuring costs	83,019	115,149
Impairment of investments	4,000	—
Change in product warranty and other	(2,758)	3,084
Changes in operating assets and liabilities:		
Accounts receivable	(4,563)	(5,635)
Inventories	(16,098)	(24,958)
Prepaid expenses and other current assets	(1,793)	13,858
Other non-current assets	(2,915)	(5,287)
Accounts payable	(1,877)	3,761
Accrued and other current liabilities	916	10,927
Other non-current liabilities	(5,067)	(8,631)
Net cash used in operating activities	<u>(158,936)</u>	<u>(137,983)</u>
Cash flows from investing activities:		
Acquisition of EM4 (net of cash acquired)	(3,831)	—
Acquisition of Seagate's lidar business	—	(12,608)
Purchases of marketable securities	(75,051)	(171,118)
Proceeds from maturities of marketable securities	112,242	277,771
Proceeds from sales/redemptions of marketable securities	3,737	39,152
Purchases of property and equipment	(1,586)	(16,831)
Net cash provided by investing activities	<u>35,511</u>	<u>116,366</u>
Cash flows from financing activities:		
Net proceeds from issuance of Class A common stock under the Equity Financing Program	35,903	29,604
Proceeds from issuance of Class A common stock to a wholly owned subsidiary of TPK	—	10,000
Proceeds from exercise of stock options	407	1,570
Proceeds from sale of Class A common stock under ESPP	800	1,406
Payments of employee taxes related to stock-based awards	(216)	(572)
Net cash provided by financing activities	<u>36,894</u>	<u>42,008</u>
Net increase (decrease) in cash, cash equivalents and restricted cash	<u>(86,531)</u>	<u>20,391</u>
Beginning cash, cash equivalents and restricted cash	140,624	71,105
Ending cash, cash equivalents and restricted cash	<u>\$ 54,093</u>	<u>\$ 91,496</u>
Supplemental disclosures of cash flow information:		
Cash paid for interest	\$ 3,906	\$ 3,906
Supplemental disclosures of noncash investing and financing activities:		
Operating lease right-of-use assets obtained in exchange for lease obligations	\$ 3,842	\$ 2,948
Purchases of property and equipment recorded in accounts payable and accrued liabilities	876	5,439
Vendor stock-in-lieu of cash program—advances for capital projects and equipment	—	4,245

See accompanying notes to the unaudited condensed consolidated financial statements.

LUMINAR TECHNOLOGIES, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements (Unaudited)

Note 1. Organization and Description of Business

Luminar Technologies, Inc. (together with its wholly-owned subsidiaries, the “Company” or “Luminar”) is incorporated in Delaware. Luminar is a global automotive technology company ushering in a new era of vehicle safety and autonomy. Over the past decade, Luminar has been building from the chip-level up, its light detection and ranging sensor, or LiDAR, which is expected to meet the demanding performance, safety, reliability and cost requirements to enable next-generation safety and autonomous capabilities for passenger and commercial vehicles as well as other adjacent markets. The Company’s Class A common stock is listed on the NASDAQ under the symbol “LAZR.”

The Company is headquartered in Orlando, Florida and has personnel that conducts the Company’s operations from various locations in the United States and internationally including Germany, Sweden, Mexico, China and India.

Note 2. Basis of Presentation and Summary of Significant Accounting Policies

Basis of Presentation and Consolidation

The accompanying condensed consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States (“GAAP”) and applicable rules and regulations of the Securities and Exchange Commission (the “SEC”) regarding interim financial reporting. Certain information and note disclosures normally included in financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such rules and regulations. Therefore, these condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and notes included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2023 (the “2023 Annual Report”) filed with the SEC on February 28, 2024. In the opinion of management, the condensed consolidated financial statements reflect all adjustments, which are normal and recurring in nature, necessary for fair financial statement presentation. All intercompany transactions and balances have been eliminated in consolidation.

Use of Estimates

The preparation of condensed consolidated financial statements in conformity with GAAP requires management to make judgments, estimates and assumptions that affect the reported amounts of assets, liabilities, equity, revenues and expenses, and related disclosures. The significant estimates made by management include inventory reserves, useful life of long-lived assets, valuation allowance for deferred tax assets, valuation of warrants issued in a private placement (“Private Warrants”), valuation of contingent consideration payable, and assets acquired in mergers and acquisitions including intangible assets, forecasted costs associated with non-recurring engineering (“NRE”) services, restructuring costs and stock-based compensation expense. Management periodically evaluates such estimates and they are adjusted prospectively based upon such periodic evaluation. Actual results could differ from those estimates.

Segment Information

The Company has determined its operating segments using the same indicators which are used to evaluate its performance internally. The Company’s business activities are organized into two operating segments:

(i) “Autonomy Solutions” which includes manufacturing and distribution of LiDAR sensors that measure distance using laser light to generate a 3D map, non-recurring engineering services related to the Company’s LiDAR products, development of software products that enable autonomy capabilities for automotive applications, and licensing of certain information. In June 2022, the Company acquired certain assets from Solstice Research, Inc. (“Solstice” or “Civil Maps”). In January 2023, the Company acquired certain assets from Seagate Technology LLC and Seagate Singapore International Headquarters Pte. Ltd. (individually and collectively, “Seagate”). Assets purchased from both Civil Maps and Seagate have been included in the Autonomy Solutions segment.

(ii) “Advanced Technologies and Services (“ATS”) which includes the design, development, manufacturing, packaging and development services of photonic components and subsystems (including semiconductor lasers and photodetectors), application-specific integrated circuits and pixel-based sensors. The Company acquired Optogration, Inc. (“Optogration”) in August 2021, Freedom Photonics LLC (“Freedom Photonics”), in April 2022, and EM4, LLC (“EM4”) in March 2024. Operations of Optogration, Freedom Photonics and EM4 have been included in the ATS segment since their respective acquisition dates.

LUMINAR TECHNOLOGIES, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements (Unaudited)

Concentration of Credit Risk

The Company's financial instruments that are exposed to concentrations of credit risk consist primarily of cash and cash equivalents, debt securities and accounts receivable. The Company's deposits exceed federally insured limits. Cash held by foreign subsidiaries of the Company as of June 30, 2024 and December 31, 2023 was not material.

The Company's revenue is derived from customers located in the United States and international markets. Two customers accounted for 51% and 12% of the Company's accounts receivable as of June 30, 2024, respectively. One customer accounted for 71% of the Company's accounts receivable as of December 31, 2023.

Significant Accounting Policies

The Company's significant accounting policies are disclosed in its Annual Report on Form 10-K for the year ended December 31, 2023. There has been no material change to the Company's significant accounting policies during the six months ended June 30, 2024.

Recent Accounting Pronouncements Not Yet Effective

In December 2023, the Financial Accounting Standards Board ("FASB") issued Accounting Standard Update ("ASU") No. ASU 2023-09, *Income Taxes (Topic 740) Improvements to Income Tax Disclosures* ("ASU 2023-09"). ASU 2023-09 requires a public company to enhance the transparency and decision usefulness of income tax disclosures to provide information to better assess how an entity's operations and related tax risks and tax planning and operational opportunities affect its tax rate and prospects for future cash flows. ASU 2023-09 will be effective for the Company for the annual period beginning January 1, 2025 with early adoption permitted. The Company is currently evaluating this guidance and the impact it may have on its financial statement disclosures.

In November 2023, the FASB issued ASU 2023-07, *Segment Reporting (Topic 280) Improvements to Reportable Segment Disclosures* ("ASU 2023-07"). ASU 2023-07 requires a public company to enhance disclosures about significant segment expenses and provide incremental segment information on an annual and interim basis to enable investors to develop more decision-useful financial analyses. ASU 2023-07 will be effective for the Company for fiscal year beginning January 1, 2024, and interim periods within fiscal year beginning January 1, 2025, with early adoption permitted. The Company is currently evaluating this guidance and the impact it may have on its financial statement disclosures.

Note 3. Business Combinations and Acquisitions

Acquisition of EM4

On March 18, 2024 (the "Acquisition Date"), the Company completed its acquisition of EM4, a designer, manufacturer and seller of packaged photonic components and sub-systems for aerospace and industrial markets. The EM4 acquisition is expected to accelerate the Company's strategy to package lasers, detectors and ASICs.

The Company acquired 100% of the membership interests of EM4 from G&H Investment Holding, Inc. ("G&H"), for an aggregate purchase price of approximately \$8.5 million in cash, net of working capital adjustments, and up to \$6.75 million in contingent future payments to G&H subject to the achievement of certain financial performance targets. The fair value of the contingent consideration at the Acquisition Date was estimated to be \$0.1 million. The Company utilized a Monte Carlo simulation model to estimate the probability-weighted fair value of the contingent consideration. This transaction has been accounted for as a business combination. The acquisition related costs incurred as part of the transaction were not material.

Recording of Assets Acquired and Liabilities Assumed

Price allocation includes preliminary estimates of deferred tax balances, certain tax liabilities, for which the Company is in the process of collecting documentation to ascertain potential amounts, and fair value of certain working capital components. Preliminary estimates of fair values included in the condensed consolidated financial statements are expected to be finalized within a one-year measurement period following the acquisition date after which any subsequent adjustments will be reflected in the consolidated statements of operations.

LUMINAR TECHNOLOGIES, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements (Unaudited)

The following table summarizes the preliminary purchase price allocation to assets acquired (in thousands):

	Preliminary Recorded Value
Cash and cash equivalents	\$ 557
Accounts receivable	1,064
Contract asset	1,644
Inventories, net	3,539
Prepaid expenses and other current assets	252
Property plant and equipment	1,888
Operating lease right-of-use assets	2,072
Total assets acquired	<u>11,016</u>
Current liabilities	(3,148)
Operating lease liabilities, non-current	(1,628)
Total liabilities assumed	<u>(4,776)</u>
Net assets acquired	<u>\$ 6,240</u>

Since the consideration paid by the Company to acquire EM4's business was lower than the estimated fair value of net assets acquired, the Company recognized a \$.8 million gain from the acquisition of EM4. The following factors contributed towards the purchase price paid by the Company being lower than the estimated fair value of the net assets acquired: (a) EM4 had historically been incurring losses; (b) G&H viewed EM4 as non-core; (c) although G&H pursued a competitive auction process for the business, the ultimate timeline to completion was drawn-out due to the complexity of the transaction structure; and (d) during the later stages of the sale process, after the Company was selected as the winning bidder, EM4's business was impacted by the cancellation of certain material government programs as well as delays in certain other purchase orders, which also served to significantly reduce the estimated probability of the contingent future payments to G&H.

The results of operations related to EM4 are included in our condensed consolidated statements of operations beginning from the Acquisition Date.

LUMINAR TECHNOLOGIES, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements (Unaudited)

Note 4. Revenue

The Company's revenue is comprised of sales of LiDAR sensors hardware, components, NRE services and licensing of certain information available with the Company.

Disaggregation of Revenues

The Company disaggregates its revenue from contracts with customers by (1) geographic region based on a customer's billed to location, and (2) type of good or service and timing of transfer of goods or services to customers (point-in-time or over time), as it believes it best depicts how the nature, amount, timing and uncertainty of its revenue and cash flows are affected by economic factors. Total revenue based on the disaggregation criteria described above, as well as revenue by segment, are as follows (in thousands):

	Three Months Ended June 30,			
	2024		2023	
	Revenue	% of Revenue	Revenue	% of Revenue
Revenue by primary geographical market:				
North America	\$ 15,764	96 %	\$ 13,776	85 %
Asia Pacific	16	— %	393	2 %
Europe and Middle East	671	4 %	2,028	13 %
Total	\$ 16,451	100 %	\$ 16,197	100 %
Revenue by timing of recognition:				
Recognized at a point in time	\$ 15,808	96 %	\$ 9,932	61 %
Recognized over time	643	4 %	6,265	39 %
Total	\$ 16,451	100 %	\$ 16,197	100 %
Revenue by segment:				
Autonomy Solutions	\$ 9,981	61 %	\$ 9,738	60 %
ATS	6,470	39 %	6,459	40 %
Total	\$ 16,451	100 %	\$ 16,197	100 %

	Six Months Ended June 30,			
	2024		2023	
	Revenue	% of Revenue	Revenue	% of Revenue
Revenue by primary geographical market:				
North America	\$ 36,101	97 %	\$ 26,974	88 %
Asia Pacific	97	— %	985	3 %
Europe and Middle East	1,221	3 %	2,747	9 %
Total	\$ 37,419	100 %	\$ 30,706	100 %
Revenue by timing of recognition:				
Recognized at a point in time	\$ 31,112	83 %	\$ 17,290	56 %
Recognized over time	6,307	17 %	13,416	44 %
Total	\$ 37,419	100 %	\$ 30,706	100 %
Revenue by segment:				
Autonomy Solutions	\$ 26,301	70 %	\$ 20,411	66 %
ATS	11,118	30 %	10,295	34 %
Total	\$ 37,419	100 %	\$ 30,706	100 %

Volvo Stock Purchase Warrant

The Company had previously issued certain stock purchase warrants ("Volvo Warrants") to Volvo Car Technology Fund AB ("VCTF") in connection with an engineering services contract. The Volvo Warrants vest and become exercisable in two tranches based on satisfaction of certain commercial milestones. The fair value of the first tranche of the Volvo Warrants was recorded as a reduction in revenue in 2021. The second tranche of the Volvo warrants will be recorded as reduction in revenue

LUMINAR TECHNOLOGIES, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements (Unaudited)

to be amortized over sales of a certain number of the Company’s sensors to Volvo for use in their commercial vehicles, which commenced in the second quarter of 2024.

Contract assets and liabilities

Changes in the Company’s contract assets and contract liabilities primarily result from the timing difference between the Company’s performance and the customer’s payment based on contractual terms. Contract assets primarily represent revenues recognized for performance obligations that have been satisfied but for which amounts have not been billed. Contract liabilities consist of the Company’s obligation to transfer goods or services to a customer for which the Company has received consideration from the customer. Customer advance payments represent required customer payments in advance of product shipments. Customer advance payments are recognized in revenue as or when control of the performance obligation is transferred to the customer.

The opening and closing balances of contract assets were as follows (in thousands):

	June 30, 2024	December 31, 2023
Contract assets, current	\$ 10,807	\$ 14,132
Contract assets, non-current	4,944	2,471
Ending balance	<u>\$ 15,751</u>	<u>\$ 16,603</u>

The significant changes in contract assets balances consisted of the following (in thousands):

	June 30, 2024	December 31, 2023
Beginning balance	\$ 16,603	\$ 17,970
Amounts billed that were included in the contract assets beginning balance	(3,523)	(10,965)
Contract assets from acquisition of EM4 (See Note 3)	1,644	—
Revenue recognized for performance obligations that have been satisfied but for which amounts have not been billed	1,027	9,598
Ending balance	<u>\$ 15,751</u>	<u>\$ 16,603</u>

The opening and closing balances of contract liabilities were as follows (in thousands):

	June 30, 2024	December 31, 2023
Contract liabilities, current	\$ 1,707	\$ 3,127
Contract liabilities, non-current	229	805
Ending balance	<u>\$ 1,936</u>	<u>\$ 3,932</u>

The significant changes in contract liabilities balances consisted of the following (in thousands):

	June 30, 2024	December 31, 2023
Beginning balance	\$ 3,932	\$ 3,008
Revenue recognized that was included in the contract liabilities beginning balance	(2,586)	(2,125)
Increase due to cash received and not recognized as revenue and billings in excess of revenue recognized during the period	590	3,049
Ending balance	<u>\$ 1,936</u>	<u>\$ 3,932</u>

Remaining Performance Obligations

Revenue allocated to remaining performance obligations was \$7.9 million as of June 30, 2024 and includes amounts within contract liabilities. The Company expects to recognize approximately 97% of this revenue over the next 12 months and the remainder thereafter.

Note 5. Restructuring

In May, the Company approved a restructuring plan (the “May 2024 Plan”) which was announced on May 3, 2024. The plan included reducing workforce by roughly 20% and sub-leasing of certain facilities. The actions disclosed commenced immediately following the announcement and are expected to be essentially complete by the end of 2024. By June 30, 2024, the reduction in workforce actions resulted in the termination of 155 employees. Total separation costs associated with the May

LUMINAR TECHNOLOGIES, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements (Unaudited)

2024 Plan amounted to \$6.3 million in the second quarter of 2024 and have been included as restructuring costs in the income statement. The following table summarizes the restructuring charges as of June 30, 2024.

	Severance expense	Other expenses	Total
Balance as of December 31, 2023	\$ —	\$ —	\$ —
Restructuring charges	6,151	111	6,262
Cash payments	(3,300)	—	(3,300)
Non-cash charges	(1,412)	—	(1,412)
Balance payable and accrued liabilities as of June 30, 2024	<u>\$ 1,439</u>	<u>\$ 111</u>	<u>\$ 1,550</u>

The entire balance payable of \$1.6 million relates to the Autonomy Solutions segment.

Note 6. Investments

Debt Securities

The Company's investments in debt securities consisted of the following as of June 30, 2024 and December 31, 2023 (in thousands):

	June 30, 2024			
	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
U.S. treasury securities	\$ 18,140	\$ —	\$ (4)	\$ 18,136
U.S. agency and government sponsored securities	1,543	—	(1)	1,542
Commercial paper	9,876	—	—	9,876
Corporate bonds	75,949	3	(107)	75,845
Certificate of deposit	500	—	—	500
Total debt securities	<u>\$ 106,008</u>	<u>\$ 3</u>	<u>\$ (112)</u>	<u>\$ 105,899</u>
Included in cash and cash equivalents	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>
Included in marketable securities	<u>\$ 106,008</u>	<u>\$ 3</u>	<u>\$ (112)</u>	<u>\$ 105,899</u>

	December 31, 2023			
	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
U.S. treasury securities	\$ 86,764	\$ 20	\$ —	\$ 86,784
U.S. agency and government sponsored securities	2,732	—	—	2,732
Commercial paper	10,144	—	—	10,144
Corporate bonds	44,924	9	(27)	44,906
Total debt securities	<u>\$ 144,564</u>	<u>\$ 29</u>	<u>\$ (27)</u>	<u>\$ 144,566</u>
Included in cash and cash equivalents	<u>\$ 1,595</u>	<u>\$ —</u>	<u>\$ (1)</u>	<u>\$ 1,594</u>
Included in marketable securities	<u>\$ 142,969</u>	<u>\$ 29</u>	<u>\$ (26)</u>	<u>\$ 142,972</u>

The following table presents the gross unrealized losses and the fair value for those debt securities that were in an unrealized loss position for less than 12 months as of June 30, 2024 and December 31, 2023 (in thousands):

	June 30, 2024		December 31, 2023	
	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses	Fair Value
U.S. treasury securities	\$ (4)	\$ 16,487	\$ —	\$ —
U.S. agency and government sponsored securities	(1)	1,542	—	741
Corporate bonds	(107)	44,802	(27)	30,621
Total	<u>\$ (112)</u>	<u>\$ 62,831</u>	<u>\$ (27)</u>	<u>\$ 31,362</u>

LUMINAR TECHNOLOGIES, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements (Unaudited)

Equity Investments

The Company's equity investments consisted of the following as of June 30, 2024 and December 31, 2023 (in thousands):

	Condensed Consolidated Balance Sheets Location	June 30, 2024	December 31, 2023
Money market funds ⁽¹⁾	Cash and cash equivalents	\$ 40,627	\$ 101,842
Marketable equity investments ⁽¹⁾	Marketable securities	3,090	7,755
Investment in non-marketable securities ⁽²⁾	Other non-current assets	10,000	10,000
Non-marketable equity investment measured using the measurement alternative ⁽²⁾	Other non-current assets	—	4,000
Total		\$ 53,717	\$ 123,597

(1) Investments with readily determinable fair values.

(2) Investment in privately held company without readily determinable fair value.

The Company assesses its non-marketable equity investments quarterly for impairment. Adjustments and impairments are recorded in other income (expense), net on the condensed consolidated statements of operations.

The Company measured the current value of its investment in Robotic Research OpCo, LLC ("Forterra") at cost as provided under the guidance for measurement of equity investment using the measurement alternative. As a result of anticipated losses of preferred rights and decline in enterprise value of Forterra, the Company has recorded an impairment charge of \$4.0 million related to the said investment in the second quarter of 2024.

Note 7. Financial Statement Components

Cash and Cash Equivalents

Cash and cash equivalents consisted of the following (in thousands):

	June 30, 2024	December 31, 2023
Cash	\$ 11,708	\$ 35,659
Money market funds	40,627	101,842
Commercial paper	—	497
Corporate bonds	—	1,097
Total cash and cash equivalents	\$ 52,335	\$ 139,095

Inventory

Inventory comprised of the following (in thousands):

	June 30, 2024	December 31, 2023
Raw materials	\$ 7,317	\$ 5,614
Work-in-process	2,550	2,521
Finished goods	4,159	4,061
Total inventories, net	\$ 14,026	\$ 12,196

The Company's inventory write-downs were \$0.9 million and \$17.8 million for the three and six months ended June 30, 2024 and \$8.0 million and \$13.4 million for the three and six months ended June 30, 2023, respectively. The write-downs were primarily due to obsolescence charges as a result of change in product design, lower of cost or market assessment, yield losses, and other adjustments.

LUMINAR TECHNOLOGIES, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements (Unaudited)

Prepaid Expenses and Other Current Assets

Prepaid expenses and other current assets consisted of the following (in thousands):

	June 30, 2024	December 31, 2023
Prepaid expenses	\$ 14,746	\$ 12,434
Contract assets	10,807	14,132
Advance payments to vendors	1,180	3,038
Other receivables	6,442	3,346
Total prepaid expenses and other current assets	\$ 33,175	\$ 32,950

Property and Equipment

Property and equipment consisted of the following (in thousands):

	June 30, 2024	December 31, 2023
Machinery and equipment	\$ 61,017	\$ 58,815
Computer hardware and software	7,907	7,025
Land	1,001	1,001
Leasehold improvements	22,620	22,531
Vehicles, including demonstration fleet	2,139	2,207
Furniture and fixtures	929	900
Construction in progress	1,569	2,256
Total property and equipment	97,182	94,735
Accumulated depreciation	(38,992)	(28,435)
Total property and equipment, net	\$ 58,190	\$ 66,300

Property and equipment capitalized under finance lease were not material.

Depreciation expense associated with property and equipment was \$5.4 million and \$12.5 million for the three and six months ended June 30, 2024 and \$3.5 million and \$5.4 million for the three and six months ended June 30, 2023, respectively.

The Company continually evaluates opportunities for optimizing its manufacturing processes and product design. In 2023, the Company finalized and committed to a plan to change its sourcing of certain sub-assemblies and components from one supplier to another, which requires the Company to abandon certain equipment located at the legacy supplier. As a result, the Company has reduced the useful lives of the long-lived assets within the impacted asset group in line with when these assets are expected to be abandoned. The Company expects the transition to the new supplier to be essentially completed in 2024. The reduction in the estimated useful lives of the impacted assets resulted in the Company recording \$1.3 million and \$3.4 million of incremental accelerated depreciation charges in the three and six months ended June 30, 2024, respectively.

Intangible Assets

The following table summarizes the activity in the Company's intangible assets (in thousands):

	June 30, 2024	December 31, 2023
Beginning of the period	\$ 22,994	\$ 22,077
Additions	—	8,240
Amortization	(2,000)	(4,323)
Impairment	—	(3,000)
End of the period	\$ 20,994	\$ 22,994

LUMINAR TECHNOLOGIES, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements (Unaudited)

Intangible assets were acquired in connection with the Company's acquisition of Optogration in August 2021, Freedom Photonics in April 2022 and Solfixe in June 2022. The components of intangible assets were as follows (in thousands):

	June 30, 2024					December 31, 2023				
	Gross Carrying Amount	Accumulated Amortization	Impairment	Net Carrying Amount	Weighted Average Remaining Period (Years)	Gross Carrying Amount	Accumulated Amortization	Impairment	Net Carrying Amount	Weighted Average Remaining Period (Years)
Customer relationships	\$ 3,730	\$ (1,887)	\$ —	\$ 1,843	3.3	\$ 3,730	\$ (1,479)	\$ —	\$ 2,251	3.7
Customer backlog	650	(650)	—	—	—	650	(650)	—	—	—
Tradename	620	(401)	—	219	1.8	620	(339)	—	281	2.3
Assembled workforce	130	(130)	—	—	—	130	(130)	—	—	—
Developed technology	20,150	(5,718)	—	14,432	5.0	20,150	(4,188)	—	15,962	5.5
IPR&D	4,500	—	—	4,500	—	7,500	—	(3,000)	4,500	—
Total intangible assets	\$ 29,780	\$ (8,786)	\$ —	\$ 20,994	4.8	\$ 32,780	\$ (6,786)	\$ (3,000)	\$ 22,994	5.2

Amortization expense related to intangible assets was \$1.0 million and \$2.0 million for the three and six months ended June 30, 2024 and \$1.1 million and \$2.2 million for the three and six months ended June 30, 2023, respectively.

As of June 30, 2024, the expected future amortization expense for intangible assets was as follows (in thousands):

Period	Expected Future Amortization Expense
2024 (remaining six months)	\$ 2,000
2025	4,001
2026	3,355
2027	3,138
2028	1,646
Thereafter	2,354
IPR&D	4,500
Total	\$ 20,994

Goodwill

The carrying amount of goodwill allocated to the Company's reportable segments was as follows (in thousands):

	Autonomy Solutions	ATS	Total
Balance as of December 31, 2022	\$ 687	\$ 18,129	\$ 18,816
Goodwill related to acquisition of Seagate's lidar business	1,063	—	1,063
Impairment of goodwill related to Freedom Photonics	—	(12,489)	(12,489)
Balance as of December 31, 2023	\$ 1,750	\$ 5,640	\$ 7,390
Balance as of June 30, 2024	\$ 1,750	\$ 5,640	\$ 7,390

During the year ended December 31, 2023, the Company recognized impairment charges of \$12.5 million and \$3.0 million related to goodwill and IPR&D related to Freedom Photonics. These impairment charges were due to events that occurred during the fourth quarter of 2023, including a decision to delay development activities on certain new products resulting from an increasing focus on supporting the product roadmap of the Autonomy Solutions segment, and a lowering of the growth outlook for the business due to less than anticipated traction in sales of new products. As the Autonomy Solutions segment continues to develop its product roadmap, certain resources from the ATS segment assist in these activities. If these resources are utilized for longer than anticipated, the Company would expect additional development delays in its external facing products, which could result in future declines in its goodwill and IPR&D balances. Total life-to-date goodwill impairment charge recorded by the ATS reportable segment was \$12.5 million and no impairment charge has been recorded by the Autonomy Solutions reportable segment.

LUMINAR TECHNOLOGIES, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements (Unaudited)

In relation to the goodwill, the Company engaged third-party valuation specialists and used industry accepted valuation models and criteria that were reviewed and approved by various levels of management. The Company assessed the fair value of the Freedom Photonics reporting during the fourth quarter of 2023, using the discounted cash flow method under the income approach, utilizing estimated cash flows and a terminal value, discounted at a rate of return that reflects the relative risk of the cash flows. The significant assumptions used in the assessment of the reporting unit included revenue growth rates, profit margins, operating expenses, capital expenditures, terminal value and a discount rate. As a result of this assessment, the Company concluded that the carrying value of the Freedom Photonics reporting unit exceeded the estimated fair value by \$12.5 million, which was recorded as an impairment charge to goodwill.

In relation to the intangibles, the significant assumptions used in the assessment of the IPR&D intangible asset included revenue growth rates, a discount rate and a royalty rate. Based on this assessment, the Company recorded a \$3.0 million impairment charge related to the IPR&D intangible asset during the fourth quarter of 2023.

Other Non-Current Assets

Other non-current assets consisted of the following (in thousands):

	June 30, 2024	December 31, 2023
Security deposits	\$ 2,637	\$ 2,410
Non-marketable equity investment	10,000	14,000
Prepaid expenses non-current	2,492	—
Contract assets	4,944	2,471
Other non-current assets	719	3,475
Total other non-current assets	<u>\$ 20,792</u>	<u>\$ 22,356</u>

Accrued and Other Current Liabilities

Accrued and other current liabilities consisted of the following (in thousands):

	June 30, 2024	December 31, 2023
Accrued compensation and benefits	\$ 9,052	\$ 20,658
Accrued expenses	13,172	14,723
Contract losses	10,914	8,790
Warranty reserves	786	4,154
Contract liabilities	1,707	3,127
Accrued interest payable and other liabilities	1,771	1,153
Total accrued and other current liabilities	<u>\$ 37,402</u>	<u>\$ 52,605</u>

During the three and six months ended June 30, 2024, the Company recorded \$10.2 million and \$12.5 million, respectively, and \$4.8 million and \$7.6 million for the three and six months ended June 30, 2023, respectively, in cost of sales (services) with respect to estimated losses expected to be incurred on NRE projects with certain customers. The estimated contract losses were primarily driven by delays in achievement of certain milestones and changes in scope of project deliverables agreed upon with a customer.

Note 8. Debt

Convertible Senior Notes and Capped Call Transactions

In December 2021, the Company issued \$625.0 million aggregate principal amount of 1.25% Convertible Senior Notes due 2026 in a private placement, which included \$75.0 million aggregate principal amount of such notes pursuant to the exercise in full of the option granted to the initial purchasers to purchase additional notes (collectively, the "Convertible Senior Notes"). The interest on the Convertible Senior Notes is payable semi-annually in arrears on June 15 and December 15 of each year, beginning on June 15, 2022. The Convertible Senior Notes will mature on December 15, 2026, unless repurchased or redeemed earlier by the Company or converted pursuant to their terms.

The total net proceeds from the debt offering, after deducting fees paid to the initial purchasers paid by the Company, was approximately \$69.4 million.

Each \$1,000 principal amount of the Convertible Senior Notes is initially convertible into 50.0475 shares of the Company's Class A common stock, par value \$0.0001, which is equivalent to an initial conversion price of approximately

LUMINAR TECHNOLOGIES, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements (Unaudited)

\$19.98 per share. The conversion rate is subject to adjustment upon the occurrence of certain specified events prior to the maturity date but will not be adjusted for any accrued and unpaid interest. In addition, following certain corporate events that occur prior to the maturity date or if the Company delivers a notice of redemption in respect of some or all of the Convertible Senior Notes, the Company will, under certain circumstances, increase the conversion rate of the Convertible Senior Notes for a holder who elects to convert its Convertible Senior Notes in connection with such a corporate event or convert its Convertible Senior Notes called for redemption during the related redemption period, as the case may be. The Convertible Senior Notes are redeemable, in whole or in part (subject to certain limitations), at the Company's option at any time, and from time to time, on or after December 20, 2024, and on or before the 40th scheduled trading day immediately before the maturity date, at a cash redemption price equal to the principal amount of the Convertible Senior Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the redemption date, but only if certain liquidity conditions are satisfied and the last reported sale price per share of the Class A common stock exceeds 130% of the conversion price on (1) each of at least 20 trading days, whether or not consecutive, during the 30 consecutive trading days ending on, and including, the trading day immediately before the date the Company sends the related redemption notice, and (2) the trading day immediately before the date the Company sends such notice. If the Company undergoes a fundamental change (as defined in the indenture governing the Convertible Senior Notes) prior to the maturity date, holders may require the Company to repurchase for cash all or any portion of their Convertible Senior Notes in principal amounts of \$1,000 or a multiple thereof at a fundamental change repurchase price equal to 100% of the principal amount of the Convertible Senior Notes to be repurchased, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date.

Holders of the Convertible Senior Notes may convert their Convertible Senior Notes at their option at any time prior to the close of business on the business day immediately preceding December 15, 2026, in multiples of \$1,000 principal amount, only under the following circumstances: (1) during any calendar quarter (and only during such calendar quarter) commencing after the calendar quarter ending on March 31, 2022, if the last reported sale price per share of the Class A common stock exceeds 130% of the conversion price for each of at least 20 trading days, whether or not consecutive, during the 30 consecutive trading days ending on, and including, the last trading day of the immediately preceding calendar quarter; (2) during the five consecutive business days immediately after any 10 consecutive trading day period (such 10 consecutive trading day period, the "measurement period") in which the trading price per \$1,000 principal amount of Convertible Senior Notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price per share of the Class A common stock on such trading day and the conversion rate on such trading day; (3) upon the occurrence of specified corporate events or distributions on the Class A common stock; and (4) if the Convertible Senior Notes are called for redemption. On or after June 15, 2026, holders may convert all or any portion of their Convertible Senior Notes at any time prior to the close of business on the second scheduled trading day immediately preceding the maturity date, regardless of the foregoing circumstances. Upon conversion, the Company will pay or deliver, as the case may be, cash, shares of its Class A common stock or a combination of cash and shares of its Class A common stock, at the Company's election. As of June 30, 2024, the conditions allowing holders of the Convertible Senior Notes to convert were not met.

The Company currently intends to settle the principal amount of its outstanding Convertible Senior Notes in cash and any excess in shares of the Company's Class A common stock.

The Convertible Senior Notes are senior unsecured obligations and will rank equal in right of payment with the Company's future senior unsecured indebtedness; senior in right of payment to the Company's future indebtedness that is expressly subordinated to the Convertible Senior Notes; effectively subordinated to the Company's existing and future secured indebtedness, to the extent of the value of the collateral securing that indebtedness; and structurally subordinated to all existing and future indebtedness and other liabilities, including trade payables, and (to the extent the Company is not a holder thereof) preferred equity, if any, of the Company's subsidiaries.

The Company has classified the Convertible Senior Notes as a non-current liability under the guidance in ASC 470-20, as amended by ASU 2020-06. Debt discount and issuance costs aggregating approximately \$16.2 million were initially recorded as a reduction to the principal amount of the Convertible Senior Notes and is being amortized as interest expense on a straight line basis over the contractual terms of the notes. The Company estimates that the difference between amortizing the debt discounts and the issuance costs using the straight line method as compared to using the effective interest rate method is immaterial.

LUMINAR TECHNOLOGIES, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements (Unaudited)

The net carrying amount of the Convertible Senior Notes was as follows (in thousands):

	June 30, 2024	December 31, 2023
Principal	\$ 625,000	\$ 625,000
Unamortized debt discount and issuance costs	(7,954)	(9,572)
Net carrying amount	\$ 617,046	\$ 615,428

The following table sets forth the interest expense recognized related to the Convertible Senior Notes (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Contractual interest expense	\$ 1,948	\$ 1,948	\$ 3,896	\$ 3,874
Amortization of debt discount and issuance costs	809	809	1,618	1,618
Total interest expense	\$ 2,757	\$ 2,757	\$ 5,514	\$ 5,492

The remaining term over which the debt discount and issuance costs will be amortized is 2.5 years.

In connection with the offering of the Convertible Senior Notes, the Company entered into privately negotiated capped call option transactions with certain counterparties (the "Capped Calls"). The Capped Calls each have an initial strike price of approximately \$19.98 per share, subject to certain adjustments, which corresponds to the initial conversion price of the Convertible Senior Notes. The Capped Calls have initial cap prices of \$30.16 per share, subject to certain adjustment events. The Capped Calls are generally intended to reduce the potential dilution to the Class A common stock upon any conversion of the Convertible Senior Notes and/or offset any cash payments the Company is required to make in excess of the principal amount of converted Convertible Senior Notes, as the case may be, with such reduction and/or offset subject to a cap based on the cap price. The Capped Calls expire on April 6, 2027, subject to earlier exercise. The Capped Calls are subject to either adjustment or termination upon the occurrence of specified extraordinary events affecting the Company, including a merger event, a tender offer, and a nationalization, insolvency or delisting involving the Company. In addition, the Capped Calls are subject to certain specified additional disruption events that may give rise to a termination of the Capped Calls, including changes in law, failure to deliver, and hedging disruptions. The Capped Calls are recorded in stockholders' equity and are not accounted for as derivatives. The net cost of \$73.4 million incurred to purchase the Capped Calls was recorded as a reduction to additional paid-in capital in the accompanying consolidated balance sheet.

See Note 17, Subsequent Event for a description of the refinancing of the Convertible Senior Notes.

Credit Facility

In February 2024, the Company entered into two non-recourse loan and securities pledge agreements (the "Loan Agreements") with The St. James Bank & Trust Company Ltd. (the "Lender"), pursuant to which the Company may borrow up to an aggregate of \$50.0 million (the "Credit Facility"). Any loans made by the Lender under the Loan Agreements would be collateralized by shares of the Company's Class A common stock or stock the Company holds as investments in other companies. The Loan Agreements require the Company to pay an up-front structure fee of 1.5% on any amounts borrowed, and any outstanding amounts would bear interest at 8.0% per annum. The Company has not borrowed any amounts under the Credit Facility and had no outstanding balance as of June 30, 2024.

Note 9. Fair Value Measurements

As of June 30, 2024, the Company carried cash equivalents, marketable investments and Private Warrants that are measured at fair value on a recurring basis. Additionally, the Company measures its equity-settled fixed value awards at fair value on a recurring basis. See Note 12 for further information on the Company's fixed value equity awards.

Fair value is based on the price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Fair value is estimated by applying the following hierarchy, which prioritizes the inputs used to measure fair value into three levels and bases the categorization within the hierarchy upon the lowest level of input that is available and significant to the fair value measurement:

Level 1 — Observable inputs, which include unadjusted quoted prices in active markets for identical assets or liabilities.

LUMINAR TECHNOLOGIES, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements (Unaudited)

Level 2 — Observable inputs other than Level 1 inputs, such as quoted prices in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3 — Unobservable inputs that are supported by little or no market activity and that are based on management's assumptions, including fair value measurements determined by using pricing models, discounted cash flow methodologies or similar techniques.

The Company determined the fair value of its Level 1 financial instruments, which are traded in active markets, using quoted market prices for identical instruments.

Marketable investments classified within Level 2 of the fair value hierarchy are valued based on other observable inputs, including broker or dealer quotations, alternative pricing sources or U.S. Government Treasury yield of appropriate term. When quoted prices in active markets for identical assets or liabilities are not available, the Company relies on non-binding quotes from its investment managers, which are based on proprietary valuation models of independent pricing services. These models generally use inputs such as observable market data, quoted market prices for similar instruments, historical pricing trends of a security as relative to its peers. To validate the fair value determination provided by its investment managers, the Company reviews the pricing movement in the context of overall market trends and trading information from its investment managers. The Company performs routine procedures such as comparing prices obtained from independent source to ensure that appropriate fair values are recorded.

Given that the transfer of Private Warrants to anyone outside of a small group of individuals constituting the sponsors of Gores Metropoulos, Inc. ("Gores") would result in the Private Warrants having substantially the same terms as warrants issued in connection with the initial public offering of Gores ("Public Warrants"), management determined that the fair value of each Private Warrant is the same as that of a Public Warrant, with an insignificant adjustment for short-term marketability restrictions. As of June 30, 2024, management determined the fair value of the Private Warrants using observable inputs in the Black-Scholes valuation model, which used the remaining term of warrants of 1.42 years volatility of 90.16% and a risk-free rate of 4.93%. Accordingly, the Private Warrants are classified as Level 3 financial instruments.

The following table presents changes in Level 3 liabilities relating to Private Warrants measured at fair value (in thousands):

	Private Warrants	
Balance as of December 31, 2023	\$	1,069
Change in fair value of outstanding warrants		(985)
Balance as of June 30, 2024	\$	84

LUMINAR TECHNOLOGIES, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements (Unaudited)

The Company's financial assets and liabilities subject to fair value measurements on a recurring basis and the level of inputs used for such measurements were as follows (in thousands):

	Fair Value Measured as of June 30, 2024:			
	Level 1	Level 2	Level 3	Total
Assets:				
Cash equivalents:				
Money market funds	\$ 40,627	\$ —	\$ —	\$ 40,627
Total cash equivalents	\$ 40,627	\$ —	\$ —	\$ 40,627
Marketable investments:				
U.S. treasury securities	\$ 18,136	\$ —	\$ —	\$ 18,136
U.S. agency and government sponsored securities	—	1,542	—	1,542
Commercial paper	—	9,876	—	9,876
Corporate bonds	—	75,845	—	75,845
Certificate of deposit	—	500	—	500
Marketable equity investments	3,090	—	—	3,090
Total marketable investments	\$ 21,226	\$ 87,763	\$ —	\$ 108,989
Liabilities:				
Private Warrants	\$ —	\$ —	\$ 84	\$ 84

	Fair Value Measured as of December 31, 2023:			
	Level 1	Level 2	Level 3	Total
Assets:				
Cash equivalents:				
Money market funds	\$ 101,842	\$ —	\$ —	\$ 101,842
Commercial paper	—	497	—	497
Corporate bonds	—	1,097	—	1,097
Total cash equivalents	\$ 101,842	\$ 1,594	\$ —	\$ 103,436
Marketable investments:				
U.S. treasury securities	\$ 86,784	\$ —	\$ —	\$ 86,784
U.S. agency and government sponsored securities	—	2,732	—	2,732
Commercial paper	—	9,647	—	9,647
Corporate bonds	—	43,809	—	43,809
Marketable equity investments	7,755	—	—	7,755
Total marketable investments	\$ 94,539	\$ 56,188	\$ —	\$ 150,727
Liabilities:				
Private Warrants	\$ —	\$ —	\$ 1,069	\$ 1,069

As of June 30, 2024 and December 31, 2023, the estimated fair value of the Company's outstanding Convertible Senior Notes was \$49.4 million and \$296.3 million, respectively. The fair value was determined based on the quoted price of the Convertible Senior Notes in an inactive market on the last trading day of the reporting period and have been classified as Level 2 in the fair value hierarchy. See Note 8 for further information on the Company's Convertible Senior Notes.

The fair value of Company's other financial instruments, including accounts receivable, accounts payable and other current liabilities, approximate their carrying value due to the relatively short maturity of those instruments. The carrying amounts of the Company's finance leases approximate their fair value, which is the present value of expected future cash payments based on assumptions about current interest rates and the creditworthiness of the Company.

See Note 17. Subsequent Event for a description of the refinancing of the Convertible Senior Notes.

LUMINAR TECHNOLOGIES, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements (Unaudited)

Note 10. Earnings (Loss) Per Share

Basic earnings (loss) per share is computed by dividing net income (loss) by the weighted average number of shares of common stock outstanding during the period. Diluted earnings per share is computed by dividing net income by the weighted average number of shares of common stock during the period plus common stock equivalents, as calculated under the treasury stock method, outstanding during the period. If the Company reports a net loss, the computation of diluted loss per share excludes the effect of dilutive common stock equivalents, as their effect would be antidilutive. The Company computes earnings (loss) per share using the two-class method for its Class A and Class B common stock. Earnings (loss) per share is same for both Class A and Class B common stock since they are entitled to the same liquidation and dividend rights.

The following table sets forth the computation of basic and diluted loss per share for the three and six months ended June 30, 2024 and 2023 (in thousands, except for share and per share amounts):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Numerator:				
Net loss	\$ (130,607)	\$ (141,756)	\$ (256,321)	\$ (288,530)
Denominator:				
Weighted average common shares outstanding—Basic	453,978,904	382,424,675	439,454,034	376,616,066
Weighted average common shares outstanding—Diluted	453,978,904	382,424,675	439,454,034	376,616,066
Net loss per share—Basic and Diluted	\$ (0.29)	\$ (0.37)	\$ (0.58)	\$ (0.77)

The following table presents the potential shares of common stock outstanding that were excluded from the computation of diluted net loss per share of common stock as of the periods presented because including them would have been antidilutive or related contingencies on issuance of shares had not been met as of June 30, 2024:

	June 30, 2024
Warrants	5,757,549
Stock-based awards—Equity classified	41,491,615
Stock-based awards—Liability classified	28,592,498
Vendor stock-in-lieu of cash program	4,317,671
Convertible Senior Notes	31,279,716
Earn-out shares	8,606,717
Total	120,045,766

The Company uses the if converted method for calculating the dilutive effect of the Convertible Senior Notes using the initial conversion price of \$9.981 per share. The closing price of Class A common stock as of June 30, 2024 was less than the initial conversion price.

See Note 17. Subsequent Event for a description of the refinancing of the Convertible Senior Notes.

Note 11. Stockholders' Equity

Class A and Class B Common Stock

The Company's board of directors (the "Board") has authorized two classes of common stock, Class A and Class B. As of June 30, 2024, the Company had authorized 715,000,000 shares of Class A common stock and 121,000,000 shares of Class B common stock with a par value of \$0.0001 per share for each class. As of June 30, 2024, the Company had 391,516,377 shares issued and 369,652,927 shares outstanding of Class A common stock, and 97,088,670 shares issued and outstanding of Class B common stock. Holders of Class A and Class B common stock have identical rights, except that holders of the Class A common stock are entitled to one vote per share and the holder of the Class B common stock is entitled to ten votes per share.

Equity Financing Program

On February 28, 2023, the Company entered into an agreement (the "2023 Sales Agreement") with Virtu Americas LLC (the "Agent") under which the Company may offer and sell, from time to time in its sole discretion, shares of the Company's Class A common stock with aggregate gross sales proceeds of up to \$75.0 million through an equity offering program under

LUMINAR TECHNOLOGIES, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements (Unaudited)

which the Agent will act as sales agent (the "Equity Financing Program"). The Company completed sale of common stock under the 2023 Sales Agreement in March 2024

On May 3, 2024, the Company entered into an agreement (the "2024 Sales Agreement") with the Agent, which extended the Equity Financing Program under the 2023 Sales Agreement. Under the 2024 Sales Agreement, the Company may offer and sell, from time to time in its sole discretion, shares of the Company's Class A common stock with aggregate gross sales proceeds of up to an additional \$150.0 million under the Equity Financing Program. The Company intends to use the net proceeds, if any, from offerings under this program for expenditures or payments in connection with mergers and acquisitions, strategic investments, partnerships and similar transactions, repurchases of outstanding convertible debt securities, and if needed, for general corporate and business purposes.

Under the 2024 Sales Agreement, the Company sets the parameters for the sale of the shares, including the number of shares to be issued, the time period during which sales are requested to be made, limitations on the number of shares that may be sold in any one trading day and any minimum price below which sales may not be made. Subject to the terms and conditions of the 2024 Sales Agreement, the Agent has agreed to use its commercially reasonable efforts, consistent with its normal trading and sales practices, to sell the shares by methods deemed to be an "at the market" offering as defined in Rule 415 promulgated under the Securities Act of 1933, as amended, (the "Securities Act"), including sales made through The Nasdaq Global Select Market.

The Company issued 10,356,990 and 20,001,276 shares of Class A common stock under the Equity Financing Program during the three and six months ended June 30, 2024 for net proceeds of \$8.7 million and \$35.9 million, respectively. As of June 30, 2024, the amount available for sale under the 2024 Sales Agreement was \$38.0 million.

Private Warrants

The Company had 1,668,269 Private Warrants outstanding as of December 31, 2023. No Private Warrants were exercised in the six months ended June 30, 2024. The Private Warrants are set to expire on December 2, 2025. Each Private Warrant allows the holder to purchase one share of Class A common stock at \$1.50 per share.

Stock-in-lieu of Cash Program

The Company has entered into arrangements with certain vendors and other third parties wherein the Company at its discretion may elect to compensate the respective vendors / third parties for services provided in either cash or by issuing shares of the Company's Class A common stock ("Stock-in-lieu of Cash Program"). The Company considers the shares issuable under the Stock-in-lieu of Cash Program as liability classified awards when the arrangement with the vendors requires the Company to issue a variable number of shares to settle amounts owed.

During the six months ended June 30, 2024, the Company issued 1,591,755 shares of Class A common stock as part of the Stock-in-lieu of Cash Program. As of June 30, 2024, the Company had a total of \$7.8 million in prepaid expenses and other current and non-current assets related to its Stock-in-lieu of Cash Program.

The Company's vendor Stock-in-lieu of Cash Program activity for the six months ended June 30, 2024 was as follows:

	Shares	Weighted Average Grant Date Fair Value per Share
Unvested shares as of December 31, 2023	878,060	\$ 4.32
Granted	1,591,755	1.76
Vested	(2,430,321)	2.62
Unvested shares as of June 30, 2024	<u>39,494</u>	<u>6.07</u>

LUMINAR TECHNOLOGIES, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements (Unaudited)

Note 12. Stock-based Compensation

Prior to becoming a publicly traded entity, the Company issued incentive stock options, non-qualified stock options, and restricted stock to employees and non-employee consultants under its 2015 Stock Plan (the “2015 Plan”). Since the closing of the business combination between Gores Metropolis, Inc. and Luminar Technologies, Inc. on December 2, 2020 (the “Business Combination”), the Company has not issued any new stock-based awards under the 2015 Plan.

In December 2020, the Board adopted, and the Company’s stockholders approved the 2020 Equity Incentive Plan (the “2020 Plan”). The 2020 Plan became effective upon the closing of the Business Combination. Under the 2020 Plan, the Company was originally authorized to issue a maximum number of 36,588,278 shares of Class A common stock.

In June 2022, the Company’s stockholders approved an amendment and restatement of the Company’s 2020 Plan (the “Amended 2020 Plan”) to increase the number of shares of Class A common stock authorized for issuance by 36,000,000 additional shares and added an evergreen provision under which the number of shares of Class A common stock available for issuance under the Amended 2020 Plan will be increased on the first day of each fiscal year of the Company beginning with the 2023 fiscal year and ending on (and including) the first day of the 2030 fiscal year, in an amount equal to the lesser of (i) 5% of the outstanding shares of common stock on the last day of the immediately preceding fiscal year, (ii) 40,000,000 shares or (iii) such number of shares determined by the Board. Pursuant to the evergreen provision 20,991,566 additional shares of Class A common stock were added to the Amended 2020 Plan on January 1, 2024.

In June 2024, the Company’s stockholders approved an amendment and restatement of the Company’s Amended 2020 Plan (the “Amended and Restated EIP”) to increase the number of shares of Class A common stock authorized for issuance by 20,000,000 additional shares of Class A common stock.

In May 2024, the Company announced the suspension of the employer match to the 401k plan. As of June 14 2024, the Company will no longer match the 401k plan contributions made by the employee. This is part of the cost reduction initiatives undertaken by management.

Stock Options

Under the terms of the 2015 Plan, incentive stock options had an exercise price at or above the fair market value of the stock on the date of the grant, while non-qualified stock options were permitted to be granted below fair market value of the stock on the date of grant. Stock options granted have service-based vesting conditions only. The service-based vesting conditions vary, though typically, stock options vest over four years with 25% of stock options vesting on the first anniversary of the grant and the remaining 75% vesting monthly over the remaining 36 months. Option holders have a 10-year period to exercise their options before they expire. Forfeitures are recognized in the period of occurrence.

As part of the restructuring severance package in connection with the May 2024 Plan, the Company granted 1,003,765 options under the Amended and Restated EIP. These options are fully vested at the time of grant and have a 6-year exercise period before expiration, but they may not be exercised prior to May 5, 2028.

The Company’s stock option activity for the six months ended June 30, 2024 was as follows:

	Number of Common Stock Options	Weighted- Average Exercise Price	Weighted- Average Remaining Contractual Life (Years)	Aggregate Intrinsic Value (In Thousands)
Outstanding as of December 31, 2023	6,199,453	\$ 1.76		
Granted	1,003,765	1.50		
Exercised	(243,744)	1.67		
Cancelled/Forfeited	(29,549)	3.94		
Outstanding as of June 30, 2024	6,929,925	1.71	4.97	\$ 160

The aggregate intrinsic value of stock options exercised during the six months ended June 30, 2024 was \$0.2 million. The intrinsic value is calculated as the difference between the exercise price and the fair value of the common stock on the

LUMINAR TECHNOLOGIES, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements (Unaudited)

exercise date. The total grant date fair value of stock options vested during the six months ended June 30, 2024 was \$1.6 million.

Restricted Stock units

Since the closing of the Business Combination, the Company has granted restricted stock units (“RSUs”) under the 2020 Plan, the Amended 2020 Plan and the Amended and Restated EIP (together, the “EIP”). Each RSU granted under the EIP represents a right to receive one share of the Company’s Class A common stock when the RSU vests. RSUs generally vest over a period up to six years. The Company has granted certain performance-based equity awards that vest upon achievement of certain performance milestones. The fair value of RSUs is equal to the fair value of the Company’s common stock on the date of grant.

The Company’s Time-Based RSUs and Performance-Based and Other RSUs activity for the six months ended June 30, 2024 was as follows:

	Time-Based RSUs		Performance-Based and Other RSUs	
	Shares	Weighted Average Grant Date Fair Value per Share	Shares	Weighted Average Grant Date Fair Value per Share
Outstanding as of December 31, 2023	31,251,698	\$ 8.60	266,921	\$ 8.91
Granted	25,114,867	1.73	179,452	1.92
Forfeited	(5,174,839)	7.53	(27,039)	8.58
Vested	(17,004,142)	5.72	(278,494)	4.29
Change in units based on performance	—	—	1,724	8.58
Outstanding as of June 30, 2024	<u>34,187,584</u>	<u>5.34</u>	<u>142,564</u>	<u>9.20</u>

Fixed Value Equity Awards

The Company issues fixed value equity awards to certain employees as a part of their compensation package. These awards are issued as RSUs under the EIP and are accounted for as liability classified awards under ASC 718 — Stock Compensation. Fixed value equity awards granted have service-based conditions only and vest quarterly over a period of up to six years. These awards represent a fixed dollar amount settled in a variable number of shares determined at each vesting period. Stock-based compensation expense related to these awards was \$3.9 million and \$7.9 million for the three and six months ended June 30, 2024, respectively, and \$3.0 million and \$5.9 million for the three and six months ended June 30, 2023, respectively.

Freedom Photonics Awards

As part of the acquisition of Freedom Photonics LLC (“Freedom Photonics”) in April 2022, the Company owed up to \$9.8 million of post combination compensation related to certain service and performance conditions including achievement of certain technical and financial milestones. In March 2024, the Company issued 2,651,085 shares of Class A common stock for \$5.4 million of the post combination compensation due to achievement of the service and performance conditions. In May 2024, the Company issued 3,098,974 shares of Class A common stock for \$5.5 million of the post combination compensation due to achievement of the service and performance conditions. In June 2024, the Company issued 1,689,400 shares of Class A common stock for \$2.5 million of the post combination compensation due to achievement of the certain milestones. As of June 30, 2024, it is probable that the remaining conditions will be met for an amount equal to approximately \$4.5 million of post combination compensation.

Management Awards

On May 2, 2022, the Board granted an award of 10.8 million RSUs to Austin Russell, the Company’s Chief Executive Officer. The grant date fair value per share of the award granted to Mr. Russell was \$0.70 per share. On August 19, 2022, the Board granted 500,000 RSUs to each of Thomas Fennimore, the Company’s Chief Financial Officer, and Alan Prescott, the Company’s Chief Legal Officer. The grant date fair value per share of the awards granted to Mr. Fennimore and Mr. Prescott was \$6.12 per share.

These awards to Mr. Russell, Mr. Fennimore and Mr. Prescott are subject to all of the following vesting conditions:

- Public Market condition: Achievement of three stock price milestones: \$50 or more, \$60 or more, and \$70 or more. The stock price will be measured based on the volume-weighted average price per share for 90 consecutive trading days;

LUMINAR TECHNOLOGIES, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements (Unaudited)

- Service condition: Approximately 7-years of vesting; and
- Performance condition: Start of production for at least one series production program.

On June 4, 2024, the Board granted 687,499 RSUs to an executive, contingent upon market-based performance conditions. The grant date fair value of the award was \$ 1.15 per share.

The Company measured the compensation cost for the management awards outlined above using a Monte Carlo simulation model and recorded \$ 7.7 million and \$11.4 million in stock-based compensation expense related to these awards in the three and six months ended June 30, 2024, respectively.

The Company's management awards activity for the six months ended June 30, 2024 was as follows:

	Shares	Weighted Average Grant Date Fair Value per Share
Outstanding as of December 31, 2023	11,800,000	\$ 8.48
Granted	687,499	1.15
Outstanding as of June 30, 2024	<u>12,487,499</u>	<u>8.07</u>

On November 8, 2023, the Board approved a formula for RSU grants to Messrs. Fennimore and Prescott for each year from 2024 through 2029 for Mr. Fennimore and through 2026 for Mr. Prescott based on achievement of annual performance goals with respect to the immediately preceding year ("Annual Performance Award"). The number of RSUs to be awarded in a year will be determined at the sole discretion of the Human Resources and Compensation Committee of the Board (the "Compensation Committee") based on actual achievement of the annual performance goals established by the Board based on the Company's approved operating plan in respect of the immediately preceding year, with such awards ranging from 137,500 RSUs at the threshold level, 550,000 RSUs at the target level, and 825,000 RSUs at the maximum level for extraordinary performance (interpolated linearly between target levels, as applicable). For a potential award to be made in 2024, the Compensation Committee had determined that annual performance goals will be weighted 50% based on revenue and 50% based on free cash flow, with target performance for the revenue performance goal equal to \$1.4 million and target performance for the 2023 fourth quarter free cash flow goal equal to \$(37) million. In March 2024, the Compensation Committee determined that the achievement of the 2023 performance goals was below the threshold level. Accordingly, no 2023 Annual Performance Award was granted to Messrs. Fennimore and Prescott in March 2024.

Compensation expense

Stock-based compensation expense by function was as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Cost of sales	\$ 298	\$ 1,925	\$ 3,693	\$ 4,587
Research and development	16,378	20,541	30,862	38,012
Sales and marketing	3,557	9,792	8,780	15,620
General and administrative	16,846	26,937	38,209	56,930
Stock-based compensation related to restructuring	1,412	—	1,412	—
Total	<u>\$ 38,491</u>	<u>\$ 59,195</u>	<u>\$ 82,956</u>	<u>\$ 115,149</u>

LUMINAR TECHNOLOGIES, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements (Unaudited)

Stock-based compensation expense by type of award was as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Equity Classified Awards:				
Stock options	\$ 106	\$ 534	\$ 368	\$ 1,261
RSAs	—	1	—	61
RSUs	25,640	34,706	56,979	73,038
Management awards	5,699	5,840	11,415	11,499
ESPP	135	345	499	748
Stock-based compensation related to restructuring	1,412	—	1,412	—
Liability Classified Awards:				
Equity-settled fixed value	3,901	3,035	7,914	5,916
Optogration	—	3,078	—	5,659
Freedom Photonics	(127)	4,977	2,087	9,532
Other	1,725	6,679	2,282	7,435
Total	\$ 38,491	\$ 59,195	\$ 82,956	\$ 115,149

Note 13. Income Taxes

Provision for income taxes for the three and six months ended June 30, 2024 and 2023 was not material. The effective tax rate was 0.0% for the six months ended June 30, 2024 and 2023. The effective tax rates differ significantly from the statutory tax rate of 21%, primarily due to the Company's valuation allowance movement in each period presented.

Note 14. Leases

The Company leases office and manufacturing facilities under non-cancelable operating leases expiring at various dates through August 2032. Some of the Company's leases include one or more options to renew, with renewal terms that if exercised by the Company, extend the lease term from one to six years. The exercise of these renewal options is at the Company's discretion. The Company's lease agreements do not contain any material terms and conditions of residual value guarantees or material restrictive covenants. The Company's short-term leases and sublease income were not material.

The components of lease expenses were as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2024	2023	2024	2023
Operating lease cost	\$ 2,948	\$ 2,028	\$ 5,669	\$ 4,000
Variable lease cost	331	518	658	1,034
Total operating lease cost	\$ 3,279	\$ 2,546	\$ 6,327	\$ 5,034

Supplemental cash flow information related to leases was as follows (in thousands):

	Six Months Ended June 30,	
	2024	2023
Cash paid for amounts included in the measurement of lease liabilities:		
Cash paid for operating leases included in operating activities	\$ (5,213)	\$ (3,881)
Right of use assets obtained in exchange for lease obligations:		
Operating leases	3,842	2,948

LUMINAR TECHNOLOGIES, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements (Unaudited)

Supplemental balance sheet information related to leases was as follows (in thousands):

	June 30, 2024	December 31, 2023
Operating leases:		
Operating lease right-of-use assets	\$ 44,408	\$ 42,706
Operating lease liabilities:		
Operating lease liabilities, current	\$ 11,370	\$ 10,154
Operating lease liabilities, non-current	36,207	35,079
Total operating lease liabilities	\$ 47,577	\$ 45,233

Weighted average remaining terms were as follows (in years):

	June 30, 2024	December 31, 2023
Weighted average remaining lease term		
Operating leases	5.20	5.61

Weighted average discount rates were as follows:

	June 30, 2024	December 31, 2023
Weighted average discount rate		
Operating leases	6.30 %	6.45 %

Maturities of lease liabilities were as follows (in thousands):

Year Ending December 31,	Operating Leases
2024 (remaining six months)	\$ 5,872
2025	11,713
2026	11,447
2027	10,525
2028	7,420
2029	2,455
Thereafter	6,491
Total lease payments	55,923
Less: imputed interest	(8,346)
Total leases liabilities	\$ 47,577

Note 15. Commitments and Contingencies

Purchase and Other Obligations

The Company purchases goods and services from a variety of suppliers in the ordinary course of business. Purchase obligations are defined as agreements that are enforceable and legally binding and that specify all significant terms, including fixed or minimum quantities to be purchased, fixed, minimum, or variable price provisions, and the approximate timing of the transaction. The Company had purchase obligations primarily for purchases of inventory, R&D, and general and administrative activities totaling \$180.1 million as of June 30, 2024.

Legal Matters

From time to time, the Company is involved in actions, claims, suits and other proceedings in the ordinary course of business, including assertions by third parties relating to intellectual property infringement, breaches of contract or warranties or employment-related matters. When it is both probable that a liability has been incurred and the amount of the loss can be reasonably estimated, the Company records a liability for such loss contingencies. The Company's estimates regarding potential losses and materiality are based on the Company's judgment and assessment of the claims utilizing currently available information. Although the Company will continue to reassess its reserves and estimates based on future developments, the Company's objective assessment of the legal merits of such claims may not always be predictive of the outcome and actual

LUMINAR TECHNOLOGIES, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements (Unaudited)

results may vary from the Company's current estimates. The Company's current legal accrual is not material to the financial statements.

On May 26, 2023, a putative class action styled Johnson v. Luminar Technologies, Inc., et al., Case No. 6:23-cv-00982-PGB-LHP, was filed in the United States District Court for the Middle District of Florida, against the Company and an employee. The suit asserts purported claims on behalf of purchasers of the Company's securities between February 28, 2023 and March 17, 2023 under Sections 10(b) and 20(a) of the Exchange Act for allegedly misleading statements regarding the Company's photonic integrated circuits technology. Defendants filed a motion to dismiss the complaint on December 29, 2023, the motion was granted, and on July 8, 2024 Plaintiff filed an amended complaint. The Company disputes the allegations in the complaint and intends to vigorously defend the litigation. The Company presently does not expect this matter to have a material adverse impact on the Company's financial results and did not accrue anything related to this matter as of June 30, 2024. On October 21, 2023, a shareholder derivative suit entitled *Bhavsar v. McAuliffe, et al.* Bhavsar v. McAuliffe, et al., No. 6:23-cv-02037 was filed in the United States District Court for the Middle District of Florida against directors of the Company and an employee. The suit avers claims for purported breaches of fiduciary duty, unjust enrichment, abuse of control, gross mismanagement, waste, aiding and abetting, and contribution under Sections 10(b) and 21D of the Exchange Act on the basis of the same wrongdoing alleged in the first lawsuit described above. In November 2023, three additional shareholder derivative suits averring similar claims to *Bhavsar* were filed in the United States District Court for the District of Delaware: *Lance Dechant, et al. v. Alec E. Gores, et al.*, C.A. No. 23-cv-01318-UNA, *Hutchinson v. Russell, et al.*, C.A. No. 23-cv-01345-UNA, and *Ulerio v. Russell, et al.*, C.A. No. 23-cv-01359-UNA. The Company disputes the allegations in these complaints and intends to vigorously defend the litigation. The Company has determined that the likelihood of this matter resulting in a material adverse impact on the Company's financial results is remote.

On March 21, 2024, a putative class action styled Smith v. Gores, et al., C.A. No. 2024-0285-MTZ (Del. Ch.) was filed in the Delaware Court of Chancery against the Company and the members of its Board of Directors. The lawsuit asserts claims on behalf of a putative class comprised of all stockholders other than defendants and any current directors or officers of the Company. The plaintiff alleges that certain provisions in the Company's advance notice bylaws (the "Challenged Provisions") are invalid and void and that the members of the Board have breached their fiduciary duty of loyalty by adopting and maintaining the Challenged Provisions. In addition to seeking declaratory, equitable, and injunctive relief, the plaintiff seeks an award of attorneys' fees and other costs and expenses on behalf of the putative class. On April 15, 2024, the Company moved to dismiss the complaint. The Company has determined that the likelihood of this matter resulting in a material adverse impact on the Company's financial results is remote.

Note 16. Segment and Customer Concentration Information

Reportable segments are (i) Autonomy Solutions and (ii) ATS. These segments reflect the way the chief operating decision maker ("CODM") evaluates the Company's business performance and manages its operations. Each segment has distinct product offerings, customers and market penetration. The Chief Executive Officer is the CODM of the Company.

Autonomy Solutions

This segment manufactures and distributes commercial LiDAR sensors that measure distance using laser light for automotive mobility applications. This segment is impacted by trends in the automobile and autonomous vehicles sector and the infrastructure/technology sector.

ATS

This segment is in the business of development of semiconductor technology based lasers and sensors. This segment also designs, tests and provides consulting services for development of integrated circuits. This segment is impacted by trends in and the strength of the automobile and aeronautics sectors as well as government spending in military and defense activities.

LUMINAR TECHNOLOGIES, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements (Unaudited)

The accounting policies of the operating segments are the same as those described in Note 2. Segment operating results and reconciliations to the Company's consolidated balances are as follows (in thousands):

Three Months Ended June 30, 2024					
	Autonomy Solutions	ATS	Total reportable segments	Eliminations (1)	Total Consolidated
Revenues from external customers	\$ 9,981	\$ 6,470	\$ 16,451	\$ —	\$ 16,451
Depreciation and amortization	5,646	745	6,391	—	6,391
Restructuring costs	5,585	677	6,262	—	6,262
Operating loss	(119,567)	(8,773)	(128,340)	618	(127,722)
Other significant items:					
Segment assets	450,151	68,207	518,358	(136,549)	381,809
Inventories, net	9,255	4,771	14,026	—	14,026
Three Months Ended June 30, 2023					
	Autonomy Solutions	ATS	Total reportable segments	Eliminations (1)	Total Consolidated
Revenues from external customers	\$ 9,738	\$ 6,459	\$ 16,197	\$ —	\$ 16,197
Depreciation and amortization	3,866	683	4,549	—	4,549
Operating loss	(120,162)	(22,234)	(142,396)	(1,496)	(143,892)
Other significant items:					
Segment assets	708,853	73,664	782,517	(182,743)	599,774
Inventory	19,679	676	20,355	(38)	20,317
Six Months Ended June 30, 2024					
	Autonomy Solutions	ATS	Total reportable segments	Eliminations (1)	Total Consolidated
Revenues from external customers	\$ 26,301	\$ 11,118	\$ 37,419	\$ —	\$ 37,419
Depreciation and amortization	13,074	1,384	14,458	—	14,458
Restructuring costs	5,585	677	6,262	—	6,262
Operating income loss	(244,586)	(9,524)	(254,110)	619	(253,491)
Other significant items:					
Segment assets	450,151	68,207	518,358	(136,549)	381,809
Inventory	9,255	4,771	14,026	—	14,026
Six Months Ended June 30, 2023					
	Autonomy Solutions	ATS	Total reportable segments	Eliminations (1)	Total Consolidated
Revenue:					
Revenues from external customers	\$ 20,411	\$ 10,295	\$ 30,706	\$ —	\$ 30,706
Depreciation and amortization	6,192	1,344	7,536	—	7,536
Operating income loss	(261,851)	(22,830)	(284,681)	(1,106)	(285,787)
Other significant items:					
Segment assets	708,853	73,664	782,517	(182,743)	599,774
Inventory	19,679	676	20,355	(38)	20,317

(1) Represents the eliminations of all intercompany balances and transactions during the period presented.

One customer of the Autonomy Solutions segment, accounted for 61% and 53% of the Company's revenue for the three and six months ended June 30, 2024, respectively. One customer of the Autonomy Solutions segment, accounted for 31% of the Company's revenue for the three months ended June 30, 2023. Two customers of the Autonomy Solutions segment, accounted

LUMINAR TECHNOLOGIES, INC. AND SUBSIDIARIES
Notes to Condensed Consolidated Financial Statements (Unaudited)

for 29% and 16% of the Company's revenue for the six months ended June 30, 2023, respectively. A vast majority of the Company's long-lived assets are located in North America.

Note 17. Subsequent Event

On August 6, 2024, the Company entered into private, separately negotiated agreements for (i) the private offering and sales (the "Note Purchase Transaction") of \$00.0 million in aggregate principal amount of newly issued, first-lien senior secured floating rate notes of the Company (the "New Senior Secured Notes"), to be issued pursuant to a First-Lien Indenture, on the terms and conditions set forth in a Purchase Agreement, dated as of August 6, 2024, among the Company, the Guarantors and the Purchasers party thereto (the "Purchase Agreement"); and (ii) the exchange (the "Exchange Transaction" and, together with the Note Purchase Transaction, the "Note Purchase and Exchange Transactions") of approximately \$421.9 million in aggregate principal amount of 1.25% Convertible Senior Notes due 2026 (the "Existing Convertible Notes") for approximately \$274.2 million in aggregate principal amount of newly issued Convertible Senior Secured Notes due 2030 (the "New Secured Convertible Notes"), consisting of two series of second-lien, senior secured notes of the Company, both of which have identical terms other than the principal amount, interest rate and applicable conversion price, to be issued pursuant to a Second-Lien Indenture, on the terms and conditions set forth in an Exchange Agreement, dated as of August 6, 2024, among the Company, the Guarantors and the Holders party thereto (the "Exchange Agreement" and, together with the Purchase Agreement, the "Note Purchase and Exchange Agreements"). The Company will not receive any cash proceeds from the Exchange Transaction.

Copies of each of the Purchase Agreement, Exchange Agreement, First-Lien Indenture and Second-Lien Indenture are included as exhibits to this Form 10-Q.

On August 8, 2024, we expanded the program under the 2024 Sales Agreement as outlined in Note 11 with the Agent, under which we may offer and sell, from time to time in our sole discretion, shares of our Class A common stock with aggregate gross sales proceeds of up to an additional \$50.0 million under the Equity Financing Program. We intend to use the net proceeds from offerings under the Equity Financing Program for general corporate purposes, including payment of interest on debt and other manner to repay, repurchase, or service such debt.

ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

You should read the following discussion in conjunction with the condensed consolidated financial statements and notes thereto included elsewhere in this Form 10-Q and our Annual Report on Form 10-K for the year ended December 31, 2023 (the "2023 Annual Report") filed with the SEC on February 28, 2024. This discussion contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those contained in these forward-looking statements due to a number of factors, including those discussed under the caption "Risk Factors" in our 2023 Annual Report and elsewhere in this Form 10-Q. See also "Cautionary Note Regarding Forward-Looking Statements" at the beginning of this Form 10-Q.

Overview

We are a global automotive technology company ushering a new era of vehicle safety and autonomy. We are enabling solutions for series production passenger cars and commercial trucks as well as other targeted markets. Over the past decade, Luminar has been building our light detection and ranging (LiDAR) sensor from the chip-level up, which is expected to meet the demanding performance, safety, reliability and cost requirements to enable next-generation safety and autonomous capabilities for passenger and commercial vehicles as well as other adjacent markets.

We are in the process of developing perception, decision-making and mapping software. As of the end of the second quarter of 2024, most of our software products had not achieved technological feasibility.

Acquisition of EM4

On March 18, 2024, we completed the acquisition of EM4, a designer, manufacturer and seller of packaged photonic components and sub-systems for industrial markets. The EM4 acquisition is expected to accelerate our strategy to package lasers, detectors and ASICs. Operations of EM4 have been included in the ATS segment since the acquisition date.

Industrialization Update

We continue to execute on our industrialization plan in conjunction with our automaker partners.

We announced our start of production ("SOP") for Volvo Cars at the manufacturing facility in Mexico in April 2024 and began shipping production LiDAR sensors for the Volvo EX90.

We continually evaluate opportunities for optimizing our manufacturing processes and product design. During 2023, we began evaluating our sourcing strategy with the objective to reduce future per unit sensor manufacturing costs, and then finalized and committed to a plan to change our sourcing of certain sub-assemblies and components from one supplier to another, which will require us to abandon certain equipment located at the legacy supplier. As a result, we have reduced the useful lives of the long-lived assets within the impacted asset group in line with when these assets are expected to be abandoned. We expect the transition to new suppliers to be essentially completed in 2024. The reduction in the estimated useful lives of the impacted assets resulted in us recording \$1.3 million and \$3.4 million of accelerated depreciation charges in the three and six months ended June, 30 2024. We expect to record additional accelerated depreciation in the range of \$1.5 million to \$2.0 million through the remainder of 2024. Our continuing optimization of our manufacturing and product design processes may impact estimated useful lives or carrying values of additional property, plant and equipment or other assets.

In the second quarter of 2024, we announced an agreement to establish an engineering center in Xiamen, China, to be staffed by TPK, one of our existing contract manufacturing partners, which will assist with our industrialization efforts, including manufacturing process design, development and validation, component process verification and validation, supplier development support, system validation, cost analysis, and benchmarking. This expanded partnership with TPK is accretive to our contract manufacturing relationship with TPK, as well as our contract manufacturing relationships with Celestica and Fabrinet, which are continuing as planned.

Business Updates

On May 3, 2024, we announced a restructuring and cost reduction plan which includes reducing our workforce by approximately 20% and sub-leasing of certain facilities. The actions disclosed commenced immediately following the announcement, and we expect them to be essentially completed by the end of 2024. We estimated that we would incur approximately \$6.0 million to \$8.0 million in cash charges associated with employee severance and related employee costs, plus charges related to accelerated of certain previously granted stock-based awards and grants of new awards as part of severance packages. Through June 30, 2024, we incurred \$6.3 million in charges associated with employee severance and related costs, including both cash and stock. We expect to incur \$2.0 million to \$5.0 million in losses on sub-leasing of certain properties during the remainder of 2024.

In May 2024, we estimated the impact of the restructuring plan, when completed, would reduce operating costs by \$50.0 million to \$65.0 million on an annual basis, of which \$20.0 million to \$30.0 million would be savings in cash costs. Our

current assessment is that the impact of the restructuring plan and other actions like contractor spend reduction will reduce operating costs by \$50.0 million to \$65.0 million, and other cost savings initiatives are currently being contemplated.

Given the customary business practices in the automotive industry, the rapidly changing nature of the markets in which we compete and that LiDAR is new, there remains potential risk that our major commercial wins may not ultimately generate any significant revenue. See the discussion under the heading “The period of time from a major commercial win to implementation is long and we are subject to risks of cancellation or postponement of the contract or unsuccessful implementation” in “Risk Factors” in Item IA of Part I in our 2023 Annual Report.

Basis of Presentation

Our condensed consolidated financial statements include the accounts of our wholly owned subsidiaries. We have eliminated intercompany accounts and transactions.

Components of Results of Operations

Revenue

Our business and revenue producing activities are organized in two operating segments: (i) Autonomy Solutions and (ii) Advanced Technologies and Services (“ATS”).

The Autonomy Solutions segment is engaged in the design, manufacturing, and sale of LiDAR sensors catering mainly to OEMs in the automobile, commercial vehicle, robotaxi and adjacent industries. The Autonomy Solutions segment revenue also includes fees earned from non-recurring engineering services provided to customers in connection with customization of our sensor and software products, as well as revenue generated from licensing of certain information.

The ATS segment provides advanced semiconductors and related components, as well as design, test and consulting services to the Autonomy Solutions segment and to various third-party customers, including government agencies and defense contractors, in markets generally unrelated to autonomous vehicles.

One customer of the Autonomy Solutions segment, accounted for 61% and 53% of the Company’s revenue for the three and six months ended June 30, 2024, respectively. One customer of the Autonomy Solutions segment, accounted for 31% of the Company’s revenue for the three months ended June 30, 2023. Two customers of the Autonomy Solutions segment, accounted for 29% and 16% of the Company’s revenue for the six months ended June 30, 2023, respectively. A vast majority of the Company’s long-lived assets are located in North America. A vast majority of the Company’s long-lived assets are located in North America.

Cost of sales and gross profit (loss)

Cost of sales includes the fixed and variable manufacturing cost of our LiDAR sensors, which primarily consists of material purchases from third-party contract manufacturers and suppliers which are directly associated with our manufacturing process and personnel-related costs, including stock-based compensation expense for personnel engaged in manufacturing, and engineering. Cost of sales also includes cost of providing services to customers, depreciation and amortization for manufacturing fixed assets or equipment, cost of components, product testing and launch-related costs, an allocated portion of overhead, facility and information technology (“IT”) costs, write downs for excess and obsolete inventory and shipping costs.

The ATS segment provides certain services and components to the Autonomy Solutions segment, which are recorded as cost of goods sold or research and development costs depending on the nature and use of such services and components by the Autonomy Solutions segment. These inter-segment transactions are eliminated in the consolidated results.

Gross profit (loss) equals revenue less cost of sales. As we transition from prototype production to series production, average selling prices will be lower and we expect these lower average selling prices to temporarily increase our gross loss over the next few quarters until we start to realize the benefits of cost reduction and efficiency measures and production scaling.

Operating Expenses

Research and Development (R&D)

R&D costs are expensed as incurred. Design and development costs for products to be sold under long-term supply arrangements are expensed as incurred. Design and development costs for molds, dies, and other tools involved in developing new technologies are expensed as incurred.

Our R&D efforts are focused on enhancing and developing additional functionality for our existing products and on new product development, including new releases and upgrades to our LiDAR sensors and integrated software solutions. R&D expenses consist primarily of:

[Table of Contents](#)

- Personnel-related expenses, including salaries, benefits, and stock-based compensation expense, for personnel in our research and engineering functions;
- Expenses related to materials, software licenses, supplies and third-party services;
- Prototype expenses; and
- An allocated portion of facility and IT costs and depreciation.

The ATS segment provides certain services and components to the Autonomy Solutions segment, which are recorded as cost of goods sold or research and development costs depending on the nature and use of such services and components by the Autonomy Solutions segment. These inter-segment transactions are eliminated in our consolidated results. We expect our R&D costs to remain elevated for the foreseeable future as we continue to invest in research and development activities to achieve our product roadmap, and we expect to continue to incur operating losses for at least the foreseeable future due to continued R&D investments.

Sales and Marketing Expenses

Sales and marketing expenses consist of personnel and personnel-related expenses, including stock-based compensation of our business development team, as well as advertising and marketing expenses. These include the cost of marketing programs, trade shows, promotional materials, demonstration equipment, an allocated portion of facility and IT costs and depreciation.

General and Administrative Expenses

General and administrative expenses consist of personnel and personnel-related expenses, including stock-based compensation of our executive, finance, human resources, information systems and legal departments as well as legal and accounting fees for professional and contract services.

Change in Fair Value of Warrants

The warrant liabilities are classified as marked-to-market liabilities and the corresponding increase or decrease in value is reflected in change in fair value of warrants.

Other income (expense), net

Interest income consists of income earned on our cash equivalents and marketable securities. These amounts will vary based on our cash, cash equivalents and marketable securities balances, and also with market rates. Interest expense consists primarily of interest on convertible senior notes as well as amortization of premium (discount) on marketable securities. Other income (expense) includes realized gains and losses related to the marketable securities, as well as impact of gains and losses related to foreign exchange transactions.

Results of Operations for the Three and Six Months Ended June 30, 2024 and 2023

The results of operations presented below should be reviewed in conjunction with the condensed consolidated financial statements and notes included elsewhere in this Form 10-Q. The following table sets forth our consolidated results of operations data for the periods presented (in thousands):

	Three Months Ended June 30,				Six Months Ended June 30,			
	2024	2023	\$ Change	% Change	2024	2023	\$ Change	% Change
Revenue	\$ 16,451	\$ 16,197	\$ 254	2 %	\$ 37,419	\$ 30,706	\$ 6,713	22 %
Cost of sales	30,131	34,532	(4,401)	(13) %	61,554	63,665	(2,111)	(3) %
Gross loss	(13,680)	(18,335)	4,655	(25) %	(24,135)	(32,959)	8,824	(27) %
Operating Expenses:								
Research and development	65,850	67,483	(1,633)	(2) %	133,600	136,535	(2,935)	(2) %
Sales and marketing	12,140	15,654	(3,514)	(22) %	26,655	29,383	(2,728)	(9) %
General and administrative	29,790	42,420	(12,630)	(30) %	62,839	86,910	(24,071)	(28) %
Restructuring costs	6,262	—	6,262	100 %	6,262	—	6,262	100 %
Total operating expenses	114,042	125,557	(11,515)	(9) %	229,356	252,828	(23,472)	(9) %
Loss from operations	(127,722)	(143,892)	16,170	(11) %	(253,491)	(285,787)	32,296	(11) %
Other income (expense), net:								
Change in fair value of warrant liabilities	163	26	137	527 %	985	(1,028)	2,013	(196) %
Interest expense	(2,757)	(1,273)	(1,484)	117 %	(5,514)	(2,938)	(2,576)	88 %
Interest income	2,519	1,605	914	57 %	5,949	3,510	2,439	69 %
Gain from acquisition of EM4	—	—	—	nm	1,752	—	1,752	100 %
(Losses)/gains related to investments and certain other assets, and other income (expense)	(3,376)	1,787	(5,163)	(289) %	(5,981)	(2,278)	(3,703)	163 %
Total other income (expense), net	(3,451)	2,145	(5,596)	(261) %	(2,809)	(2,734)	(75)	3 %
Loss before provision for income taxes	(131,173)	(141,747)	10,574	(7) %	(256,300)	(288,521)	32,221	(11) %
Provision for income taxes	(566)	9	(575)	nm	21	9	12	nm
Net loss	\$ (130,607)	\$ (141,756)	\$ 11,149	(8) %	\$ (256,321)	\$ (288,530)	\$ 32,209	(11) %

Revenue

The following table sets forth a breakdown of revenue by segments for the periods presented (in thousands):

	Three Months Ended June 30,				Six Months Ended June 30,			
	2024	2023	\$ Change	% Change	2024	2023	\$ Change	% Change
Revenue from sales to external customers:								
Autonomy Solutions	\$ 9,981	\$ 9,738	\$ 243	2 %	\$ 26,301	\$ 20,411	\$ 5,890	29 %
ATS	6,470	6,459	11	— %	11,118	10,295	823	8 %
Total	\$ 16,451	\$ 16,197	\$ 254	2 %	\$ 37,419	\$ 30,706	\$ 6,713	22 %

The increase in revenue of our Autonomy Solutions in the three and six months ended June 30, 2024 compared to the same period in 2023 was primarily due to an increase in licensing of certain information partially offset by lower service revenue on certain NRE contracts.

The increase in revenue of our ATS segment in the three and six months ended June 30, 2024 compared to the same period in 2023 was primarily due to an increase in revenue from the acquisition of EM4 partially offset by non-recurring engineering service and product sales.

Cost of Sales

The \$4.4 million decrease in the cost of sales in the three months ended June 30, 2024, compared to the same period in 2023, was primarily due to completion of the industrialization of Iris as we started series production. The \$2.1 million decrease in the cost of sales in the six months ended June 30, 2024, compared to the same period in 2023, was primarily due to lower number of service projects offset by ramp up in production and units sold.

In 2023, we finalized and committed to a plan to proceed with a change in our sourcing strategy for certain manufacturing activities. Implementation of this plan is expected to result in discontinued use of certain plant, property and equipment assets as they will no longer be needed for their original intended use. We have revised the estimated useful lives of said long-lived assets within the impacted asset group, which resulted in recording depreciation for these assets over an accelerated period. We recorded \$1.3 million and \$3.4 million of incremental accelerated depreciation charges associated with this manufacturing and sourcing change in the three and six months ended June 30, 2024, respectively.

Operating Expenses

Research and Development

The \$1.6 million and \$2.9 million decrease in research and development expenses in the three and six months ended June 30, 2024 compared to the same periods in 2023 was primarily due to:

- a \$6.5 million and \$8.3 million net decrease in personnel-related costs driven mainly by decreased headcount and a decrease in stock-based compensation expense; offset by
- a \$4.9 million and \$5.4 million net increase in purchased materials, contractor fees and external spend in relation to continuing development and testing of our sensor and software products, development activities related to advanced manufacturing as well as data labeling services.

Sales and Marketing

The \$3.5 million and \$2.7 million decrease in sales and marketing expenses for the three and six months ended June 30, 2024 compared to the same periods in 2023 was primarily due to decreases in personnel related costs including stock-based compensation costs due to decreased headcount and reduction in travel related costs.

General and Administrative

The \$12.6 million and \$24.1 million decrease in general and administrative expenses for the three and six months ended June 30, 2024 compared to the same period in 2023 was primarily due to:

- a \$8.3 million and \$16.3 million net decrease in personnel-related costs driven mainly by a decrease in stock-based compensation expense as a result of headcount reduction and vesting of certain awards previously granted in connection with M&A activity;
- a \$1.3 million and \$1.9 million decrease in travel related costs; and
- a \$3.0 million and \$5.9 million net decrease in purchased materials, contractor fees and external spend.

Restructuring costs

The Company incurred \$6.3 million and \$0.0 million in restructuring expenses for the three and six months ended June 30, 2024 due to the restructuring plan announced on May 3, 2024.

Change in Fair Value of Warrant Liabilities

The change in fair value of warrant liabilities is a non-cash benefit or charge due to the corresponding decrease or increase in the estimated fair value of warrants issued in a private placement in connection with the initial public offering of Gores Metropoulos, Inc. ("Private Warrants").

The non-cash gain related to the Private Warrants was \$0.2 million and \$1.0 million for the three and six months ended June 30, 2024.

Segment Operating Income or Loss

Segment income or loss is defined as income or loss before taxes. Our segment income or loss breakdown is as follows (in thousands):

	Three Months Ended June 30,				Six Months Ended June 30,			
	2024	2023	\$ Change	% Change	2024	2023	\$ Change	% Change
Segment operating income (loss)								
Autonomy Solutions	\$ (119,567)	\$ (120,162)	\$ 595	—%	\$ (244,586)	\$ (261,851)	\$ 17,265	(7%)
ATS	(8,773)	(22,234)	13,461	61%	(9,524)	(22,830)	13,306	58%

Liquidity and Capital Resources

Sources of Liquidity and Capital Requirements

Our capital requirements will depend on many factors, including:

- production capacity and volume;
- the timing and extent of spending to support R&D efforts;
- investments in manufacturing equipment and facilities;
- the expansion of sales and marketing activities, market adoption of new and enhanced products and features; and
- investments in information technology systems.

Until we can generate sufficient revenue and profits from sale of products and services to cover our operating expenses, working capital, and capital expenditures, we expect our cash, cash equivalents and marketable securities, and proceeds from debt and/or equity financings to fund our cash needs. If we are required to raise additional funds by issuing equity securities, dilution to stockholders would result. Any equity securities issued may also provide for rights, preferences or privileges senior to those of holders of our common stock. If we raise funds by issuing debt securities, these debt securities may have rights, preferences and privileges senior to those of holders of our common stock. The terms of debt securities or borrowings could impose significant restrictions on our operations. In addition, we may from time to time seek to retire or repurchase material amounts of our outstanding debt securities through open-market purchases, privately negotiated transactions or otherwise, for cash or through exchanges for debt or equity. Any repurchases or exchanges would be on terms and at prices that we may determine in our discretion and would depend on prevailing market conditions, our liquidity requirements, our receipt of any necessary corporate approvals and other factors. The credit market and financial services industry have in the past, and may in the future, experience periods of uncertainty that could impact the availability and cost of equity and debt financing.

We expect to continue to invest in our product and software development as well as incur efforts to build customer relations and markets. Further, we expect to invest in developing advanced manufacturing capabilities, both, internally as well as with our contract manufacturing partners. We expect to fund these product and business development initiatives and capital expenditures either through our cash, cash equivalents and marketable securities or through issuance of shares of our Class A common stock to vendors and third parties for services provided (“Stock-in-lieu of Cash Program”).

In February 2024, we entered into two non-recourse loan and securities pledge agreements (the “Loan Agreements”) with The St. James Bank & Trust Company Ltd. (the “Lender”), pursuant to which we may borrow up to an aggregate of \$50.0 million. Any loans made by the Lender under the Loan Agreements would be collateralized by shares of our Class A common stock or stock we hold of another company. The Loan Agreements require us to pay an up-front structure fee of 1.5% on any amounts borrowed, and any outstanding amounts would bear interest at 8.0% per annum. We did not borrow any amount from this credit facility and had no outstanding balance as of June 30, 2024.

On May 3, 2024, we entered into a Sales Agreement (the “2024 Sales Agreement”) with Virtu Americas LLC (the “Agent”) under which we may offer and sell, from time to time in our sole discretion, shares of our Class A common stock with aggregate gross sales proceeds of up to \$150.0 million under the Equity Financing Program. This is an extension of the prior Equity Financing Program we established with the Agent in February 2023. We intend to use the net proceeds from offerings under the Equity Financing Program for expenditures or payments in connection with strategic merger and acquisitions, strategic investments, partnerships and similar transactions, repurchases of convertible debt securities, and if needed, for general corporate and business purposes.

Under the 2024 Sales Agreement, we set the parameters for the sale of the shares, including the number of shares to be issued, the time period during which sales are requested to be made, limitations on the number of shares that may be sold in any one trading day and any minimum price below which sales may not be made. Subject to the terms and conditions of the 2024 Sales Agreement, the Agent has agreed to use its commercially reasonable efforts, consistent with its normal trading and sales practices, to sell the shares by methods deemed to be an “at the market” offering as defined in Rule 415 promulgated under the Securities Act, including sales made through The Nasdaq Global Select Market.

In August 2024, we entered into private, separately negotiated agreements for (i) the private offering and sale of \$100 million in aggregate principal amount of newly issued, first-lien, senior secured floating rate notes due 2028 and (ii) the exchange of approximately \$421.9 million in aggregate principal amount of 1.25% Convertible Senior Notes due 2026 for approximately \$274.2 million in aggregate principal amount of newly issued Convertible Senior Secured Notes due 2030. See Note 17. Subsequent Event for a description of these transactions. We received \$100 million in cash proceeds from the offering and sale of the 2028 Notes, but did not receive any cash proceeds from the exchange of the 2026 Convertible Notes for the 2030 Convertible Notes. As a result of this transaction, we extended a significant amount of our 2026 maturities into 2030 and raised additional capital to bolster our liquidity position. We expect to incur higher annual interest expense for the incremental 2028 Notes and 2030 Convertible Notes.

[Table of Contents](#)

We issued 10,356,990 and 20,001,276 shares of Class A common stock under the Equity Financing Program during the three and six months ended June 30, 2024 for net proceeds of \$18.7 million and \$35.9 million, respectively. As of June 30, 2024, \$138.0 million was available for sale under the program.

As of June 30, 2024, we had cash and cash equivalents totaling \$52.3 million and marketable securities of \$109.0 million, totaling \$161.3 million of total liquidity. To date, our principal sources of liquidity have been proceeds received from issuances of debt and equity. Market and economic conditions, such as the increase in interest rates by federal agencies, may materially impact relative cost and mix of these sources of liquidity.

To date, we have not generated positive cash flows from operating activities and have incurred significant losses from operations in the past as reflected in our accumulated deficit of \$2.1 billion as of June 30, 2024. We expect to continue to incur operating losses for at least the foreseeable future due to continued R&D investments that we intend to make in our business and, as a result, we may require additional capital resources to grow our business. We believe that current cash, cash equivalents, and marketable securities will be sufficient to continue to execute our business strategy in the next 12 months.

Cash Flow Summary

The following table summarizes our cash flows for the periods presented:

	Six months ended June 30,	
	2024	2023
Net cash provided by (used in):		
Operating activities	\$ (158,936)	\$ (137,983)
Investing activities	35,511	116,366
Financing activities	36,894	42,008

Operating Activities

Net cash used in operating activities was \$158.9 million during the six months ended June 30, 2024. Net cash used in operating activities was due to our net loss of \$256.3 million adjusted for non-cash items of \$128.8 million, primarily consisting of \$83.0 million of stock-based compensation, \$17.8 million of inventory write-offs and write-downs, \$14.5 million of depreciation and amortization, \$8.4 million of vendor payments in stock in lieu of cash and cash used for operating assets and liabilities of \$31.4 million due to the timing of cash payments to vendors and cash receipts from customers.

Investing Activities

Net cash provided by investing activities of \$35.5 million in the six months ended June 30, 2024 was comprised of cash proceeds from maturities of marketable securities of \$112.2 million, offset primarily by \$75.1 million related to purchases of marketable securities, \$1.6 million in cash spent for capital expenditures, and \$3.8 million cash paid for acquisition of EM4.

Financing Activities

Net cash provided by financing activities of \$36.9 million in the six months ended June 30, 2024 was primarily comprised of \$35.9 million cash received from the sale and issuance of shares of Class A common stock under the Equity Financing Program.

Critical Accounting Policies and Estimates

Our condensed consolidated financial statements are prepared in accordance with generally accepted accounting principles in the United States. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue, expenses and related disclosures. On an ongoing basis, we evaluate our estimates and assumptions. Our actual results may differ from these estimates under different assumptions or conditions.

We believe our critical accounting policies involve the greatest degree of judgment and complexity and have the greatest potential impact on our condensed consolidated financial statements.

During the six months ended June 30, 2024, there were no significant changes to our critical accounting policies and estimates. For a more detailed discussion of our critical accounting policies and estimates, please refer to our 2023 Annual Report and Note 2 of the notes to condensed consolidated financial statements included in this Form 10-Q.

Recent Accounting Pronouncements

See Note 2 of the notes to condensed consolidated financial statements included in this Form 10-Q.

ITEM 3. Quantitative and Qualitative Disclosures about Market Risk.

We are exposed to market risk in the ordinary course of our business. Market risk represents the risk of loss that may impact our financial position due to adverse changes in financial market prices and rates. Our market risk exposure is primarily a result of fluctuations in interest rates and foreign currency exchange rates. We do not hold or issue financial instruments for trading purposes. For a discussion of market risk, see “Quantitative and Qualitative Disclosure about Market Risk” in Item 7A of our 2023 Annual Report. Our exposure to market risk has not changed materially since December 31, 2023.

We had cash and cash equivalents, and marketable securities totaling \$161.3 million as of June 30, 2024. Cash equivalents and marketable securities were invested primarily in U.S. treasury securities, commercial paper, corporate bonds, U.S. agency and government sponsored securities, equity investments and asset-backed securities. Our investment policy is focused on the preservation of capital and supporting our liquidity needs. Under the policy, we invest in highly rated securities, while limiting the amount of credit exposure to any one issuer other than the U.S. government. We do not invest in financial instruments for trading or speculative purposes, nor do we use leveraged financial instruments. We utilize external investment managers who adhere to the guidelines of our investment policy. A hypothetical 100 basis point change in interest rates would not have a material impact on the value of our cash and cash equivalents or marketable investments.

As of June 30, 2024, the principal amount outstanding of our Convertible Senior Notes was \$625.0 million. The fair value of the Convertible Senior Notes is subject to interest rate risk, market risk and other factors due to their conversion features. The fair value of the Convertible Senior Notes will generally increase as our common stock price increases and will generally decrease as our common stock price declines. The interest and market value changes affect the fair value of the Convertible Senior Notes but do not impact our financial position, cash flows or results of operations due to the fixed nature of the debt obligations. We carry the Convertible Senior Notes at face value less unamortized discount on our consolidated balance sheets.

Our Convertible Senior Notes bear a fixed interest rate, and therefore, are not subject to interest rate risk. We have not utilized derivative financial instruments, derivative commodity instruments or other market risk sensitive instruments, positions or transactions in any material fashion, except for the privately negotiated capped call transactions entered into in December 2021 related to the issuance of our Convertible Senior Notes.

Our results of operations and cash flows are subject to fluctuations due to changes in foreign currency exchange rates. Currently, all of our revenue is generated in U.S. dollars. Our expenses are generally denominated in the currencies of the jurisdictions in which we conduct our operations, which are primarily in the U.S. and in Europe. Luminar’s results of operations and cash flows in the future may be adversely affected due to an expansion of non-U.S. dollar denominated contracts, growth of its international entities, and changes in foreign exchange rates. The effect of a hypothetical 10% change in foreign currency exchange rates applicable to our business would not have a material impact on our historical or current consolidated financial statements. To date, we have not engaged in any hedging strategies. As our international operations grow, we will continue to reassess our approach to manage the risk relating to fluctuations in currency rates.

ITEM 4. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, as of June 30, 2024.

Based on management’s evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of June 30, 2024, our disclosure controls and procedures were designed, and were effective, to provide assurance at a reasonable level that the information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC rules and forms, and that such information is accumulated and communicated to our management as appropriate to allow timely decisions regarding required disclosures.

In designing and evaluating our disclosure controls and procedures, management recognizes that any disclosure controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints and that management is required to apply its judgment in evaluating the benefits of possible controls and procedures relative to their costs.

Changes in Internal Control Over Financial Reporting

During the three months ended June 30, 2024, there was no change in our internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. Legal Proceedings.

Information with respect to this Item may be found under the heading “Legal Matters” in Note 15 to the condensed consolidated financial statements in this Form 10-Q, which information is incorporated herein by reference.

ITEM 1A. Risk Factors.

The Company is supplementing the risk factors previously disclosed in Part I, Item 1A of its Annual Report on Form 10-K for the fiscal year ended December 31, 2023, filed with the Securities and Exchange Commission on February 28, 2024, to update the risk factors under the heading “Risk Factors – Risks Related to Our Indebtedness”:

The large amount of our outstanding indebtedness and liabilities limits the cash flow available for our operations and exposes us to risks that could adversely affect our business, financial condition and results of operations.

As of June 30, 2024, our total consolidated indebtedness was approximately \$617.0 million, representing our 1.25% convertible senior notes due 2026 (the “existing convertible notes”), net of unamortized debt discount and issuance costs. On August 8, 2024, we issued \$100.0 million in aggregate principal amount of first-lien senior secured floating rate notes (the “new senior secured notes”) and exchanged approximately \$421.9 million in aggregate principal amount of existing convertible notes for approximately \$274.2 million in aggregate principal amount of newly issued second-lien convertible senior secured notes due 2030 (the “new secured convertible notes”) and together with the existing convertible notes, the “convertible notes”, and the convertible notes and the new senior secured notes, the “notes”). The new senior secured notes bear interest at a fluctuating rate equal to Term SOFR plus 9.0%, subject to a Term SOFR floor of 3.0%, and the new secured convertible notes, which consists of two series, bear interest at 9.0% per annum and 11.5% per annum, respectively.

Our indebtedness could have significant negative consequences for our security holders and our business, results of operations and financial condition by, among other things:

- increasing our vulnerability to adverse economic and industry conditions;
- limiting our ability to obtain additional financing;
- requiring the dedication of a substantial portion of our cash flow from operations to service our indebtedness, which will reduce the amount of cash available for other purposes;
- limiting our flexibility to plan for, or react to, changes in our business;
- diluting the interests of our existing stockholders as a result of issuing shares of our Class A common stock upon conversion of our convertible notes; and
- placing us at a possible competitive disadvantage with competitors that are less leveraged than us or have better access to capital.

Our business may not generate sufficient funds, and we may otherwise be unable to maintain sufficient cash reserves, to pay amounts due under our indebtedness, including the convertible notes and the new senior secured notes, and our cash needs may increase in the future. In addition, the new senior secured notes and the new secured convertible notes contain, and any future indebtedness that we may incur may contain, financial and other restrictive covenants that further limit our ability to operate our business, raise capital or make payments under our other indebtedness. If we fail to comply with these covenants or to make payments under our indebtedness when due, then we would be in default under that indebtedness, which could, in turn, result in that and our other indebtedness becoming immediately payable in full.

The terms of our new senior secured notes and new secured convertible notes require us to maintain minimum liquidity and place restrictions on our operating and financial flexibility. If we fail to comply with any covenants contained in the indentures governing our notes, holders may declare all of the applicable series of notes to be due and payable, and in the case of the new senior secured notes and new secured convertible notes, exercise rights with respect to collateral securing those notes.

The new senior secured notes are secured by a first priority lien on, and the new secured convertible notes are secured by a second priority lien on, substantially all of our and the guarantors’ assets (including intellectual property) and are guaranteed by certain of our current and future material subsidiaries on a senior secured basis and a second-priority senior secured basis, respectively, subject to certain criteria and exceptions.

The indenture governing the new senior secured notes contains covenants that limit our and our subsidiaries’ ability to, among other things: (i) incur, assume or guarantee additional indebtedness; (ii) grant or incur liens securing indebtedness; (iii) make certain restricted payments and investments; (iv) sell or otherwise dispose of assets, including capital stock of subsidiaries; (v) enter into transactions with affiliates; (vi) in the case of us and any guarantor, consolidate, amalgamate or merge with or into, or sell all or substantially all of its assets to, another person; (vii) declare or pay dividends or make other distributions; and (viii) make modifications to certain of our material debt agreements. In addition, the indenture governing the

new senior secured notes contains a covenant that provides that we may not permit liquidity (calculated as the sum of (a) unused commitments then available to be drawn under any revolving credit facility permitted under the indenture, plus (b) the amount of unrestricted cash and cash equivalents held by us and our subsidiary guarantors) to be less than \$35 million as of the last day, or for more than 5 days, of any calendar month. The indenture governing the new secured convertible notes contain similar restrictive covenants and a similar minimum liquidity requirement, but at a \$31.5 million level.

If we fail to comply with these or any of the other covenants under the indentures governing the notes and are unable to obtain a waiver or amendment, the holders of notes may, among other things, declare all of the applicable series of notes to be due and payable and, with respect to the new senior secured notes and new secured convertible notes, exercise rights with respect to collateral securing those notes, each of which could significantly harm our business, financial condition and prospects and could cause the price of our common stock to decline.

Under the indentures governing the new senior secured notes and new secured convertible notes, if we do not reduce the outstanding principal amount of the existing convertible notes to less than \$100 million by June 30, 2026, the maturity date of the new senior secured notes and the new secured convertible notes will advance to September 15, 2026.

The new senior secured notes will mature on the earlier of (i) August 15, 2028 or (ii) if more than \$100 million of the existing convertible notes remain outstanding as of June 30, 2026, then September 15, 2026. The new secured convertible notes will mature on the earlier of (i) January 15, 2030 or (ii) if more than \$100 million of the existing convertible notes remain outstanding as of June 30, 2026, then September 15, 2026. If we are unable to reduce the outstanding principal amount of the existing convertible notes to less than \$100 million by June 30, 2026, we may not have sufficient cash or be able to raise funds sufficient to pay the new senior secured notes and new secured convertible notes on their earlier maturity date.

We may be unable to raise the funds necessary to repurchase the notes for cash following a fundamental change, or to pay any cash amounts due upon conversion, and our existing and other indebtedness may limit our ability to repurchase the notes or pay cash upon their conversion.

Under the indenture governing our new senior secured notes, if a “change of control” occurs, and under the indenture governing our new secured convertible notes, if a “fundamental change” occurs, then the respective holders may require us to repurchase their respective notes at a cash repurchase price equal to 103% and 100%, respectively, of the principal amount of the notes to be repurchased, plus accrued and unpaid interest, if any. A holder that elects to convert its new secured convertible notes in connection with a fundamental change may be entitled to receive a make-whole adjustment to the conversion rate for such notes in connection with such corporate event in certain circumstances. The definition of “fundamental change” includes certain business combination transactions involving us and certain de-listing events with respect to our Class A common stock. In addition, upon conversion, we may satisfy part or all of our conversion obligation in cash, shares of our Class A common stock or a combination of cash and shares, at our election. We may not have enough available cash or be able to obtain financing at the time we are required to repurchase the notes or pay any cash amounts due upon conversion. In addition, applicable law, regulatory authorities and the agreements governing our existing and any future indebtedness may restrict our ability to repurchase the notes or pay any cash amounts due upon conversion. Our failure to repurchase notes or to pay any cash amounts due upon conversion or when otherwise required will constitute a default under the indentures governing the notes. A default under the indenture governing our new senior secured notes or a default under the indenture governing the new secured convertible notes or the fundamental change itself could also lead to a default under agreements governing other indebtedness which we have incurred or may incur, which may result in that other indebtedness becoming immediately payable in full. We may not have sufficient funds to satisfy all amounts due under the other indebtedness and the notes.

The conditional conversion feature of our convertible notes, if triggered, may adversely affect our financial condition and operating results.

In the event the conditional conversion feature of the existing convertible notes is triggered, holders of such notes will be entitled to convert the notes at any time during specified periods at their option and holders of the new secured convertible notes are entitled to convert their notes at any time at their option. If one or more holders elect to convert their notes, unless we elect to satisfy our conversion obligation by delivering solely shares of our Class A common stock (other than paying cash in lieu of delivering any fractional share), we would be required to settle a portion or all of our conversion obligation through the payment of cash, which could adversely affect our liquidity. If a significant portion of our convertible notes were converted, the number of shares of Class A common stock that would be issued upon conversion will cause substantial dilution to our stockholders. In addition, upon conversion of the new secured convertible notes (except a conversion following certain events that constitute a “make-whole fundamental change”), we would be required to pay a make-whole premium upon conversion equal to the lesser of (i) all regularly scheduled interest payments that would be due on the portion of such new secured convertible notes being redeemed for the succeeding two year period and (ii) all regularly scheduled interest payments that would be due on the portion of such new secured convertible notes being redeemed through the maturity date, and is capped at the maximum number of shares that would be issuable in connection with a “make-whole fundamental change”.

ITEM 2. Unregistered Sales of Equity Securities and Use of Proceeds

Unregistered Sales of Equity Securities

On May 24, 2024, we issued 1,440,549 shares of Class A common stock in lieu of cash to a certain service provider for services rendered to us pursuant to a private placement in reliance on Section 4(a)(2) of the Securities Act of 1933.

On July 5, 2024, we issued 259,246 shares of Class A common stock in lieu of cash to a certain service provider for services rendered to us pursuant to a private placement in reliance on Section 4(a)(2) of the Securities Act of 1933.

ITEM 3. Defaults Upon Senior Securities.

None.

ITEM 4. Mine Safety Disclosures.

Not applicable.

ITEM 5. Other Information.

During the fiscal quarter ended June 30, 2024, none of our directors or officers (as defined in Rule 16a-1(f) under the Securities Exchange Act adopted or terminated a "Rule 10b5-1 trading arrangement" or "non-Rule 10b5-1 trading arrangement," as those terms are defined in Item 408 of Regulation S-K.

[Table of Contents](#)

ITEM 6. Exhibits.

Exhibit Number	Description	Incorporation by Reference				Filed Herewith
		Form	File Number	Exhibit/Appendix Reference	Filing Date	
3.1	Second Amended and Restated Certificate of Incorporation of the Company.	8-K/A	001-38791	3.1	12/8/20	
3.2	Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of the Company.	10-K	001-38791	3.2	02/28/24	
3.3	Amended and Restated Bylaws of the Company (as amended on March 17, 2023).	8-K	001-38791	3.1	03/21/23	
4.1	First Lien Indenture, dated August 8, 2024, by and between the Company and GLAS Trust Company LLC, as trustee.					X
4.2	Second Lien Indenture, dated August 8, 2024, by and between the Company and GLAS Trust Company LLC, as trustee.					X
5.1	Opinion of Orrick, Herrington & Sutcliffe LLP					X
10.1	Luminar Technologies, Inc. Amended and Restated 2020 Equity Incentive Plan.	DEF14A	001-38791	B	04/25/24	
10.2	Financing Agreement, dated May 3, 2024, by and between the Company and Virtu Americas LLC.	S-3ASR	33-279118	1.3	05/3/24	
10.3	Form of Exchange Agreement, dated August 6, 2024, by and between the Company and the Holders.†					X
10.4	Form of Purchase Agreement, dated August 6, 2024, by and between the Company and the Purchasers.†					X
31.1	Certification of Principal Executive Officer pursuant to Rules 13a-14(a) and 15(d)-14(a) under the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.					X
31.2	Certification of Principal Financial Officer pursuant to Rules 13a-14(a) and 15(d)-14(a) under the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.					X
32.1	Certification of Principal Executive Officer and Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.					Furnished herewith
101.INS	XBRL Instance Document					X
101.SCH	XBRL Taxonomy Extension Schema Document					X
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document					X
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document					X
101.LAB	XBRL Taxonomy Extension Label Linkbase Document					X
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document					X
104	Cover Page Interactive Data File (formatted as Inline XBRL).					X

† Certain of the exhibits and schedules to this Exhibit have been omitted in accordance with Regulation S-K Item 601(a)(5). The registrant agrees to furnish a copy of all omitted exhibits and schedules to the SEC upon its request.

LUMINAR TECHNOLOGIES, INC.,
as Issuer,

THE SUBSIDIARY GUARANTORS PARTY HERETO,
as Guarantors,

and

GLAS TRUST COMPANY LLC,
as Trustee and Collateral Agent

FIRST LIEN INDENTURE

Dated as of August 8, 2024

Floating Rate Senior Secured Notes due 2028

TABLE OF CONTENTS

	<u>Page</u>
Article 1. Definitions; Rules of Construction	1
Section 1.01. Definitions.....	1
Section 1.02. Other Definitions.	27
Section 1.03. Rules of Construction.	28
Article 2. The Notes	28
Section 2.01. Form, Dating and Denominations.....	28
Section 2.02. Execution, Authentication and Delivery.....	29
Section 2.03. Initial Notes and Additional Notes.	30
Section 2.04. Method of Payment.....	30
Section 2.05. Accrual of Interest; Defaulted Amounts; When Payment Date is Not a Business Day.....	30
Section 2.06. Registrar and Paying Agent.	31
Section 2.07. Paying Agent to Hold Property in Trust.	32
Section 2.08. Holder Lists.....	32
Section 2.09. Legends.	33
Section 2.10. Transfers and Exchanges; Certain Transfer Restrictions.....	33
Section 2.11. Exchange and Cancellation of Notes to Be Repurchased Pursuant to an Asset Sale Offer, a Change of Control Offer or Redemption.	38
Section 2.12. Replacement Notes.	39
Section 2.13. Registered Holders; Certain Rights with Respect to Global Notes.	39
Section 2.14. Cancellation.	40
Section 2.15. Notes Held by the Company or its Affiliates.....	40
Section 2.16. Temporary Notes.	40
Section 2.17. Outstanding Notes.....	40
Section 2.18. Repurchases by the Company.....	41
Section 2.19. CUSIP and ISIN Numbers.	41
Article 3. Covenants.....	42
Section 3.01. Payment on Notes.	42
Section 3.02. [Reserved].....	42
Section 3.03. Financial Reporting Information.....	42
Section 3.04. Additional Interest.	45
Section 3.05. Compliance and Default Certificates.	46
Section 3.06. Stay, Extension and Usury Laws.	46
Section 3.07. Acquisition of Notes by the Company and its Affiliates.	47
Section 3.08. Corporate Existence.	47
Section 3.09. Limitation on Incurrence of Indebtedness.	47

Section 3.10. Limitation on Liens.....	52
Section 3.11. Limitation on Restricted Payments.....	52
Section 3.12. Limitation on Asset Sales.....	55

Section 3.13. Transactions with Affiliates.....	57
Section 3.14. Burdensome Agreements.....	60
Section 3.15. Modification of Terms of Junior Indebtedness.....	60
Section 3.16. Minimum Liquidity.....	61
Section 3.17. Change of Control.....	61
Section 3.18. Further Instruments and Acts.....	63
Section 3.19. Additional Subsidiary Guarantors.....	63
Section 3.20. Further Assurances.....	64
Section 3.21. Payment for Consent.....	65
Article 4. Repurchase and Redemption.....	65
Section 4.01. No Sinking Fund.....	65
Section 4.02. [Reserved].....	65
Section 4.03. Right of the Company to Redeem the Notes.....	65
Article 5. [Reserved].....	67
Article 6. Successors.....	67
Section 6.01. When the Company May Merge or Transfer Assets.....	67
Section 6.02. When the Subsidiary Guarantors May Merge or Transfer Assets.....	69
Article 7. Defaults and Remedies.....	70
Section 7.01. Events of Default.....	70
Section 7.02. Acceleration.....	73
Section 7.03. Sole Remedy for a Failure to Report.....	74
Section 7.04. Other Remedies.....	75
Section 7.05. Waiver of Past Defaults.....	75
Section 7.06. Control by Required Holders.....	76
Section 7.07. Limitation on Suits.....	76
Section 7.08. Absolute Right of Holders to Institute Suit for the Enforcement of the Right to Receive Payment.....	77
Section 7.09. Collection Suit by Trustee.....	77
Section 7.10. Trustee May File Proofs of Claim.....	77
Section 7.11. Priorities.....	78
Section 7.12. Undertaking for Costs.....	78
Article 8. Amendments, Supplements and Waivers.....	79
Section 8.01. Without the Consent of Holders.....	79
Section 8.02. With the Consent of Holders.....	80
Section 8.03. Notice of Amendments, Supplements and Waivers.....	81
Section 8.04. Revocation. Effect and Solicitation of Consents; Special Record Dates:	

Etc.	81
Section 8.05. Notations and Exchanges.	82
Section 8.06. Trustee and Collateral Agent to Execute Supplemental Indentures.	82
Section 8.07. Additional Voting Terms; Calculation of Principal Amount.	82
Article 9. Satisfaction and Discharge.	83
Section 9.01. Termination of Company's Obligations.	83

- ii -

Section 9.02. Repayment to Company.	83
Section 9.03. Reinstatement.	84
Article 10. Trustee.	84
Section 10.01. Duties of the Trustee.	84
Section 10.02. Rights of the Trustee.	85
Section 10.03. Individual Rights of the Trustee.	87
Section 10.04. Trustee's Disclaimer.	88
Section 10.05. Notice of Defaults.	88
Section 10.06. Compensation and Indemnity.	88
Section 10.07. Replacement of the Trustee.	89
Section 10.08. Successor Trustee by Merger, Etc.	90
Section 10.09. Eligibility; Disqualification.	90
Article 11. COLLATERAL AND SECURITY	90
Section 11.01. Security Interest; Collateral Agent.	90
Section 11.02. Authorization of Actions to Be Taken by the Trustee or the Collateral Agent Under the Collateral Documents.	95
Section 11.03. Authorization of Receipt of Funds by the Trustee under the Collateral Documents.	96
Section 11.04. Termination of Security Interest; Release of Collateral.	96
Section 11.05. Maintenance of Collateral.	98
Section 11.06. Collateral Agent; Collateral Documents.	98
Section 11.07. Replacement of Collateral Agent.	99
Section 11.08. Acceptance By Collateral Agent.	100
Section 11.09. Powers Exercisable By Receiver or Trustee.	100
Article 12. Guarantees.	101
Section 12.01. Guarantee.	101
Section 12.02. Limitation on Guarantor Liability.	103
Section 12.03. Execution and Delivery.	103
Section 12.04. When a Subsidiary Guarantor May Merge, Etc.	104
Section 12.05. Benefits Acknowledged.	104
Section 12.06. Release of Guarantees.	104
Article 13. Miscellaneous	105
Section 13.01. Notices	105

Section 13.01. Notices.	105
Section 13.02. Delivery of Officer’s Certificate and Opinion of Counsel as to Conditions Precedent.	107
Section 13.03. Statements Required in Officer’s Certificate and Opinion of Counsel.....	107
Section 13.04. Rules by the Trustee, the Registrar and the Paying Agent.....	108
Section 13.05. No Personal Liability of Directors, Officers, Employees and Stockholders.....	108
Section 13.06. Governing Law; Waiver of Jury Trial.	108
Section 13.07. Submission to Jurisdiction.	108
Section 13.08. No Adverse Interpretation of Other Agreements.	109
Section 13.09. Successors.	109

Section 13.10. Force Majeure.....	109
Section 13.11. U.S.A. PATRIOT Act.....	109
Section 13.12. Calculations.....	109
Section 13.13. Severability.....	110
Section 13.14. Counterparts.....	110
Section 13.15. Table of Contents, Headings, Etc.....	110

Exhibits

Exhibit A: Form of Note.....	A-1
Exhibit B-1: Form of Restricted Note Legend.....	B1-1
Exhibit B-2: Form of Global Note Legend.....	B2-1
Exhibit B-3: Form of Non-Affiliate Legend.....	B3-1
Exhibit C: Form of Supplemental Indenture.....	C-1

Schedules

Schedule 1.01A: Investments.....	S-1
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FIRST LIEN INDENTURE, dated as of August 8, 2024, between Luminar Technologies, Inc., a Delaware corporation, as issuer (the “**Company**”), the Subsidiary Guarantors from time to time party hereto, and GLAS Trust Company LLC, as trustee (in such capacity, the “**Trustee**”) and as collateral agent (in such capacity, the “**Collateral Agent**”).

Each party to this Indenture (as defined below) agrees as follows for the benefit of the Trustee, the Collateral Agent and for the equal and ratable benefit of the Holders (as defined below) of the Company’s Floating Rate Senior Secured Notes due 2028 issued pursuant to this Indenture (the “**Notes**”).

Article 1. DEFINITIONS; RULES OF CONSTRUCTION

Section 1.01. DEFINITIONS.

“**Additional Interest**” means any interest that accrues on any Note pursuant to Section 3.04.

“**Affiliate**” has the meaning set forth in Rule 144 as in effect on the Issue Date.

“**Affiliated Party**” means, with respect to any natural person, (i) any company, partnership, trust or other entity for which such natural person (or such natural person’s estate) has dispositive or voting power with respect to the Company’s Capital Stock held by such company, partnership, trust or other entity; (ii) any trust the beneficiaries of which consist solely of such natural person, any Family Member of such natural person or any person described in clause (i); (iii) the trustees, legal representatives, beneficiaries or beneficial owners (in each case, solely in such capacity and not in their individual or other capacities) of any such company, partnership, trust or other entity referred to in clause (i) or (ii); (iv) the estate of such natural person (it being understood, for the avoidance of doubt, that this clause (iv) will not include any person to whom any securities are transferred from any such estate); and (v) the Family Members of such natural person.

“**Approved Jurisdiction**” means the United States, any state or commonwealth thereof or the District of Columbia.

“**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 outside the ordinary course of business of the Company or any Subsidiary;

(B) any license of Intellectual Property; or

(C) 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 or Disqualified Stock) of any Subsidiary (other than to the Company or another Subsidiary), whether in a single transaction or a series of related transactions,

in each case, *other than*:

- 1 -

(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 or commercially reasonable to maintain in the conduct of the business of the Company and its Subsidiaries, taken as a whole;

(ii) any Disposition of all or substantially all of the assets of the Company in a manner permitted pursuant to, and subject to, **Article 6**, or any Disposition that constitutes a Change of Control;

(iii) any transaction specifically excluded from the definition of Investment or Restricted Payment or any Permitted Investment (other than as a result of the application of clause (D) or clause (T) of such definition) or any Restricted Payment permitted under the provisions of **Section 3.11(B)** (other than clause (xiii) thereof);

(iv) Dispositions between or among the Company and its Wholly-Owned Subsidiaries (not to exceed, in the case of any such Dispositions by Wholly-Owned Subsidiaries that are Subsidiary Guarantors to any Non-Guarantor Subsidiaries, Dispositions of assets in excess of \$2,500,000 in the aggregate for so long as the Obligations under the Notes are outstanding);

(v) any settlement of or payment in respect of any property or casualty insurance claim or any foreclosure, condemnation, expropriation or similar proceeding relating to any property or assets of the Company or any of its Subsidiaries;

(vi) any sale or Disposition deemed to occur in connection with the granting or creation of any Permitted Lien;

(vii) issuances of Capital Stock of the Company that is not Disqualified Stock pursuant to benefit plans, employment agreements, equity plans, stock subscription or shareholder agreements, stock ownership plans and other similar plans, policies, contracts or arrangements established in the ordinary course of business or approved by the Board of Directors in good faith;

(viii) the lease, assignment, license, sublicense or sublease of any real or personal property (other than Intellectual Property and, for the sake of clarity, any related distribution or commercialization rights) in the ordinary course of business or consistent with industry practice;

(ix) 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;

(x) 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 of joint ventures;

- 2 -

(xi) the sale, exchange or other Disposition of cash or Cash Equivalents or marketable securities in the ordinary course of business;

(xii) the lapse, abandonment or other Disposition of Intellectual Property (other than Material Intellectual Property) by the Company and its Subsidiaries in the ordinary course of business;

(xiii) the unwinding of any Swap Agreement; or

(xiv) Dispositions of up to \$250,000 in any single transaction or series of related transactions not to exceed \$5,000,000 in the aggregate for so long as the Notes are outstanding.

“Authorized Denomination” means, with respect to a Note, a principal amount thereof equal to a minimum of \$1,000 or any integral multiple of \$1,000 in excess thereof.

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

“Board of Directors” means the board of directors of the Company or a committee of such board duly authorized to act on behalf of such board.

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

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

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

“Cash Equivalents” means:

(A) (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 720 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;

(B) (i) corporate debt issued by any Person organized under the laws of any state of the United States of America or (b) United States dollar denominated corporate debt issued by any Person organized under the laws of any territory of Canada, in each case rated at least “Prime-2”

(or the then equivalent grade) by Moody's or at least "A-2" (or the then equivalent grade) by S&P (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency), in each case with maturities of not more than 365 days from the date of acquisition thereof;

(C) time and demand deposits with, or certificates of deposit or bankers' acceptances of, any commercial bank that has combined capital and surplus of at least \$500,000,000;

(D) fully collateralized repurchase agreements with a term of not more than thirty (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;

(E) commercial paper maturing within (i) 180 days from the date of acquisition thereof and having, at such date of acquisition, a rating of at least P-2 or A-2 from either Moody's or S&P or (ii) 365 days from the date of acquisition thereof and having, at such date of acquisition, a rating of at least P-1 or A-1 from either Moody's or S&P;

(F) marketable short-term money market and similar liquid funds having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency);

(G) securities issued or fully guaranteed by any state, commonwealth or territory of the United States of America or by any political subdivision (including any municipality) or taxing authority of any such state, commonwealth or territory, the securities of which state, commonwealth, territory, political subdivision or taxing authority (as the case may be) are rated at least "A" (or A-1, SP1 or other then equivalent grade) by S&P or at least "A1" (or "Prime-1" or MIG-1 or other then equivalent grade) by Moody's as of the date of acquisition and, in each case, with a maturity of not more than one year from the date of acquisition thereof;

(H) Investments, classified in accordance with GAAP as current assets, 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 invest solely in one or more of the types of securities described in clauses (A) through (G) above; and

(I) in the case of a Subsidiary incorporated, organized or formed outside the United States, other short-term investments that are analogous to the foregoing, are of comparable credit quality and are customarily used by companies in the jurisdiction of such Subsidiary for cash management purposes.

"CFC" means a Foreign Subsidiary that is a "controlled foreign corporation" within the meaning of section 957(a) of the Code, the dividends of which are not entitled to the dividends received deduction under Section 245A of the Code.

“**Change of Control**” means the occurrence of any of the following:

- 4 -

(A) the sale, lease or transfer, in one transaction or a series of related transactions, of all or substantially all the assets of the Company and its Subsidiaries, taken as a whole;

(B) the Company becomes aware (by way of a report or any other filing pursuant to Section 13(d) of the Exchange Act, proxy, vote, written notice or otherwise) of the acquisition by any Person or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision), including any group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act), other than any Permitted Party, in a single transaction or in a related series of transactions, by way of merger, consolidation, amalgamation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision), of more than 25% of the total voting power of the Voting Stock of the Company (except that such threshold shall be increased to 35% so long as Permitted Parties in the aggregate beneficially own more of the total voting power of the Voting Stock of the Company than such Person or group at all times that such 25% threshold is exceeded);

(C) the adoption of a plan relating to the Company’s dissolution or liquidation in accordance with the Company’s organizational documents; or

(D) the occurrence of a “Fundamental Change” or a “Make-Whole Fundamental Change” pursuant to the terms of the Second Lien Indebtedness or the Existing Convertible Notes.

“**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 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 (as defined in the Security Agreement).

“**Collateral Agent**” means the Person named as the “Collateral Agent” in the first paragraph of this Indenture, acting in such capacity, 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, account control agreement, pledge agreement and related agreements (including, without limitation, any mortgages), as amended, supplemented, restated, renewed, refunded, replaced, restructured, repaid, refinanced, or otherwise modified from time to time, creating, perfecting or otherwise evidencing the security interests granted by the Company or any Subsidiary Guarantor in favor of the Collateral Agent and executed and delivered pursuant to the

Notes Documents to secure any of the Obligations in respect of the Notes.

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

- 5 -

“**Company**” means the Person named as such in the first paragraph of this Indenture and, subject to **Article 6**, its successors and assigns.

“**Company Order**” means a written request or order signed on behalf of the Company by one (1) of its Officers and delivered to the Trustee.

“**Contingent Obligations**” means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness (“primary obligations”) of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent: (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor; (b) to advance or supply funds for the purchase or payment of any such primary obligation or to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

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

“**Depository**” means The Depository Trust Company or its successor.

“**Depository Participant**” means any member of, or participant in, the Depository.

“**Depository Procedures**” means, with respect to any transfer, exchange or other transaction involving a Global Note or any beneficial interest therein, including notices to Indirect Participants and any consent solicitations through the Depository, the rules and procedures of the Depository applicable to such transfer, exchange or transaction. For the avoidance of doubt, the Trustee shall have no responsibility for the actions or inactions of the Depository pursuant to its Depository Procedures.

“**Disposition**” or “**Dispose**” means the sale, transfer, issuance, license, sublicense, lease, contribution or other disposition (including any sale and leaseback transaction or any contribution or other transfer in exchange for an Investment), whether in one transaction or in a series of transactions, of any property or assets (including, without limitation, any issuance or other disposition of Capital Stock of any Subsidiary of the Company but excluding the issuance of Capital Stock of the Company) 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; *provided*, that non-exclusive licenses or sublicenses of Intellectual Property or any related distribution or commercialization rights in the ordinary course of business and on an arms' length basis granting rights to third-party contract manufacturers or distributors solely for the purpose of manufacturing or distribution shall not constitute a Disposition.

- 6 -

“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 one hundred and eighty (180) 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); *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 redemption provisions of, such Disqualified Stock or portion thereof, plus accrued dividends. Notwithstanding the foregoing, Disqualified Stock shall include all Preferred Stock of the Company's Subsidiaries.

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

“Excluded Subsidiary” means, as of any date, (A) any Immaterial Subsidiary; (B) any Subsidiary 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 (so long as in respect of any such contractual prohibition such prohibition is not incurred in contemplation of such acquisition), in each case, from providing a Guarantee or granting security or which would require governmental (including regulatory) consent, approval, license or authorization to provide a Guarantee or to grant security unless such consent, approval, license or authorization has been received; (C) any other Subsidiary with respect to which the Required Holders agree in writing that the cost or other consequences of providing a guarantee is likely to be excessive in relation to the value to be afforded to the Holders thereby; and (D) the Luminar China Subsidiary; *provided*, that no Subsidiary that is a co-borrower or guarantor of any Indebtedness of a Note Party shall be an Excluded Subsidiary; and *provided, further* that no Foreign Subsidiary organized in a country where a Subsidiary Guarantor is organized shall be an Excluded Subsidiary on the basis of being

an Immaterial Subsidiary unless such Foreign Subsidiary would be deemed an Immaterial Subsidiary if it were not a Foreign Subsidiary.

“Existing Convertible Notes” means the Company’s 1.25% Convertible Senior Notes due 2026 issued pursuant to the indenture dated as of December 17, 2021, between the Company and U.S. Bank National Association, as trustee.

“Fair Market Value” means the value that would be paid by a willing buyer or licensor to an unaffiliated willing seller or licensee in a transaction not involving distress or necessity of either party, reasonably determined in good faith by the Board of Directors.

“Family Member” means, with respect to any individual, any other individual having a relationship by blood (to the second degree of consanguinity), marriage (including former spouses), domestic partnership (including former domestic partners) or adoption to such individual.

“Foreign Subsidiary” means a Subsidiary not organized or existing under the laws of the United States of America or any state or commonwealth thereof or the District of Columbia that is a CFC or substantially all of the assets and operations of which are located outside of the United States of America. For the avoidance of doubt, any Subsidiary incorporated or organized under the laws of a territory of the United States (including the Commonwealth of Puerto Rico) that meets the foregoing criteria shall constitute a “Foreign Subsidiary”.

“Freely Tradable” means, with respect to any security of the Company, that such security would be eligible to be offered, sold or otherwise transferred pursuant to Rule 144 if held by a Person that is not an Affiliate of the Company, and that has not been an Affiliate of the Company during the immediately preceding three (3) months, without any requirements as to volume, manner of sale, availability of current public information or notice under the Securities Act (except that any such requirement as to the availability of current public information will be disregarded if the same is satisfied at that time).

“GAAP” means generally accepted accounting principles in the United States of America as in effect from time to time, including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or any successor entity thereto designated by the SEC).

“Global Note” means a Note that is represented by a certificate substantially in the form set forth in **Exhibit A**, registered in the name of the Depository or its nominee, duly executed by the Company and authenticated by the Trustee, and deposited with the Trustee, as custodian for the Depository.

“Global Note Legend” means a legend substantially in the form set forth in **Exhibit B-2**.

“Guarantee” means the guarantee by each Subsidiary Guarantor of the Company’s obligations under this Indenture, the Notes and the other Notes Documents pursuant to **Article 12**.

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

“Immaterial Foreign Jurisdictions” means countries or geographical regions (if perfection in the applicable Intellectual Property is effected on a regional basis), excluding the United States of America, Canada, the United Kingdom, Sweden or Germany, where the actual or projected annual revenues (other than intercompany revenues) (in the case of actual revenues, for the most recently concluded 12 calendar month period for which financial statements are available or were required to have been delivered in accordance with **Section 3.03**, and in the case of projected revenues, as determined in good faith by the Board of Directors of the Company) of the Company and its Subsidiaries, taken as a whole, are less than \$7,500,000 individually and, taken together with all such Immaterial Foreign Jurisdictions as of such date, are less than \$15,000,000

in the aggregate; *provided* that, any country or geographical region shall cease to be deemed an Immaterial Foreign Jurisdiction hereunder following such time as the Company or the applicable Subsidiary Guarantor shall record appropriate evidence of the Liens and security interests granted hereunder and/or under the Collateral Documents in the Intellectual Property of the Company or such Subsidiary Guarantor registered in such country or geographical region.

“Immaterial Subsidiary” means any Subsidiary that is not an obligor in respect of any Indebtedness for borrowed money and that (A) with respect to any such Subsidiaries that are not Foreign Subsidiaries, did not, as of the last day of the fiscal quarter of the Company most recently ended for which financial statements have been (or were required to be) delivered pursuant to this Indenture, have assets with a value in excess of 2.5% of the total assets or revenues representing in excess of 2.5% of total revenues of the Company and its Subsidiaries on a consolidated basis as of such date (or, taken together with all such Subsidiaries that are not Foreign Subsidiaries as of such date that are Non-Guarantor Subsidiaries as a result of being Immaterial Subsidiaries, in excess of 5.0% of total assets or revenues representing in excess of 5.0% of total revenues of the Company and its Subsidiaries that are not Foreign Subsidiaries on a consolidated basis as of such date) and (B) with respect to any such Subsidiaries that are Foreign Subsidiaries, are not Significant Subsidiaries (for this purpose, deeming all Foreign Subsidiaries that are located or organized in a single country as a single Subsidiary).

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money, including obligations in respect of the Permitted ABL Facility, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding accounts payable and accrued expenses incurred in the ordinary course of business and not past due by more than ninety (90) days, payroll liabilities and deferred compensation and severance, pension, health and welfare retirement and equivalent benefits to current or former employees, directors or managers of such Person and its subsidiaries), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (f) all guarantees by, and Contingent Obligations of, such Person of Indebtedness of others set forth in clauses (a) through (e) and (g) through (i) of this definition, (g) all attributable indebtedness in respect of Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit, letters of guaranty or bankers’ acceptances; and (i) net termination obligations under Swap Agreements (other than any such obligations that are settleable at the option of such Person in Capital Stock (other than Disqualified Stock) of the Company); *provided, however*, that notwithstanding the foregoing, Indebtedness shall be deemed not to include: (1) Contingent Obligations (other than, for the avoidance of doubt, those described in clause (d) or (f) above) incurred in the ordinary course of business and not in respect of borrowed money; (2) deferred or prepaid revenues; (3) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed

respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller; (4) obligations in respect of non-exclusive time-based licenses in the ordinary course of business and consistent with customary industry practices; (5) deferred compensation; (6) trade payables or similar obligations to trade creditors or accrued

- 9 -

expenses; and (7) obligations in respect of any Capital Stock of the Company that is not Disqualified Stock. Notwithstanding any other provision of this Indenture, for purposes of the definition of “Indebtedness” and **Section 3.09** hereof, any deferred purchase price or earnout obligation of the Company, shall be deemed outstanding in the maximum amount which the Company may be obligated to pay, assuming the occurrence or satisfaction of any trigger or other contingency.

“**Indenture**” means this Indenture, as amended or supplemented from time to time.

“**Indirect Participant**” means a Person who holds a beneficial interest in a Global Note through a Depository Participant.

“**Initial Purchasers**” means the investors purchasing the Notes on the Issue Date.

“**Intellectual Property**” means (a) all compounds, formulations, materials, methods, techniques, trade secrets, copyrights, know-how, data, documentation, regulatory submissions, specifications, and other intellectual property of any kind (whether or not protectable under patent, trademark, copyright, or similar laws) and (b) all patents and patent applications claiming the foregoing, as applicable, and all divisions, continuations and continuations-in-part of such patent applications, all patents issuing thereon and all reissues, reexaminations and extensions of any of the foregoing patents.

“**Intercreditor Agreement**” means that certain Intercreditor Agreement, dated as of the date hereof, by and among the Collateral Agent, the Second Lien Collateral Agent and the Control Agent parties thereto, and acknowledged by the Note Parties party thereto from time to time, as amended, restated, amended and restated, supplemented, modified or replaced, in whole or in part, from time to time, in accordance with its terms.

“**Interest Payment Date**” means, with respect to a Note, each, February 15, May 15, August 15 and November 15 of each year, commencing on November 15, 2024 (or commencing on such other date specified in the certificate representing such Note). For the avoidance of doubt, the Maturity Date is an Interest Payment Date.

“**Interest Period**” means a calendar quarter.

“**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, (ii) accounts receivable, credit card and debit card receivables, trade credit and advances to customers, (iii) 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 as well as investments that are required by GAAP to be classified on the balance sheet of such Person in the same manner as other investments included in this definition to the extent such transactions involve the transfer of cash or other property. The acquisition by the Company or any Subsidiary of a Person that holds an Investment

- 10 -

in a third Person that was acquired in contemplation of the acquisition of such Person will be deemed to be an Investment by the Company or such Subsidiary in such third Person in an amount equal to the Fair Market Value of the Investments held by the acquired Person in such third Person at the time of acquisition of such Person. Except as otherwise provided in this Indenture, the amount of an Investment will be determined at the time the Investment is made and without giving effect to subsequent changes in value but after giving effect (without duplication) to all subsequent reductions in the amount of such Investment as a result of the dividend, distribution, interest payment, return of capital, repayment or disposition thereof, in each case solely to the extent paid in or made for cash, not to exceed the original amount of such Investment.

"IP Proceeds" means proceeds received by the Company and its Subsidiaries on account of any Disposition of Intellectual Property, including applicable proceeds from Permitted IP Licenses, excluding royalty or subscription payments payable on a regular periodic basis or payable on customary terms for royalty payments, calculated based on revenues, sales, units or other customary metrics. For the sake of clarity, IP Proceeds shall include all upfront payments, any guaranteed payments (other than any guaranteed royalty or subscription payments of the type described in the foregoing sentence) and any milestone payments (whether time based or based on the achievement of performance or other hurdles).

"Issue Date" means August 8, 2024.

"Lien" means, with respect to any asset, (A) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset; (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), other than an operating lease, relating to such asset; and (C) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Liquidity" means, as of any date of determination, the sum of (i) unused commitments then available to be drawn under the Permitted ABL Facility plus (ii) (A) on or prior to November 6, 2024, unrestricted cash and Cash Equivalents of the Company and the Subsidiary Guarantors and (B) after November 6, 2024, unrestricted cash and Cash Equivalents of the Company and its Subsidiaries that is subject to a Control Agreement (as defined in the Security Agreement) in favor of the Collateral Agent, in each case free and clear of any Liens (other than non-consensual Liens permitted by **Section 3.10**; Liens in favor of the depository bank that arise by operation of

law; customary Liens in favor of the depositary bank set forth in applicable treasury management agreements; the Liens in favor of the Collateral Agent; and Liens securing the Permitted ABL Facility or the Second Lien Indebtedness).

“Luminar China Subsidiary” means Luminar Technologies (Xiamen) Co., Ltd.

“Make-Whole Amount” means, with respect to any Note that is accelerated or redeemed on or prior to August 8, 2025, an amount equal to the present value at the date of such acceleration or redemption of all required remaining scheduled interest payments due on such Note (or the portion of the Note being redeemed) through August 8, 2025 (excluding accrued but unpaid interest through such acceleration or redemption date) and for this purpose deeming August 8,

2025 a date on which interest is scheduled to be paid, computed using a discount rate equal to the Treasury Rate plus 50 basis points, calculated using a constant interest rate equal to Term SOFR as of the day that is three (3) Business Days prior to the date of such acceleration or redemption as calculated by the Company or on behalf of the Company by such Person as the Company shall designate (and the amount of the Make-Whole Amount shall be provided by the Company to the Trustee in writing promptly following the calculation thereof); *provided* that making such calculation or determining the correctness thereof shall not be a duty or obligation of the Trustee.

“Material Foreign Jurisdiction” means any jurisdiction outside of the United States of America that is not an Immaterial Foreign Jurisdiction, other than China.

“Material Geography” means any jurisdiction within North America, Europe, Japan or Korea.

“Material Intellectual Property” means all Intellectual Property that is (i) utilized by the Company and its Subsidiaries, and (ii) necessary for, and material to the business of the Company and its Subsidiaries (taken as a whole).

“Material Real Property” means (1) any Real Property that is owned by any Note Party and has a Fair Market Value in excess of \$2,000,000 or (2) any Real Property that is owned or leased by any Note Party as to which the loss or suspension of the use of such Real Property would be likely to cause a material disruption to the business operations of the Company and its Subsidiaries.

“Maturity Date” means the earlier of (i) August 15, 2028, and (ii) to the extent more than one hundred million (\$100,000,000) of Existing Convertible Notes are outstanding as of June 30, 2026, September 15, 2026. The Company shall notify the Trustee in writing if more than \$100,000,000 of Existing Convertible Notes are outstanding as of June 30, 2026, and the Trustee shall have no duty to independently monitor or verify the amount of Existing Convertible Notes outstanding at anytime (including as of June 30, 2026).

“Net Proceeds” means, (a) with respect to any Asset Sale by the Company or any of its Subsidiaries, the excess, if any, of (i) the sum of cash and Cash Equivalents received by the Company or such Subsidiary in connection with such transaction (excluding (x) recurring periodic sales or royalty payments and subscription fees received on account of Permitted IP Licenses that do not, for the sake of clarity, constitute IP Proceeds and (y) any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, any notes or other obligations or other securities or assets received by the Company or such Subsidiary from such transferee, 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 Asset Sale received by the Company or any of its Subsidiaries for such Asset Sale) over (ii) the sum of (A) all payments on account of any Indebtedness that is secured on a priority basis to the Obligations under the Notes by a Permitted Lien on the applicable asset that is required to be repaid (or to establish an escrow for the future repayment thereof) in connection with such transaction or on account of any Indebtedness of a Non-Guarantor Subsidiary that was the transferor in respect

of such transaction, (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), (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 is 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, such amounts shall constitute Net Proceeds) and (b) in connection with any issuance or sale of Indebtedness by the Company or any of its 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 that is not a Note Party, "Net Proceeds" shall be reduced to the pro rata portion thereof attributable to such minority interests.

"**Non-Affiliate Legend**" means a legend substantially in the form set forth in **Exhibit B-3**.

"**Non-Guarantor Subsidiary**" means any Subsidiary of the Company that is not a Subsidiary Guarantor.

"**Note Agent**" means any Registrar or Paying Agent.

"**Note Parties**" means, collectively, the Company and each Subsidiary Guarantor.

"**Notes Documents**" means this Indenture, the Notes, the Collateral Documents and the Intercreditor Agreement.

"**Obligations**" means any principal, interest, fees, expenses (including any interest, fees, expenses and other amounts accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest, fees, expenses and other amounts are allowed or allowable claims under applicable state, federal or foreign law), penalties, indemnifications, reimbursements (including, without limitation, reimbursement obligations with respect to letters of credit and bankers' acceptances), damages and other liabilities payable under the documentation governing any Indebtedness.

"**Officer**" means the Chairman of the Board of Directors, the Chief Executive Officer, the

Officer means the Chairman of the Board of Directors, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Vice-President of the Company.

- 13 -

“Officer’s Certificate” means a certificate that is signed on behalf of the Company by one (1) of its Officers and that meets the requirements of **Section 13.03**.

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

“Opinion of Counsel” means a written opinion, from legal counsel (including an employee of, or counsel to, the Company or any of its Subsidiaries) reasonably acceptable to the Trustee, that meets the requirements of **Section 13.03**, subject to customary qualifications and exclusions.

“Periodic Term SOFR Determination Day” has the meaning specified in the definition of “Term SOFR”.

“Permitted ABL Facility” means an asset backed revolving credit facility of the Company, which may be guaranteed by any Subsidiary Guarantors (and, for the avoidance of doubt, with availability limited by a customary borrowing base), and otherwise on customary terms reasonably satisfactory to the Required Holders in their discretion, including that such facility shall be entitled to a priority Lien on assets of the type customarily included in the borrowing base (and no more than a junior Lien on any other Collateral, including junior to the Second Lien Indebtedness), and subject to a customary intercreditor agreement, in each case reasonably satisfactory to the Required Holders.

“Permitted China Facility” means an asset backed revolving credit facility of the Luminar China Subsidiary (and, for the avoidance of doubt, with availability limited by a customary borrowing base), on customary terms satisfactory to the Required Holders in their reasonable discretion; *provided* that except as contemplated in clause (K) of the definition of “Permitted Investment”, any guarantee or other credit support by the Company or any other Subsidiary of the Company must be unsecured and subordinated in right of payment to the Obligations of the Company and the Subsidiary Guarantors under the Notes on terms and pursuant to documentation satisfactory to the Required Holders.

“Permitted Investment” means:

(A) (i) Investments by the Company or any Subsidiary in Subsidiary Guarantors, and (ii) Investments by any Note Party in Wholly-Owned Subsidiaries (other than the Luminar China Subsidiary) that are Non-Guarantor Subsidiaries of cash and Cash Equivalents or other assets (excluding Material Intellectual Property) in amounts (or with a Fair Market Value) of up to \$5,000,000 in the aggregate at any one time outstanding;

(B) any Investment in cash and Cash Equivalents;

(C) any Investment by the Company or any Subsidiary in a Person, if, as a result of, or in connection with, such Investment: (i) such Person becomes or will become a Subsidiary Guarantor; or (ii) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys all or substantially all of its assets to, or is liquidated into, any Note Party;

- 14 -

(D) any Investment made as a result of the receipt of non-cash consideration from an Asset Sale that was made pursuant to and in compliance with **Section 3.12** or from a Disposition of assets not constituting an Asset Sale;

(E) any Investments received in compromise or resolution of (i) obligations of trade creditors or customers that were incurred in the ordinary course of business or consistent with past practice of the Company or any of its Subsidiaries, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer; or (ii) litigation, arbitration or other disputes;

(F) advances or reimbursements to officers, directors, consultants and employees in the ordinary course of business or consistent with past practice, for travel, entertainment, relocation and analogous ordinary business purposes;

(G) any Investment of the Company or any of its Subsidiaries existing on the Issue Date and set forth in **Schedule 1.01**, and any extension, modification or renewal of such existing Investments, to the extent not involving any additional Investment other than as the result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities, in each case, pursuant to the terms of such Investments as in effect on the Issue Date; *provided* that the amount of any such Investment may only be increased to the extent permitted under this Indenture;

(H) guarantees of Indebtedness (in accordance with **Section 3.09**) and of performance guarantees, leases and other ordinary course obligations otherwise permitted by the terms of this Indenture and the creation of Liens on the assets of the Company or any of its Subsidiaries permitted by the terms of this Indenture;

(I) receivables owing to the Company or any of its Subsidiaries, prepaid expenses, and lease, utility, workers' compensation and other pledges and deposits, if created, acquired or entered into in the ordinary course of business;

(J) Investments consisting of purchases of inventory, supplies, raw materials or equipment in the ordinary course of business (not, for the sake of clarity, via purchases of business, lines of businesses, or entities);

(K) Investments in the Luminar China Subsidiary consisting of (i) cash and Cash

Equivalents in amounts of up to \$10,000,000 in the aggregate during the term of this Indenture; (ii) additional amounts not to exceed \$15,000,000 in the aggregate during the term of this Indenture in connection with adjustments in, or changes in the Company's past practices relating to, industrialization arrangements between or among the Company, its Subsidiaries and various third parties, to the extent that the net result of Investments under this **clause (ii)** is to reduce the aggregate cost to the Company of such industrialization arrangements as compared to such industrialization arrangements or practices prior to giving effect to such adjustments or changes, (iii) guarantees or other credit support of the Permitted China Facility that are unsecured and are subordinated in right of payment of the Obligations of the Company and the Subsidiary Guarantors under the Notes, pursuant to documentation and on terms acceptable to the Required Holders, and (iv) credit support in the form of a letter of credit the beneficiary of which is the lender or agent

under the Permitted China Facility issued under the Permitted ABL Facility in a face amount not to exceed an amount equal to (x) \$11,000,000 reduced by (y) any prior draws on any such letter of credit;

(L) advances, loans, rebates and extensions of credit (including the creation of receivables and endorsements for collection and deposit) to suppliers, lessors, licensors, licensees, distributors, advisors, hosts, producers, customers and vendors, and performance guarantees, in each case in the ordinary course of business or consistent with past practice;

(M) 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;

(N) stock, obligations or securities received in satisfaction of judgments and any renewal or replacement thereof;

(O) to the extent constituting Investments, (i) lease, utility and other similar pledges and deposits, (ii) prepaid expenses, negotiable instruments held for collection and lease, utility and workers' compensation, performance and other similar pledges and deposits, and (iii) guarantees of business obligations owed to landlords, suppliers, customers and licensees of the Company and its Subsidiaries, in each case, in the ordinary course of business;

(P) Investments consisting of earnest money deposits required in connection with a purchase agreement, or letter of intent, or other acquisitions to the extent not otherwise prohibited by this Indenture;

(Q) the granting of leases, subleases, licenses or sublicenses to others in the ordinary course of business that do not materially adversely interfere in the business of the Company and its Subsidiaries, taken as a whole, and the rights of such parties set forth in such agreements; *provided* that, if pertaining to Intellectual Property, such Investments constitute Permitted IP Licenses;

(R) Investments in non-Wholly-Owned Subsidiaries, joint ventures, corporate collaborations or strategic alliances in the ordinary course of business of the Company or any of its Subsidiaries, in each case, for the purposes of bona fide collaborations with third parties in amounts of (i) up to (or with a Fair Market Value not to exceed) \$10,000,000 in the aggregate at any one time outstanding, plus (ii) an unlimited amount to the extent consisting of, or made with the net cash proceeds from, the substantially concurrent sale (other than to a Subsidiary) of Capital Stock (other than Disqualified Stock) of the Company; *provided, further*, that, to the extent the Company or any of its Subsidiaries control any such Subsidiary or joint venture and, after giving effect to such transaction, such Subsidiary or joint venture would not constitute an Excluded Subsidiary, such Person becomes a Subsidiary Guarantor in accordance with **Section 3.19**;

(S) Swap Agreements permitted under **Section 3.09**;

(T) any Investment, including any payments to customers, vendors or suppliers, (i) consisting of, or the consideration for which consists, of Capital Stock of the Company (other than Disqualified Stock) or (ii) made with the net cash proceeds from the substantially concurrent

sale (other than to a Subsidiary) of Capital Stock (other than Disqualified Stock) of the Company; and

(U) intercompany accounts receivable, accounts payable or advances of services or expenses between or among the Company and its Subsidiaries in connection with transfer pricing arrangements or charge-back agreements entered into in the ordinary course of business and consistent with industry practice.

In the event that an Investment (or a portion thereof) meets the criteria of any of **clauses (A) through (U)** above, the Company may, in its sole discretion, classify, reclassify (based on circumstances existing on the date of such reclassification) or divide such Investment (or a portion thereof) between such **clauses (A) through (U)** in any manner that otherwise complies with this definition.

“Permitted IP License” means a license or sublicense of Intellectual Property or any related distribution or commercialization rights; *provided* that, if related to Material Intellectual Property, such license or sublicense either (i) is non-exclusive both generally and with respect to any region, geography, field of use or therapeutic indication, (ii) provides for exclusivity with respect to a specific region or geography or with respect to a specified field of use or therapeutic indication and, in the case of any such exclusive license or sublicense described in this **clause (ii)**, (A) has a finite term or other termination right which, in each case, provides the Company with a material reversionary interest in the applicable rights, and (B) does not provide for exclusivity with respect to any use of such Material Intellectual Property in the automotive or vehicular industry (whether directly or indirectly) in a Material Geography or (iii) would not constitute a Disposition hereunder.

“Permitted Junior Indebtedness” means unsecured Indebtedness of the Company, *provided* that: (A) the stated final maturity of such Indebtedness shall not be earlier than the 180th day after the Maturity Date; (B) such Indebtedness shall not be required to be repaid, prepaid, redeemed, repurchased or defeased, in whole or in part, whether on one or more fixed dates, upon the occurrence of one or more events or at the option of any holder thereof (except, in each case, upon the occurrence of an event of default, the occurrence of a change in control or the occurrence of an asset sale) prior to the date that is the 180th day after the Maturity Date; and (C) such Indebtedness shall be expressly subordinated in right of payment or contractually subordinated to each of the Notes, the Guarantees and the Second Lien Indebtedness (including any guarantees thereof).

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

(A) Liens imposed by law, including carriers’, warehousemen’s, mechanics’, landlords’, materialmen’s, repairmen’s, construction contractors’ or other like Liens, in each case for sums not yet overdue for a period of more than sixty (60) days after giving effect to any applicable grace period or that are bonded or being contested in good faith by appropriate

(B) Liens on any property in favor of domestic or foreign governmental bodies to secure partial, progress, advance or other payment pursuant to any contract or statute, not yet due and payable;

(C) (i) leases, non-exclusive licenses, subleases and non-exclusive sublicenses of real property and other assets in the ordinary course of business which do not materially interfere with the ordinary conduct of the Company's or any of its Subsidiaries' business and other Liens incidental to the conduct of the Company's or any of its Subsidiaries' business which do not in the aggregate materially detract from the value of the property or assets subject thereto or interfere with the ordinary conduct of the Company's or any of its Subsidiaries' business in an material and adverse respect, (ii) Permitted IP Licenses, (iii) encumbrances, charges, ground leases, easements (including reciprocal easement agreements), survey exceptions, restrictions, encroachments, protrusions, by-law, regulation, zoning restrictions or reservations of, or rights of others for, licenses, rights of way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning, building codes or other restrictions (including minor defects or irregularities in title and similar encumbrances) as to the use of real properties or Liens incidental to the conduct of the business of the Company and its Subsidiaries or to the ownership of their properties, which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of the Company and its Subsidiaries, and (iv) rights of recapture of unused real property in favor of the seller of such property set forth in customary purchase agreements and related arrangements with any government, statutory or regulatory authority;

(D) Liens arising from UCC financing statement filings (or similar filings in other applicable jurisdictions) regarding operating leases entered into by the Company or any of its Subsidiaries in the ordinary course of business;

(E) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into in the ordinary course of business;

(F) Liens securing the Notes and the Guarantees;

(G) Liens securing purchase money Indebtedness, Capital Lease Obligations, synthetic lease obligations and mortgages permitted under this Indenture; *provided* that such Liens do not at any time encumber any property or assets other than the property and assets financed thereby (together with any additions, accessions and improvements thereto and the proceeds or distributions thereof);

(H) Liens on assets or property of the Company or any Subsidiary securing Treasury Management Arrangements or Swan Arrangements;

(I) customary Liens on insurance proceeds securing financed insurance premiums in the ordinary course of business;

(J) Liens for taxes, assessments or governmental charges which are not overdue for a period of more than sixty (60) days or which are being contested in good faith by appropriate proceedings if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

- 18 -

(K) Liens in favor of the Company or any Subsidiary Guarantor;

(L) Liens on Collateral securing debt permitted to be incurred under the Permitted ABL Facility;

(M) Liens on Collateral securing the Second Lien Indebtedness, subject to the Intercreditor Agreement;

(N) Liens on the "Borrower Securities Accounts" under, and as defined in, the St. James Loan Agreements; *provided* that, such Liens will cease to be permitted Liens if the Collateral Value (as defined in the St. James Loan Agreements) exceeds 200% of the outstanding balance in the "Borrower Securities Accounts";

(O) Liens on the assets of the Luminar China Subsidiary securing the Permitted China Facility;

(P) pledges, deposits or Liens under workmen's compensation laws, payroll taxes, unemployment insurance laws, social security laws or similar legislation, or in connection with bids, tenders, completion guarantees (other than for borrowed money), contracts (other than for borrowed money) or leases, or to secure utilities, licenses, public or statutory obligations, or to secure the performance of bids, trade contracts, government contracts and leases, statutory obligations, surety, stay, indemnity, judgment, customs, appeal or performance bonds, guarantees of government contracts, return-of-money bonds, bankers' acceptance facilities (or other similar bonds, instruments or obligations), obligations in respect of letters of credit, bank guarantees or similar instruments that have been posted to support the same, or as security for contested taxes or import or customs duties or for the payment of rent, or other obligations of like nature, in each case incurred in the ordinary course of business or consistent with past practice;

(Q) to the extent constituting a Lien, escrow arrangements securing indemnification obligations in connection with an acquisition of a Person or a Disposition that is otherwise permitted under this Indenture;

(R) Liens (i) on advances of cash or Cash Equivalents in favor of the seller of any property to be acquired, which are to be applied against the purchase price for such acquisition; *provided* that (x) the aggregate amount of such advances shall not exceed the purchase price of such acquisition and (y) the property is acquired within ninety (90) days following the date of the

first such advance so made; and (ii) consisting of any agreement, grant or option to sell, transfer or dispose of any property in a disposition of assets, in each case, solely to the extent such acquisition or disposition, as the case may be, would have been permitted on the date of the creation of such Liens;

(S) Liens securing Indebtedness permitted under **Section 3.09(B)(xxii)**; *provided* that (i) such Lien was not created in connection with, or in contemplation of, such acquisition (or such merger or consolidation), as the case may be, (ii) such Lien shall not apply to any other property or assets of the Company or any of its Subsidiaries (other than, in the case of any such merger or consolidation, the assets of any Subsidiary without significant assets that was formed solely for the purpose of effecting such acquisition), (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition (or is so merged or consolidated), as the case may be and

(iv) the Collateral Agent shall have a perfected security interest in the collateral securing such Indebtedness, junior only to such Lien on terms and conditions reasonably satisfactory to the Required Holders;

(T) Liens securing or otherwise arising out of judgments, decrees, attachments, garnishments, orders, awards or other forms of levies or injunction not giving rise to an Event of Default so long as (a) any appropriate legal proceedings which may have been duly initiated for the review of such judgment, decree, order or award have not been finally terminated, (b) the period within which such proceedings may be initiated has not expired or (c) no more than sixty (60) days have passed after (i) such judgment, decree, attachment, garnishment, order, award or other form of levy or injunction has become final or (ii) such period within which such proceedings may be initiated has expired; and

(U) Liens on assets of Non-Guarantor Subsidiaries securing Indebtedness or other obligations of such Subsidiaries that is permitted by **Section 3.09** or otherwise not prohibited by this Indenture, and (ii) Liens on Capital Stock of joint ventures that are not a Note Party (A) securing obligations of such joint venture or (B) pursuant to the relevant joint venture agreement or arrangement.

“Permitted Party” means (i) any of Austin Russell and his Affiliated Parties and (ii) any “group” within the meaning of Section 13(d) of the Exchange Act consisting solely of Permitted Parties.

“Permitted Refinancing Indebtedness” means any Indebtedness for borrowed money of the Company or its Subsidiaries issued in exchange for, or the Net Proceeds of which are used to renew, refund, refinance, replace, defease or discharge (**“Refinance”**) other Indebtedness for borrowed money of the Company or its Subsidiaries; *provided* that: (A) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness renewed, refunded, refinanced, replaced, defeased or discharged (such Indebtedness, the **“Refinanced Indebtedness”**) (plus all accrued interest on the Indebtedness and the amount of all fees and expenses, including premiums, incurred in connection therewith); (B) such Permitted Refinancing Indebtedness has a final maturity date no earlier than either (i) the final maturity date of the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged or (ii) one hundred and eighty (180) days after the Maturity Date; (C) such Permitted Refinancing Indebtedness has a Weighted Average Life to Maturity at the time such Permitted Refinancing Indebtedness is incurred that is no shorter than the Weighted Average Life to Maturity of the portion of the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged; (D) if the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged is subordinated in right of payment to the Notes, such Permitted Refinancing Indebtedness is subordinated in right of payment to the Notes on terms at least as favorable to the Holders of Notes as those contained in the documentation governing the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged; (E) such Indebtedness is incurred either by the Company or its Subsidiary that was the obligor on the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged and is guaranteed only by persons who were obligors on the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged; (F) such Indebtedness is not secured by a Lien on any assets other than the assets securing the Indebtedness being renewed.

refunded, refinanced, replaced, defeased or discharged; and (G) if the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged is secured by any of the Collateral on a basis that is junior in priority to the Liens on the Collateral, such Permitted Refinancing Indebtedness is (i) unsecured, (ii) secured by Liens that are subordinated to the Liens that secure the Notes at least to the same extent as the Liens securing the applicable Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged or (iii) solely if such Refinancing constitutes a Restricted Payment permitted by **Section 3.11** of Refinanced Indebtedness secured by Liens that are subordinated to the Liens that secure the Obligations under the Notes, secured by Liens that are subordinated to the Liens that secure the Notes pursuant to the Intercreditor Agreement or another intercreditor agreement reasonably acceptable to the Trustee (acting at the direction of the Required Holders).

“Person” or **“person”** means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or other agency or political subdivision thereof. Any division or series of a limited liability company, limited partnership or trust will constitute a separate “person” under this Indenture.

“Physical Note” means a Note (other than a Global Note) that is represented by a certificate substantially in the form set forth in **Exhibit A**, registered in the name of the Holder of such Note and duly executed by the Company and authenticated by the Trustee.

“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.

“Purchase Agreement” means that certain Purchase Agreement, dated as of August 6, 2024, between the Company, the Subsidiary Guarantors and the Initial Purchasers.

“Real Property” means, collectively, all right, title and interest (including any leasehold, mineral or other 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.

“Redemption” means the repurchase of any Note by the Company pursuant to **Section 4.03**.

“Redemption Date” means the date fixed, pursuant to **Section 4.03(C)**, for the settlement of the repurchase of any Notes by the Company pursuant to a Redemption.

“Redemption Notice Date” means, with respect to a Redemption, the date on which the

Redemption Notice Date means, with respect to a redemption, the date on which the Company sends the Redemption Notice for such Redemption pursuant to **Section 4.03(E)**.

- 21 -

“Redemption Price” means, with respect to any repayment, prepayment or redemption of (whether on the Maturity Date or otherwise), or acceleration of, any Note (other than a prepayment or redemption pursuant to an Asset Sale Offer or a Change of Control Offer), an amount equal to the sum of (i) the outstanding principal amount so accelerated, prepaid or redeemed, plus (ii) an amount equal to 3.00% of such accelerated, prepaid or redeemed principal amount, plus (iii) an amount equal to:

(i) if the acceleration, prepayment or Redemption Date occurs on or prior to August 15, 2026, an amount equal to 8.00% of the principal amount accelerated, prepaid or redeemed plus, if such acceleration, prepayment or redemption occurs on or prior to the first anniversary of the Issue Date, the Make-Whole Amount;

(ii) if the acceleration, prepayment or Redemption Date occurs after August 15, 2026 and on or prior to August 15, 2027, an amount equal to 5.00% of the principal amount so accelerated, prepaid or redeemed;

(iii) if the acceleration, prepayment or Redemption Date is after August 15, 2027, \$0.00;

plus, in each case, accrued and unpaid interest on such Notes to, but not including, the relevant Redemption Date (subject to **Section 4.03(D)**) or other repayment or payment date.

“Refinance” has the meaning assigned in the definition of “Permitted Refinancing Indebtedness” and “Refinancing” and “Refinanced” have meanings correlative to the foregoing.

“Refinanced Indebtedness” has the meaning assigned to such term in clause (A) of the definition of “Permitted Refinancing Indebtedness”.

“Regular Record Date” has the following meaning with respect to an Interest Payment Date: (A) if such Interest Payment Date occurs on February 15, the immediately preceding February 1; (B) if such Interest Payment Date occurs on May 15, the immediately preceding May 1; (C) if such Interest Payment Date occurs on August 15, the immediately preceding August 1; and (D) if such Interest Payment Date occurs on November 15, the immediately preceding November 1.

“Relevant Governmental Body” means the Federal Reserve Board or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board or the Federal Reserve Bank of New York, or any successor thereto.

“Required Holder” means, at any time of determination, Holder of a majority in

Required Holders means, at any time or determination, holders of a majority in aggregate principal amount of the then outstanding Notes, excluding any Notes held by the Company or any of its Affiliates.

Responsible Officer means (A) any officer within the corporate trust administration of the Trustee or the Collateral Agent (or any successor group) or any other officer of the Trustee or the Collateral Agent customarily performing functions similar to those performed by any of such officers; and (B) with respect to a particular corporate trust matter, any other officer to whom such

- 22 -

matter is referred because of his or her knowledge of, and familiarity with, the particular subject and, in each case, who will have direct responsibility for the administration of this Indenture.

Restricted Note Legend means a legend substantially in the form set forth in **Exhibit B-1**.

Rule 144 means Rule 144 under the Securities Act (or any successor rule thereto), as the same may be amended from time to time.

Rule 144A means Rule 144A under the Securities Act (or any successor rule thereto), as the same may be amended from time to time.

Secured Parties shall have the meaning specified in the Security Agreement.

SEC means the U.S. Securities and Exchange Commission.

Second Lien Indebtedness means indebtedness governed by the Second Lien Indenture; *provided*, that any Second Lien Indebtedness issued after the date of this Indenture shall be comprised of Additional Notes (as defined in the Second Lien Indenture) of the Series 2 Notes (as defined in the Second Lien Indenture) issued under the Second Lien Indenture.

Second Lien Indenture means that certain Indenture, dated as of the date hereof, by and among the Company and certain other Subsidiaries of the Company party thereto from time to time, the trustee thereunder, and the collateral agent named therein, as may be amended, amended and restated or modified, in each case, to the extent permitted by this Indenture and the Intercreditor Agreement.

Securities Act means the U.S. Securities Act of 1933, as amended.

Security means any Note.

Security Agreement means that certain Security Agreement, dated as of the date hereof, by and among the Company, the Subsidiary Guarantors party thereto from time to time and the Collateral Agent, as amended, restated, amended and restated, supplemented, modified or replaced, in whole or in part, from time to time, in accordance with its terms.

“Significant Subsidiary” means, with respect to any Person, any Subsidiary of such Person that constitutes, or any group of Subsidiaries of such Person that, in the aggregate, would constitute, a “significant subsidiary” (as defined in Rule 1-02(w) of Regulation S-X under the Exchange Act) of such Person.

“Similar Business” means any business (A) the majority of whose revenues are derived from business or activities conducted by the Company and its Subsidiaries on the Issue Date; and (B) that is a natural outgrowth or reasonable extension, development, expansion of any business or activities conducted by the Company and its Subsidiaries on the Issue Date or any business

similar, reasonably related, incidental, complementary or ancillary to any of the foregoing, including research and product development.

“Special Interest” means any interest that accrues on any Note pursuant to **Section 7.03**.

“St. James Indebtedness” means the credit facilities governed by the St. James Loan Agreements.

“St. James Loan Agreements” means (a) that certain Non-Recourse Loan and Securities Pledge Agreement, dated as of February 23, 2024, by and among the Company and The St. James Bank & Trust Company Ltd and (b) that certain Non-Recourse Loan and Securities Pledge Agreement, dated as of February 23, 2024, by and among the Company and The St. James Bank & Trust Company Ltd, each as in effect on the Issue Date.

“Subsidiary” means, with respect to any Person, (A) any corporation, association or other business entity (other than a partnership or limited liability company) of which more than fifty percent (50%) of the total (i) economic entitlements or (ii) voting power of the Capital Stock entitled (without regard to the occurrence of any contingency, but after giving effect to any voting agreement or stockholders’ agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees, as applicable, of such corporation, association or other business entity, is owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person; and (B) any partnership or limited liability company where (i) more than fifty percent (50%) of the capital accounts, distribution rights, equity and voting interests, or of the general and limited partnership interests, as applicable, of such partnership or limited liability company are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person, whether in the form of membership, general, special or limited partnership or limited liability company interests or otherwise; or (ii) such Person or any one or more of the other Subsidiaries of such Person is a controlling general partner of, or otherwise controls, such partnership or limited liability company. Unless otherwise indicated or the context requires otherwise, references to a “Subsidiary” or “Subsidiaries” shall mean a Subsidiary (or the Subsidiaries) of the Company.

“Subsidiary Guarantor” means, collectively, each Subsidiary of the Company that is not an Excluded Subsidiary and that executes this Indenture as a Subsidiary Guarantor on the Issue Date and each other Subsidiary of the Company that is not an Excluded Subsidiary that incurs or is required to incur, pursuant to the terms of this Indenture, a Guarantee by executing a supplemental indenture pursuant to **Section 3.19**, **Section 6.02** or **Section 12.03**; *provided* that upon the release or discharge of such Subsidiary from its Guarantee in accordance with the terms of this Indenture, such Subsidiary automatically ceases to be a Subsidiary Guarantor.

“substantially concurrent” means, with respect to two or more events, (i) the occurrence of such events within 30 days of one another or (ii) if a binding commitment to effect such second event is in effect at the date of occurrence of the first event, within 45 days of the first event. For the sake of clarity, where a transaction is required to be effected using net proceeds of a “substantially concurrent” issuance or incurrence, the issuance or incurrence must be the first of the two events to occur.

“**Swap Agreement**” means any agreement with respect to any swap, forward, spot, future, credit default or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; *provided* that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Company or its Subsidiaries shall be a Swap Agreement.

“**Term SOFR**” means, the greater of (x) 3.00% per annum and (y) an interest rate per annum equal to the Term SOFR Reference Rate on the day (such day, the “**Periodic Term SOFR Determination Day**”) that is two (2) U.S. Government Securities Business Days prior to the first day of the applicable Interest Period, as such rate is published on the Term SOFR Reference Website; *provided, however*, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published on the Term SOFR Reference Website, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published on the Term SOFR Reference Website on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published on the Term SOFR Reference Website so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day.

“**Term SOFR Reference Website**” means (i) <https://www.chathamfinancial.com/technology/us-market-rates>, (ii) if the website referenced in the foregoing **clause (i)** is not operable or accessible, or if Term SOFR Reference Rate has not been published on such website, the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or (iii) a successor website setting forth the Term SOFR Reference Rate selected by the Company in good faith and agreed to by the Required Holders in good faith.

“**Term SOFR Reference Rate**” means the 3-month term SOFR rate as set forth on the Term SOFR Reference Website.

“**Transfer-Restricted Security**” means any Security that constitutes a “restricted security” (as defined in Rule 144); *provided, however*, that such Security will cease to be a Transfer-Restricted Security upon the earliest to occur of the following events:

(A) such Security is sold or otherwise transferred to a Person (other than the Company or an Affiliate of the Company) pursuant to a registration statement that was effective under the Securities Act at the time of such sale or transfer;

(B) such Security is sold or otherwise transferred to a Person (other than the Company or an Affiliate of the Company) pursuant to an available exemption (including Rule 144) from the

registration and prospectus-delivery requirements of, or in a transaction not subject to, the Securities Act and, immediately after such sale or transfer, such Security ceases to constitute a “restricted security” (as defined in Rule 144); and

- 25 -

(C) such Security is eligible for resale, by a Person that is not an Affiliate of the Company and that has not been an Affiliate of the Company during the immediately preceding three (3) months, pursuant to Rule 144 without any limitations thereunder as to volume, manner of sale, availability of current public information or notice.

The Trustee is under no obligation to determine whether any Security is a Transfer-Restricted Security and may conclusively rely on an Officer’s Certificate with respect thereto.

“**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.

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

“**Trustee**” means the Person named as such in the first paragraph of this Indenture until a successor replaces it in accordance with the provisions of this Indenture and, thereafter, means such successor.

“**UCC**” means the Uniform Commercial Code as in effect from time to time in the State of New York; *provided, however*, that, at any time, if by reason of mandatory provisions of law, any or all of the perfection or priority of the Collateral Agent’s security interest in any item or portion of the Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term “UCC” shall mean the Uniform Commercial Code as in effect, at such time, in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions relating to such provisions.

“**U.S. Government Securities Business Day**” means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association or any successor organization recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“**Voting Stock**” of any Person as of any date means the class or classes of Capital Stock of such Person that are at the time entitled to vote in the election of the Board of Directors of such Person.

“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, including payment at final maturity, in respect of the Indebtedness, 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” of a Person means any Subsidiary of such Person all of the outstanding Capital Stock or other ownership interests of which (other than directors’ qualifying shares) are owned by such Person or by one or more Wholly-Owned Subsidiaries of such Person.

Section 1.02. OTHER DEFINITIONS.¹

Term	Defined in Section
“Acceleration”	7.02(D)
“Action”	11.01(H)
“Affiliate Transaction”	3.13(A)
“After-Acquired Collateral”	3.20(A)3.20
“Asset Sale Offer”	3.12(C)
“Change of Control Offer”	3.17(B)
“Default Interest”	2.05(B)
“Defaulted Amount”	2.05(B)
“Event of Default”	7.01(A)
“Excess Proceeds”	3.12(B)
“incur”	3.09(A)
“Initial Notes”	2.03(A)
“Minimum Liquidity Amount”	3.16
“Notes”	Recitals
“Offer Amount”	3.12(C)
“Paying Agent”	2.06(A)
“Permitted Debt”	3.09(B)
“Redemption Notice”	4.03(E)
“Register”	2.06(B)
“Registrar”	2.06(A)
“Reporting Entity”	3.03(B)
“Reporting Event of Default”	7.03(A)
“Restricted Payment”	3.11(A)
“Second Commitment”	3.12(B)

“Specified Courts”	13.07
“Stated Interest”	2.05(A)
“Successor Entity”	6.01(A)
“Successor Subsidiary Guarantor”	6.02(A)(i)

¹ **NTD:** To be updated.

Section 1.03. RULES OF CONSTRUCTION.

For purposes of this Indenture:

- (A) “or” is not exclusive;
- (B) “including” means “including without limitation”;
- (C) “will” expresses a command;
- (D) the “average” of a set of numerical values refers to the arithmetic average of such numerical values;
- (E) a merger involving, or a transfer of assets by, a limited liability company, limited partnership or trust will be deemed to include any division of or by, or an allocation of assets to a series of, such limited liability company, limited partnership or trust, or any unwinding of any such division or allocation;
- (F) words in the singular include the plural and in the plural include the singular, unless the context requires otherwise;
- (G) “herein,” “hereof” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision of this Indenture, unless the context requires otherwise;
- (H) references to currency mean the lawful currency of the United States of America, unless the context requires otherwise;
- (I) the exhibits, schedules and other attachments to this Indenture are deemed to form part of this Indenture;
- (J) the term “**interest**,” when used with respect to a Note, includes any Default Interest, Additional Interest and Special Interest, unless the context requires otherwise; and
- (K) references herein to any notice, direction, request or other communication to be delivered or provided to the Trustee, the Collateral Agent or any Note Agent shall mean a notice, direction, request or other communication that is provided in writing and delivered in connection with this Indenture.

Article 2. THE NOTES

Section 2.01. FORM, DATING AND DENOMINATIONS.

The Notes and the Trustee’s certificate of authentication will be substantially in the form set forth in **Exhibit A**. The Notes will bear the legends required by **Section 2.09** and may bear notations, legends or endorsements required by law, stock exchange rule or usage or the Depository. Each Note will be dated as of the date of its authentication.

Except to the extent otherwise provided in a Company Order delivered to the Trustee in connection with the issuance and authentication thereof, the Notes will be issued initially in the form of one or more Global Notes. Global Notes may be exchanged for Physical Notes, and Physical Notes may be exchanged for Global Notes, only as provided in **Section 2.10**.

The Notes will be issuable only in registered form without interest coupons and only in Authorized Denominations.

Each certificate representing a Note will bear a unique registration number that is not affixed to any other certificate representing another outstanding Note.

The terms contained in the Notes constitute part of this Indenture, and, to the extent applicable, the Company, the Trustee and the Collateral Agent, by their execution and delivery of this Indenture, agree to such terms and to be bound thereby; *provided, however*, that, to the extent that any provision of any Note conflicts with the provisions of this Indenture, the provisions of this Indenture will control for purposes of this Indenture and such Note.

Section 2.02. EXECUTION, AUTHENTICATION AND DELIVERY.

(A) *Due Execution by the Company.* At least one (1) duly authorized Officer will sign the Notes on behalf of the Company by manual, electronic or facsimile signature. A Note's validity will not be affected by the failure of any Officer whose signature is on any Note to hold, at the time such Note is authenticated, the same or any other office at the Company.

(B) *Authentication by the Trustee and Delivery.*

(i) No Note will be valid until it is authenticated by the Trustee. A Note will be deemed to be duly authenticated only when an authorized signatory of the Trustee (or a duly appointed authenticating agent) manually or electronically signs the certificate of authentication of such Note.

(ii) The Trustee will cause an authorized signatory of the Trustee (or a duly appointed authenticating agent) to manually or electronically sign the certificate of authentication of a Note only if (1) the Company delivers such Note to the Trustee; (2) such Note is executed by the Company in accordance with **Section 2.02(A)**; and (3) the Company delivers a Company Order to the Trustee that (a) requests the Trustee to authenticate such Note; and (b) sets forth the name of the Holder of such Note and the date as of which such Note is to be authenticated. If such Company Order also requests the Trustee to deliver such Note to any Holder or to the Depositary (or the Trustee as its custodian), then the Trustee will promptly deliver such Note in accordance with such Company Order.

(iii) The Trustee may appoint an authenticating agent acceptable to the

Company to authenticate Notes. A duly appointed authenticating agent may authenticate Notes whenever the Trustee may do so under this Indenture, and a Note authenticated as provided in this Indenture by such an agent will be deemed, for purposes of this Indenture, to be authenticated by the Trustee. Each duly appointed authenticating agent will have the

- 29 -

same rights to deal with the Company as the Trustee would have if it were performing the duties that the authentication agent was validly appointed to undertake.

Section 2.03. INITIAL NOTES AND ADDITIONAL NOTES.

(A) *Initial Notes.* On the Issue Date, there will be originally issued one hundred million dollars (\$100,000,000) aggregate principal amount of Notes, subject to the provisions of this Indenture (including **Section 2.02**). Notes issued pursuant to this **Section 2.03(A)**, and any Notes issued in exchange therefor or in substitution thereof, are referred to in this Indenture as the “**Initial Notes**”.

(B) *Additional Notes.* The Company may not issue any additional Notes under this Indenture except pursuant to **Section 2.10(B), 2.10(C), 2.11** or **2.12**.

Section 2.04. METHOD OF PAYMENT.

(A) *Global Notes.* The Company will pay, or cause the Paying Agent to pay, the principal (whether due upon maturity on the Maturity Date, Redemption on a Redemption Date, or otherwise) of, interest on and any other repurchase or Redemption Price on, any Global Note to the Depository by wire transfer of immediately available funds no later than the time the same is due as provided in this Indenture.

(B) *Physical Notes.* The Company will pay, or cause the Paying Agent to pay, the principal (whether due upon maturity on the Maturity Date, Redemption on a Redemption Date, or otherwise) of, interest on and any other repurchase or Redemption Price on, any Physical Note no later than the time the same is due as provided in this Indenture by wire transfer of immediately available funds to such account of the Holder which the Holder has provided a prior written notice to the Company, the Trustee and the Paying Agent pursuant to the immediately following sentence. Payments to Holders shall be made to the account designated by such Holder in the last notice received from such Holder prior to the Close of Business on the following date: (x) with respect to the payment of any interest due on an Interest Payment Date, the immediately preceding Regular Record Date; and (y) with respect to any other payment, the date that is fifteen (15) calendar days immediately before the date such payment is due; *provided* that, if no such account is designated by a Holder prior to the applicable payment date, such payment shall be made by check mailed to the address of the Holder of such Physical Note entitled to such payment as set forth in the Register.

Section 2.05. ACCRUAL OF INTEREST; DEFAULTED AMOUNTS; WHEN PAYMENT DATE IS NOT A BUSINESS DAY.

(A) *Accrual of Interest.* Each Note will accrue interest for each Interest Period at a

floating rate per annum equal to Term SOFR (as calculated on the applicable Periodic Term SOFR Determination Day for such Interest Period) plus 9.00% (the “**Stated Interest**”), plus any Additional Interest and Special Interest that may accrue pursuant to **Sections 3.04** and **Section 7.03**, respectively. Stated Interest on each Note will (i) accrue from, and including, the most recent date to which Stated Interest has been paid or duly provided for (or, if no Stated Interest has theretofore been paid or duly provided for, the date set forth in the certificate representing such Note as the date from, and including, which Stated Interest will begin to accrue in such circumstance) to, but excluding, the date of payment of such Stated Interest; and (ii) be, subject to

- 30 -

Section 4.03(D) (but without duplication of any payment of interest), payable quarterly in arrears on each Interest Payment Date, beginning on the first Interest Payment Date set forth in the certificate representing such Note, to the Holder of such Note as of the Close of Business on the immediately preceding Regular Record Date. Stated Interest, and, if applicable, Additional Interest and Special Interest, on the Notes will be computed on the basis of a 360-day year comprised of twelve 30-day months.

(B) *Defaulted Amounts.* If the Company fails to pay any amount (a “**Defaulted Amount**”) payable on a Note on or before the due date therefor as provided in this Indenture, then, regardless of whether such failure constitutes an Event of Default, (i) such Defaulted Amount will forthwith cease to be payable to the Holder of such Note otherwise entitled to such payment; (ii) to the extent lawful, interest (“**Default Interest**”) will accrue on such Defaulted Amount at a rate per annum equal to the rate per annum at which Stated Interest accrues plus 2.00%, from, and including, such due date to, but excluding, the date of payment of such Defaulted Amount and Default Interest; (iii) such Defaulted Amount and Default Interest will be paid in any lawful manner, including on a payment date selected by the Company to the Holder of such Note as of the Close of Business on a special record date selected by the Company, *provided* that such special record date must be no more than fifteen (15), nor less than ten (10), calendar days before such payment date; and (iv) at least fifteen (15) calendar days before such special record date, the Company will send notice to the Trustee and the Holders that states such special record date, such payment date and the amount of such Defaulted Amount and Default Interest to be paid on such payment date.

(C) *Delay of Payment when Payment Date is Not a Business Day.* If the due date for a payment on a Note as provided in this Indenture is not a Business Day, then, notwithstanding anything to the contrary in this Indenture or the Notes, such payment may be made on the immediately following Business Day and no interest will accrue on such payment as a result of the related delay.

Section 2.06. REGISTRAR AND PAYING AGENT.

(A) *Generally.* The Company will maintain (i) an office or agency in the continental United States where Notes may be presented for registration of transfer or for exchange (the “**Registrar**”); and (ii) an office or agency in the continental United States where Notes may be presented for payment (the “**Paying Agent**”). If the Company fails to maintain a Registrar and Paying Agent, then the Trustee will act as such and will be entitled to receive compensation

paying agent, with the trustee, may act as such and may be entitled to receive compensation therefor in accordance with this Indenture and any other agreement between the Trustee and the Company. For the avoidance of doubt, the Company or any of its Subsidiaries may act as Registrar and/or Paying Agent without prior notice to the Holders. Notwithstanding anything to the contrary in this **Section 2.06(A)**, each of the Registrar and Paying Agent with respect to any Global Note must at all times be a Person that is eligible to act in that capacity under the Depositary Procedures.

(B) *Duties of the Registrar.* The Registrar will keep a record (the “**Register**”) of the names and addresses of the Holders, the Notes held by each Holder and the transfer, exchange, repurchase and Redemption of Notes. Absent manifest error, the entries in the Register will be conclusive and the Company and the Trustee shall treat each Person whose name is recorded as a

Holder in the Register as a Holder for all purposes. The Register will be in written form or in any form capable of being converted into written form reasonably promptly.

(C) *Co-Agents; Company's Right to Appoint Successor Registrars and Paying Agents.* The Company may appoint one or more co-Registrars and co-Paying Agents, each of whom will be deemed to be a Registrar or Paying Agent, as applicable, under this Indenture. Subject to **Section 2.06(A)**, the Company may change any Registrar or Paying Agent (including appointing itself or any of its Subsidiaries to act in such capacity) without notice to any Holder. The Company will notify the Trustee (and, upon request, any Holder) of the name and address of each Note Agent, if any, not a party to this Indenture and will enter into an appropriate agency agreement with each such Note Agent, which agreement will implement the provisions of this Indenture that relate to such Note Agent.

(D) *Initial Appointments.* The Company appoints the Trustee as the initial Paying Agent and the initial Registrar.

Section 2.07. PAYING AGENT TO HOLD PROPERTY IN TRUST.

The Company will require each Paying Agent that is not the Trustee to agree in writing that such Note Agent will (A) hold in trust for the benefit of the Secured Parties all money and other property held by such Note Agent for payment or delivery due on the Notes; and (B) notify the Trustee of any default by the Company in making any such payment or delivery. The Company, at any time, may, and the Trustee, while any Default continues, may, require a Paying Agent to pay or deliver, as applicable, all money and other property held by it to the Trustee, after which payment or delivery, as applicable, such Note Agent (if not the Company or any of its Subsidiaries) will have no further liability for such money or property. If the Company or any of its Subsidiaries acts as Paying Agent, then (A) it will segregate and hold in a separate trust fund for the benefit of the Secured Parties all money and other property held by it as Paying Agent; and (B) references in this Indenture or the Notes to the Paying Agent holding cash or other property, or to the delivery of cash or other property to the Paying Agent, in each case for payment or delivery to any Holders or the Trustee or with respect to the Notes, will be deemed to refer to cash or other property so segregated and held separately, or to the segregation and separate holding of such cash or other property, respectively. Upon the occurrence of any event pursuant to **clause (viii) or (ix) of Section 7.01(A)** with respect to the Company (or with respect to any Subsidiary of the Company acting as Paying Agent), the Trustee will serve as the Paying Agent for the Notes.

Section 2.08. HOLDER LISTS.

If the Trustee is not the Registrar, then the Company will furnish to the Trustee, no later than seven (7) Business Days before each Interest Payment Date, and at such other times as the Trustee may request, a list, in such form and as of such date or time as the Trustee may reasonably require, of the names and addresses of the Holders.

Section 2.09. LEGENDS.

(A) *Global Note Legend.* Each Global Note will bear the Global Note Legend (or any similar legend, not inconsistent with this Indenture, required by the Depository for such Global Note).

(B) *Non-Affiliate Legend.* Each Note will bear the Non-Affiliate Legend.

(C) *Restricted Note Legend.* Subject to the other provisions of this Indenture,

(i) each Note that is a Transfer-Restricted Security will bear the Restricted Note Legend; and

(ii) if a Note is issued in exchange for, in substitution of, another Note (such other Note being referred to as the “old Note” for purposes of this **Section 2.09(C)(ii)**), including pursuant to Sections **2.10(B)**, **2.10(C)**, **2.11** or **2.12**, then such Note will bear the Restricted Note Legend if such old Note bore the Restricted Note Legend at the time of such exchange or substitution; *provided, however*, that such Note need not bear the Restricted Note Legend if such Note does not constitute a Transfer-Restricted Security immediately after such exchange or substitution.

(D) *Other Legends.* A Note may bear any other legend or text, not inconsistent with this Indenture, as may be required by applicable law or by any securities exchange or automated quotation system on which such Note is traded or quoted.

(E) *Acknowledgment and Agreement by the Holders.* A Holder’s acceptance of any Note bearing any legend required by this **Section 2.09** will constitute such Holder’s acknowledgment of, and agreement to comply with, the restrictions set forth in such legend.

Section 2.10. TRANSFERS AND EXCHANGES; CERTAIN TRANSFER RESTRICTIONS.

(A) *Provisions Applicable to All Transfers and Exchanges.*

(i) *Generally.* Subject to and in accordance with this **Section 2.10**, Physical Notes and beneficial interests in Global Notes may be transferred or exchanged from time to time. The Registrar will record each transfer or exchange of Physical Notes or, subject to **(B)(i)**, a Global Note in the Register.

(ii) *Transferred and Exchanged Notes Remain Valid Obligations of the Company.* Each Note issued upon transfer or exchange of any other Note (such other Note being referred to as the “old Note” for purposes of this **Section 2.10(A)(ii)**) or portion thereof in accordance with this Indenture will be the valid obligation of the Company, evidencing the same indebtedness, and entitled to the same benefits under this Indenture,

as such old Note or portion thereof, as applicable.

(iii) *No Services Charge; Transfer Taxes.* The Company, the Subsidiary Guarantors, the Trustee and the Note Agents will not impose any service charge on any

- 33 -

Holder for any transfer or exchange of Notes, but the Company, the Subsidiary Guarantors, the Trustee, the Registrar may require payment of a sum sufficient to cover any transfer tax or similar governmental charge that may be imposed in connection with any transfer or exchange of Notes, other than exchanges pursuant to **Section 2.11, 2.16** or **8.05** not involving any transfer.

(iv) *Transfers and Exchanges Must Be in Authorized Denominations.* Notwithstanding anything to the contrary in this Indenture or the Notes, a Note may not be transferred or exchanged in part unless the portion to be so transferred or exchanged is in an Authorized Denomination.

(v) *Trustee's Disclaimer.* The Trustee and the Note Agents will have no obligation or duty to monitor, determine or inquire as to compliance with any transfer restrictions imposed under this Indenture or applicable law with respect to any Security, other than to require the delivery of such certificates or other documentation or evidence as expressly required by this Indenture and to examine the same to determine substantial compliance as to form with the requirements of this Indenture.

(vi) *Legends.* Each Note issued upon transfer of, or in exchange for, another Note will bear each legend, if any, required by **Section 2.09**.

(vii) *Settlement of Transfers and Exchanges.* Upon satisfaction of the requirements of this Indenture to effect a transfer or exchange of any Note, the Company will cause such transfer or exchange to be effected as soon as reasonably practicable but in no event later than the second (2nd) Business Day after the date of such satisfaction.

(viii) *Interpretation.* For the avoidance of doubt, and subject to the terms of this Indenture, as used in this **Section 2.10**, an "exchange" of a Global Note or a Physical Note includes (x) an exchange effected for the sole purpose of removing any Restricted Note Legend affixed to such Global Note or Physical Note; and (y) if such Global Note or Physical Note is identified by a "restricted" CUSIP number, an exchange effected for the sole purpose of causing such Global Note or Physical Note to be identified by an "unrestricted" CUSIP number.

(ix) Neither the Trustee nor any Note Agent will have any responsibility for any action taken or not taken by the Depositary.

(B) *Transfers and Exchanges of Global Notes.*

(i) *Certain Restrictions.* Subject to the immediately following sentence, no

Global Note may be transferred or exchanged in whole except (x) by the Depositary to a nominee of the Depositary; (y) by a nominee of the Depositary to the Depositary or to another nominee of the Depositary; or (z) by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary. No Global Note (or any portion thereof) may be transferred to, or exchanged for, a Physical Note; *provided,*

- 34 -

however, that a Global Note will be exchanged, pursuant to customary procedures, for one or more Physical Notes if:

(1) (x) the Depositary notifies the Company or the Trustee that the Depositary is unwilling or unable to continue as depositary for such Global Note or (y) the Depositary ceases to be a “clearing agency” registered under Section 17A of the Exchange Act and, in each case, the Company fails to appoint a successor Depositary within ninety (90) days of such notice or cessation;

(2) an Event of Default has occurred and is continuing and the Company, the Trustee or the Registrar has received a written request from the Depositary, or from a holder of a beneficial interest in such Global Note, to exchange such Global Note or beneficial interest, as applicable, for one or more Physical Notes; or

(3) the Company, in its sole discretion, permits the exchange of any beneficial interest in such Global Note for one or more Physical Notes at the request of the owner of such beneficial interest.

(ii) *Effecting Transfers and Exchanges.* Upon satisfaction of the requirements of this Indenture to effect a transfer or exchange of any Global Note (or any portion thereof):

(1) the Trustee will reflect any resulting decrease of the principal amount of such Global Note by notation on the “Schedule of Exchanges of Interests in the Global Note” forming part of such Global Note (and, if such notation results in such Global Note having a principal amount of zero, then the Company may (but is not required to) instruct the Trustee to cancel such Global Note pursuant to **Section 2.14**);

(2) if required to effect such transfer or exchange, then the Trustee will reflect any resulting increase of the principal amount of any other Global Note by notation on the “Schedule of Exchanges of Interests in the Global Note” forming part of such other Global Note;

(3) if required to effect such transfer or exchange, then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, a new Global Note bearing each legend, if any, required by **Section**

2.09; and

(4) if such Global Note (or such portion thereof), or any beneficial interest therein, is to be exchanged for one or more Physical Notes, then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, one or more Physical Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount of such Global Note to be so exchanged; (y) are registered in such name(s) as the Depositary specifies (or as otherwise determined pursuant to customary procedures); and (z) bear each legend, if any, required by **Section 2.09**.

(iii) *Compliance with Depositary Procedures.* Each transfer or exchange of a beneficial interest in any Global Note will be made in accordance with the Depositary Procedures.

(C) *Transfers and Exchanges of Physical Notes.*

(i) *Requirements for Transfers and Exchanges.* Subject to and in accordance with this **Section 2.10**, a Holder of a Physical Note may (x) transfer such Physical Note (or any portion thereof in an Authorized Denomination) to one or more other Person(s); (y) exchange such Physical Note (or any portion thereof in an Authorized Denomination) for one or more other Physical Notes in Authorized Denominations having an aggregate principal amount equal to the aggregate principal amount of the Physical Note (or portion thereof) to be so exchanged; and (z) if then permitted by the Depositary Procedures, transfer such Physical Note (or any portion thereof in an Authorized Denomination) in exchange for a beneficial interest in one or more Global Notes; *provided, however*, that, to effect any such transfer or exchange, such Holder must:

(1) surrender such Physical Note to be transferred or exchanged to the office of the Registrar, together with any endorsements or transfer instruments reasonably required by the Company, the Trustee or the Registrar; and

(2) deliver such certificates, documentation or evidence as may be required pursuant to **Section 2.10(D)**.

(ii) *Effecting Transfers and Exchanges.* Upon the satisfaction of the requirements of this Indenture to effect a transfer or exchange of any Physical Note (such Physical Note being referred to as the “old Physical Note” for purposes of this **Section 2.10(C)(ii)**) of a Holder (or any portion of such old Physical Note in an Authorized Denomination):

(1) such old Physical Note will be promptly cancelled pursuant to **Section 2.14**;

(2) if such old Physical Note is to be so transferred or exchanged only in part, then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, one or more Physical Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount of such old Physical Note not to be so transferred or exchanged; (y) are registered in the name of such Holder; and (z) bear each legend, if any, required by **Section 2.09**;

(3) in the case of a transfer:

(a) to the Depositary or a nominee thereof that will hold its interest in such old Physical Note (or such portion thereof) to be so transferred in the form of one or more Global Notes, the Trustee will reflect an increase of the principal amount of one or more existing Global Notes by notation on the “Schedule of Exchanges of Interests in the Global Note” forming part of such Global Note(s), which increase(s) are in Authorized

Denominations and aggregate to the principal amount to be so transferred, and which Global Note(s) bear each legend, if any, required by **Section 2.09**; *provided, however*, that if such transfer cannot be so effected by notation on one or more existing Global Notes (whether because no Global Notes bearing each legend, if any, required by **Section 2.09** then exist, because any such increase will result in any Global Note having an aggregate principal amount exceeding the maximum aggregate principal amount permitted by the Depositary or otherwise), then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, one or more Global Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount that is to be so transferred but that is not effected by notation as provided above; and (y) bear each legend, if any, required by **Section 2.09**; and

(b) to a transferee that will hold its interest in such old Physical Note (or such portion thereof) to be so transferred in the form of one or more Physical Notes, the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, one or more Physical Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount to be so transferred; (y) are registered in the name of such transferee; and (z) bear each legend, if any, required by **Section 2.09**; and

(4) in the case of an exchange, the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, one or more Physical Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount to be so exchanged; (y) are registered in the name of the Person to whom such old Physical Note was registered; and (z) bear each legend, if any, required by **Section 2.09**.

(D) *Requirement to Deliver Documentation and Other Evidence.* If a Holder of any Note that is identified by a “restricted” CUSIP number or that bears a Restricted Note Legend or is a Transfer-Restricted Security requests to:

- (i) cause such Note to be identified by an “unrestricted” CUSIP number;
- (ii) remove such Restricted Note Legend; or
- (iii) register the transfer of such Note to the name of another Person,

then the Company, the Trustee and the Registrar may refuse to effect such identification, removal or transfer, as applicable, unless there is delivered to the Company, the Trustee and the Registrar such certificates or other documentation or evidence as the Company, the Trustee and the Registrar

such certificates or other documentation or evidence as the Company, the Trustee and the Registrar may reasonably require to determine that such identification, removal or transfer, as applicable, complies with the Securities Act and other applicable securities laws; *provided, however*, that, no such certificates, documentation or evidence (other than, in the case of the following clause (v), a

- 37 -

written request in the form contemplated by **Section 2.10(E)**) need be so delivered (v) on or after the six (6) month anniversary of the Issue Date if the requirements of Rule 144(c) and (i) are then satisfied with respect to the Company; (w) in connection with any transfer of a beneficial interest in a Global Note pursuant to Rule 144A; (x) in connection with any transfer of such Note to the Company or one of its Subsidiaries; (y) in connection with any transfer of such Note pursuant to an effective registration statement under the Securities Act; or (z) on or after the one (1) year anniversary of the Issue Date unless the Company determines, in its reasonable discretion, that such Note is not eligible to be offered, sold or otherwise transferred pursuant to Rule 144 or otherwise without any requirements as to volume, manner of sale, availability of current public information or notice.

(E) *Certain De-Legending Procedures.* If a Holder of any Note, or an owner of a beneficial interest in any Global Note, transfers such Note or share in compliance with Rule 144 and delivers to the Company a written request, certifying that it is not, and has not been at any time during the preceding three (3) months, an Affiliate of the Company, to reissue such Note or share without a Restricted Note Legend, then the Company will cause the same to occur (and, if applicable, cause such Note or share to thereafter be represented by an “unrestricted” CUSIP or ISIN number in the facilities of the related depository), and will use its commercially reasonable efforts to cause such occurrence within two (2) Business Days of such request.

(F) *Transfers of Notes Subject to Redemption or Repurchase.* Notwithstanding anything to the contrary in this Indenture or the Notes, the Company, the Trustee and the Registrar will not be required to register the transfer of or exchange any Note that has been selected for Redemption pursuant to a Redemption Notice, except to the extent that any portion of such Note is not subject to Redemption or the Company fails to pay the applicable Redemption Price when due.

Section 2.11. EXCHANGE AND CANCELLATION OF NOTES TO BE REPURCHASED PURSUANT TO AN ASSET SALE OFFER, A CHANGE OF CONTROL OFFER OR REDEMPTION.

(A) *Partial Repurchases of Physical Notes Pursuant to an Asset Sale Offer, a Change of Control Offer or Redemption.* If only a portion of a Physical Note of a Holder is to be repurchased pursuant to an Asset Sale Offer, a Change of Control Offer or Redemption, then, as soon as reasonably practicable after such Physical Note is surrendered for Redemption or repurchase, as applicable, the Company will cause such Physical Note to be exchanged, pursuant and subject to **Section 2.10(C)**, for (i) one or more Physical Notes that are in Authorized Denominations and have an aggregate principal amount equal to the principal amount of such Physical Note that is not to be so repurchased, as applicable, and deliver such Physical Note(s) to

such Holder; and (ii) a Physical Note having a principal amount equal to the principal amount to be so repurchased, as applicable, which Physical Note will be repurchased, as applicable, pursuant to the terms of this Indenture; *provided, however*, that the Physical Note referred to in this **clause (ii)** need not be issued at any time after which such principal amount subject to such Redemption or repurchase, as applicable, is deemed to cease to be outstanding pursuant to **Section 2.17**.

(B) *Cancellation of Notes that Are Repurchased Pursuant to an Asset Sale Offer, a Change of Control Offer or Redemption.*

- 38 -

(i) *Physical Notes.* If a Physical Note (or any portion thereof that has not theretofore been exchanged pursuant to **Section 2.11(A)**) of a Holder is to be repurchased pursuant to an Asset Sale Offer, a Change of Control Offer or Redemption, then, promptly after the later of the time such Physical Note (or such portion) is deemed to cease to be outstanding pursuant to **Section 2.17** and the time such Physical Note is surrendered for such Redemption or repurchase, as applicable, (1) such Physical Note will be cancelled pursuant to **Section 2.14**; and (2) in the case of a partial Redemption or repurchase, as applicable, the Company will issue, execute and deliver to such Holder, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, one or more Physical Notes that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount of such Physical Note that is not to be so repurchased, as applicable; (y) are registered in the name of such Holder; and (z) bear each legend, if any, required by **Section 2.09**.

(ii) *Global Notes.* If a Global Note (or any portion thereof) is to be repurchased pursuant to an Asset Sale Offer, a Change of Control Offer or Redemption, then, promptly after the time such Note (or such portion) is deemed to cease to be outstanding pursuant to **Section 2.17**, the Trustee will reflect a decrease of the principal amount of such Global Note in an amount equal to the principal amount of such Global Note to be so repurchased, as applicable, by notation on the “Schedule of Exchanges of Interests in the Global Note” forming part of such Global Note (and, if the principal amount of such Global Note is zero following such notation, cancel such Global Note pursuant to **Section 2.14**).

Section 2.12. REPLACEMENT NOTES.

If a Holder of any Note claims that such Note has been mutilated, lost, destroyed or wrongfully taken, then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, a replacement Note upon surrender to the Trustee of such mutilated Note, or upon delivery to the Trustee of evidence of such loss, destruction or wrongful taking reasonably satisfactory to the Trustee and the Company. In the case of a lost, destroyed or wrongfully taken Note, the Company and the Trustee may require the Holder thereof to provide such security or indemnity that is reasonably satisfactory to the Company, the Trustee and the Collateral Agent to protect the Company, the Trustee and the Collateral Agent from any loss that any of them may suffer if such Note is replaced.

Every replacement Note issued pursuant to this **Section 2.12** will be an additional

Every replacement Note issued pursuant to this Section 2.12 will be an additional obligation of the Company and will be entitled to all of the benefits of this Indenture equally and ratably with all other Notes issued under this Indenture.

Section 2.13. REGISTERED HOLDERS; CERTAIN RIGHTS WITH RESPECT TO GLOBAL NOTES.

Only the Holder of a Note will have rights under this Indenture as the owner of such Note. Without limiting the generality of the foregoing, but subject to **Section 8.07**, Depository Participants will have no rights as such under this Indenture with respect to any Global Note held on their behalf by the Depository or its nominee, or by the Trustee as its custodian, and the Company, the Subsidiary Guarantors, the Trustee, the Collateral Agent and the Note Agents, and

their respective agents, may treat the Depository as the absolute owner of such Global Note for all purposes whatsoever; *provided, however*, that (A) the Holder of any Global Note may grant proxies and otherwise authorize any Person, including Depository Participants and Persons that hold interests in Notes through Depository Participants, to take any action that such Holder is entitled to take with respect to such Global Note under this Indenture or the Notes; and (B) the Company, the Subsidiary Guarantors, the Collateral Agent and the Trustee, and their respective agents, may give effect to any written certification, proxy or other authorization furnished by the Depository. Neither the Trustee nor any other Note Agent will have any responsibility or liability for any aspects of the records maintained by, or any other actions or omissions of, the Depository or any of the Depository Participants or Indirect Participants.

Section 2.14. CANCELLATION.

Without limiting the generality of **Section 3.07**, the Company may at any time deliver Notes to the Trustee for cancellation. The Registrar and the Paying Agent will forward to the Trustee each Note duly surrendered to them for transfer, exchange or payment. The Trustee will promptly cancel all Notes so surrendered to it in accordance with its customary procedures. The Company may not originally issue new Notes to replace Notes that it has paid or that have been cancelled upon transfer, exchange or payment. For the avoidance of doubt, the cancellation of Notes shall be effectuated in accordance with the Trustee's customary procedures.

Section 2.15. NOTES HELD BY THE COMPANY OR ITS AFFILIATES.

Without limiting the generality of **Section 2.17** and **Section 3.07**, in determining whether the Holders of the required aggregate principal amount of Notes have concurred in any direction, waiver, consent or other action under this Indenture, Notes (if any) owned by the Company or any of its Affiliates will be deemed not to be outstanding; *provided, however*, that, for purposes of determining whether the Trustee or the Collateral Agent is protected in relying on any such direction, waiver, consent or other action, only Notes that a Responsible Officer of the Trustee or the Collateral Agent, as applicable, actually knows are so owned will be so disregarded.

Section 2.16. TEMPORARY NOTES.

Until definitive Notes are ready for delivery, the Company may issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, temporary Notes. Temporary Notes will be substantially in the form of definitive Notes but may have variations that the Company considers appropriate for temporary Notes. The Company will promptly prepare, issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, definitive Notes in exchange for temporary Notes. Until so exchanged, each temporary Note will in all respects be entitled to the same benefits under this Indenture as definitive Notes.

Section 2.17. OUTSTANDING NOTES.

(A) *Generally*. The Notes that are outstanding at any time will be deemed to be those Notes that, at such time, have been duly executed and authenticated, excluding those Notes (or portions thereof) that have theretofore been (i) cancelled by the Trustee or delivered to the Trustee

for cancellation in accordance with **Section 2.14**; (ii) assigned a principal amount of zero by notation on the “Schedule of Exchanges of Interests in the Global Note” forming part of any a Global Note representing such Note; (iii) paid in full in accordance with this Indenture; or (iv) deemed to cease to be outstanding to the extent provided in, and subject to, **clause (B) or (C)** of this **Section 2.17**. Notwithstanding anything herein to the contrary, with respect to any requirement for the Trustee or any Note Agent to record any transfer or exchange through a notation on the “Schedule of Exchanges of Interests in the Global Note”, such notation shall be deemed made for all purposes without any further action upon the Trustee or the Registrar updating the Register to reflect any applicable increase or decrease in the applicable Global Note.

(B) *Replaced Notes*. If a Note is replaced pursuant to **Section 2.12**, then such Note will cease to be outstanding at the time of its replacement, unless the Trustee and the Company receive proof reasonably satisfactory to them that such Note is held by a “*bona fide* purchaser” under applicable law.

(C) *Maturing Notes and Notes Called for Redemption or Subject to Repurchase*. If, on a Redemption Date, a repurchase date under **Section 3.12** or **Section 3.17** or the Maturity Date, the Paying Agent holds money sufficient to pay the aggregate Redemption Price or applicable repurchase price, together with the aggregate interest, in each case due on such date, then (unless there occurs a Default in the payment of any such amount) (i) the Notes (or portions thereof) to be redeemed or repurchased, or that mature, on such date will be deemed, as of such date, to cease to be outstanding, except to the extent provided in **Section 4.03(D)**; and (ii) the rights of the Holders of such Notes (or such portions thereof), as such, will terminate with respect to such Notes (or such portions thereof), other than the right to receive the Redemption Price or applicable repurchase price of, and accrued and unpaid interest on, such Notes (or such portions thereof), in each case as provided in this Indenture.

(D) [*Reserved*].

(E) *Cessation of Accrual of Interest*. Except as provided in **Section 4.03(D)**, interest will cease to accrue on each Note from, and including, the date that such Note is deemed, pursuant to this **Section 2.17**, to cease to be outstanding, unless there occurs a default in the payment or delivery of any cash or other property due on such Note.

Section 2.18. REPURCHASES BY THE COMPANY.

Without limiting the generality of **Section 2.14** and **Section 3.07**, the Company may, from time to time, repurchase Notes in open market purchases or in negotiated transactions or otherwise, whether through private or public tender or exchange offers, cash-settled swaps, other cash-settled derivatives or private open market repurchases not involving a tender offer with one or more Holders without the consent of or delivering prior notice to Holders.

Section 2.19. CUSIP AND ISIN NUMBERS.

The Company may use one or more CUSIP or ISIN numbers to identify any of the Notes, and, if so, the Company and the Trustee will use such CUSIP or ISIN number(s) in notices to Holders; *provided, however*, that (i) the Trustee makes no representation as to the correctness or

- 41 -

accuracy of any such CUSIP or ISIN number; and (ii) the effectiveness of any such notice will not be affected by any defect in, or omission of, any such CUSIP or ISIN number. The Company will promptly notify the Trustee of any change in the CUSIP or ISIN number(s) identifying any Notes.

Article 3. COVENANTS

Section 3.01. PAYMENT ON NOTES.

(A) *Generally.* The Company will pay or cause to be paid the Redemption Price and, without duplication, all the principal of, any applicable premium, interest on, and other amounts due with respect to, the Notes on the dates and in the manner set forth in this Indenture.

(B) *Deposit of Funds.* Before 11:00 A.M., New York City time, on each applicable Redemption Date or Interest Payment Date, and on the Maturity Date or any other date on which any cash amount is due on the Notes, the Company will deposit, or will cause there to be deposited, with the Paying Agent cash, in funds immediately available on such date, sufficient to pay the cash amount due on the applicable Notes on such date. The Paying Agent will return to the Company, as soon as practicable, any money not required for such purpose.

Section 3.02. [RESERVED].

Section 3.03. FINANCIAL REPORTING INFORMATION.

(A) For so long as any Notes are outstanding, the Company shall deliver to the Trustee, for prompt further distribution by the Trustee to each Holder, a copy of all of the information and reports referred to below:

(i) within fifteen (15) days after the time period specified in the SEC's rules and regulations for non-accelerated filers (or such earlier date on which the Company is required to file a Form 10-K under the Exchange Act, if applicable), annual reports of the Reporting Entity (as defined below) for such fiscal year containing the information that would have been required to be contained in an annual report on Form 10-K (or any successor or comparable form) if the Reporting Entity had been a reporting company under the Exchange Act, except to the extent permitted to be excluded by the SEC;

(ii) within fifteen (15) days after the time period specified in the SEC's rules and regulations for non-accelerated filers (or such earlier date on which the Company is required to file a Form 10-Q under the Exchange Act, if applicable), quarterly reports of the Reporting Entity for such fiscal quarter containing the information that would have been required to be contained in a quarterly report on Form 10-Q (or any successor or

comparable form) if the Reporting Entity had been a reporting company under the Exchange Act, except to the extent permitted to be excluded by the SEC; and

(iii) within fifteen (15) days after the time period specified in the SEC's rules and regulations for filing or furnishing current reports on Form 8-K (or such earlier date on which the Company is required to file or furnish a Form 8-K under the Exchange Act, if applicable), current reports of the Reporting Entity containing substantially all of the information that would be required to be filed or furnished in a current report on

- 42 -

Form 8-K under the Exchange Act on the Issue Date pursuant to Sections 1, 2 and 4, Items 5.01, 5.02 (a), (b) and (c) and Item 9.01(a) and (b) (only to the extent relating to any of the foregoing) of Form 8-K if the Reporting Entity had been a reporting company under the Exchange Act.

In addition to providing such information to the Trustee, the Company shall make available to the Holders, bona fide, prospective investors in the Notes (which prospective investors may be limited to "qualified institutional buyers" within the meaning of Rule 144A of the Securities Act that certify their status as such to the satisfaction of the Company) and securities analysts (solely to the extent providing analysis of an investment in the Notes) the information required to be provided pursuant to the foregoing clauses (i), (ii) and (iii), by posting such information to its website (or the website of any of the Company's parent companies, including the Reporting Entity) or on IntraLinks or any comparable online data system or website.

Notwithstanding the foregoing, (A) if neither the Company nor another Reporting Entity is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, neither the Company nor another Reporting Entity will be required to deliver any information, certificates or reports that would otherwise be required by (i) Section 302 or Section 404 of the Sarbanes-Oxley Act of 2002, or related Items 307 or 308 of Regulation S-K or (ii) Item 10(e) of Regulation S-K promulgated by the SEC with respect to any non-generally accepted accounting principles financial measures contained therein, (B) such reports will not be required to contain financial information required by Rule 3-09, Rule 3-10 or Rule 3-16 of Regulation S-X or include any exhibits or certifications required by Form 10-K, Form 10-Q or Form 8-K (or any successor or comparable forms) or related rules under Regulation S-K.

(B) The financial statements, information and other documents required to be provided as described in this **Section 3.03** may be those of (i) the Company or (ii) any direct or indirect parent of the Company (any such entity, a "**Reporting Entity**"), so long as in the case of clause (ii) such direct or indirect parent of the Company shall not conduct, transact or otherwise engage, or commit to conduct, transact or otherwise engage, in any material business or operations other than its direct or indirect ownership of all of the Capital Stock in, and its management of, the Company; *provided* that, if the financial information so delivered relates to such direct or indirect parent of the Company, the same is accompanied by a reasonably detailed description of the quantitative differences between the information relating to such parent, on the one hand, and the information relating to the Company and its Subsidiaries on a standalone basis, on the other hand.

(C) In addition, the Company will make such information available to prospective investors upon request. The Company has agreed that, for so long as any Notes remain outstanding during any period when neither it nor another Reporting Entity is subject to Section 13 or 15(d) of the Exchange Act, or otherwise permitted to furnish the SEC with certain information pursuant to Rule 12g3-2(b) of the Exchange Act, it will furnish to the Holders of the Notes and to prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

(D) Notwithstanding the foregoing, the Company will be deemed to have delivered such reports and information referred to in this **Section 3.03** to the Holders, prospective investors, securities analysts and the Trustee for all purposes of this Indenture if the Company or another

Reporting Entity has filed such reports with the SEC via the EDGAR filing system (or any successor system) and such reports are publicly available. In addition, the requirements of this **Section 3.03** shall be deemed satisfied and the Company will be deemed to have delivered such reports and information referred to this **Section 3.03** to the Trustee and the Holders, prospective investors and securities analysts for all purposes of this Indenture by the posting of reports and information that would be required to be provided on the Company's website (or that of any of the Company's parent companies, including the Reporting Entity). The Trustee shall have no obligation to monitor whether the Company posts such reports, information and documents on the Company's website (or that of any of the Company's parent companies, including the Reporting Entity) or the SEC's EDGAR service, or collect any such information from the Company's (or any of the Company's parent companies) website or the SEC's EDGAR service.

(E) The Company will hold quarterly conference calls, beginning with the first full fiscal quarter ending after the Issue Date, for all Holders of the Notes, prospective investors, market makers affiliated with any Initial Purchaser of the Notes and securities analysts to discuss such financial information no later than ten (10) Business Days after the distribution of such information required by clauses (i) or (ii) of **Section 3.03(A)** and, prior to the date of each such conference call, will announce the time and date of such conference call and either include all information necessary to access the call or inform Holders of the Notes, prospective investors, market makers affiliated with any Initial Purchaser of the Notes and securities analysts how they can obtain such information, including, without limitation, the applicable password or login information (if applicable). For the avoidance of doubt, the holding of the Company's regular quarterly earnings call in accordance with past practice shall satisfy its obligations under this **Section 3.03(E)**.

(F) The Company will, and will cause each of its Subsidiaries to, keep proper books of record and accounts in which full, true and correct entries in conformity in all material respects with GAAP shall be made of all dealings and transactions in relation to its business and activities. At the request of the Trustee, acting at the direction of a Holder or Holders holding not less than 10% in aggregate principal amount of the then outstanding Notes, the Company will, and will cause each of its Subsidiaries to, permit any authorized representatives (including appointed third party agents) of such Holder or Holders to visit and inspect any of the properties of the Company and any of its Subsidiaries, to inspect, copy and take extracts from its and their financial and accounting records, and to discuss its and their affairs, finances and accounts with its and their officers and independent public accountants, all upon reasonable notice and at such reasonable times during normal business hours and, subject to the following proviso, as often as may reasonably be requested, and by this provision the Company authorizes such accountants to discuss with the Trustee and such Holders and such representatives the affairs, finances and accounts of the Company and its Subsidiaries, in each case, at the Company's expense; *provided*, that (i) prior to being permitted to engage in any such visitation, inspection or access rights provided for under this **Section 3.03(F)**, any such Holder or Holders and their applicable representatives shall have executed a standard confidentiality agreement in favor of the Company on customary terms reasonably satisfactory to the Company and such Holder or Holders and their applicable representatives (as applicable) and (ii) absent the occurrence and continuance of an Event of Default, (x) no more than two (2) such visits and inspections of any particular entity or location, as applicable, shall be permitted in any fiscal year and (y) the Company shall be required to reimburse the Trustee and the Holders for not more than one (1) such visit and inspection of any particular location or property in any fiscal year.

(G) The Company will, and will cause each of its Subsidiaries to, promptly provide to the Trustee such additional information regarding the business and financial affairs of the Company or any of its Subsidiaries, or compliance with the terms of the Notes Documents, as the Trustee, acting at the direction of a Holder or Holders holding not less than 10% in aggregate principal amount of the then outstanding Notes, may from time to time reasonably request in writing; *provided* that the Company may condition any Holder or Holders receipt of any such information provided for under this **Section 3.03(G)**, on such Holder or Holders having executed a standard confidentiality agreement in favor of the Company on customary terms reasonably satisfactory to the Company and such Holder or Holders and their applicable representatives (as applicable).

Delivery of reports, information and documents to the Trustee pursuant to this **Section 3.03** is for informational purposes only and the Trustee's receipt thereof shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely conclusively on the Officer's Certificates). The Trustee is under no duty to examine such reports, information or documents to ensure compliance with the provision of this Indenture or to ascertain the correctness or otherwise of the information or the statements contained therein.

Section 3.04. ADDITIONAL INTEREST.

(A) *Accrual of Additional Interest.* If, at any time during the six (6) month period beginning on, and including, the date that is six (6) months after the Issue Date of any Note:

- (i) the Company fails to timely file any report (other than Form 8-K reports) that the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act (after giving effect to all applicable grace periods thereunder); or
- (ii) such Note is not otherwise Freely Tradable,

then Additional Interest will accrue on such Note for each day during such period on which such failure is continuing or such Note is not Freely Tradable.

(B) *Amount and Payment of Additional Interest.* Any Additional Interest that accrues on a Note pursuant to **Section 3.04(A)** will be payable on the same dates and in the same manner as the Stated Interest on such Note and will accrue at a rate per annum equal to one quarter of one percent (0.25%) of the principal amount thereof for the first one hundred twenty (120) days on which Additional Interest accrues and, thereafter, at a rate per annum equal to one half of one percent (0.50%) of the principal amount thereof; *provided, however*, that in no event will Additional Interest, together with any Special Interest, accrue on any day on a Note at a combined rate per annum that exceeds one half of one percent (0.50%). For the avoidance of doubt, any Additional Interest that accrues on a Note will be in addition to the interest that accrues on such Note and,

subject to the proviso of the immediately preceding sentence, in addition to any Special Interest that accrues on such Note.

- 45 -

(C) *Notice of Accrual of Additional Interest; Trustee's Disclaimer.* The Company will send notice to the Holder of each Note, and to the Trustee, of the commencement and termination of any period in which Additional Interest accrues on such Note. In addition, if Additional Interest accrues on any Note, then, no later than five (5) Business Days before each date on which such Additional Interest is to be paid, the Company will deliver an Officer's Certificate to the Trustee and the Paying Agent stating (i) that the Company is obligated to pay Additional Interest on such Note on such date of payment; and (ii) the amount of such Additional Interest that is payable on such date of payment. Neither the Trustee nor the Paying Agent will have a duty to determine whether any Additional Interest is payable or the amount thereof.

(D) *Exclusive Remedy.* The accrual of Additional Interest will be the exclusive remedy available to Holders for the failure of their Notes to become Freely Tradable.

Section 3.05. COMPLIANCE AND DEFAULT CERTIFICATES.

(A) *Quarterly Compliance Certificate.* Within forty-five (45) days after September 30, 2024 and each fiscal quarter of the Company ending thereafter, the Company will deliver an Officer's Certificate to the Trustee (i) stating that the signatory thereto has supervised a review of the activities of the Company and its Subsidiaries during such fiscal quarter with a view towards determining whether any Default or Event of Default has occurred; and (ii) stating whether, to such signatory's knowledge, a Default or Event of Default has occurred or is continuing (and, if so, describing all such Defaults or Events of Default and what action the Company is taking or proposes to take with respect thereto).

(B) *Monthly Compliance Certificate.* Within fifteen (15) days following the end of each calendar month, commencing with the first month ended after issuance of the Notes, the Company will deliver an Officer's Certificate to the Trustee stating that the signatory thereto has supervised a review of the Liquidity of the Company during such calendar month with a view towards determining whether the Company's Liquidity was at all times during such calendar month in compliance with **Section 3.16**; stating whether the Company's Liquidity was less than the Minimum Liquidity Amount at the end of, or for more than 5 days of, such calendar month; and setting forth a calculation of the Company's Liquidity as of the last day of such calendar month.

(C) *Default Certificate.* If a Default or Event of Default occurs, then the Company will, promptly and in any event within fifteen (15) days after its first occurrence, deliver an Officer's Certificate to the Trustee describing the same and what action the Company is taking or proposes to take with respect thereto.

Section 3.06. STAY, EXTENSION AND USURY LAWS.

To the extent that it may lawfully do so, each of the Company and each Subsidiary Guarantor (A) agrees that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law (wherever or whenever enacted or in force) that may affect the covenants or the performance of this Indenture; and (B) expressly waives all benefits or advantages of any such law and agrees that it will not, by resort to any such law, hinder, delay or impede the execution of any power granted to the Trustee or the Collateral Agent

- 46 -

by this Indenture, but will suffer and permit the execution of every such power as though no such law has been enacted.

Section 3.07. ACQUISITION OF NOTES BY THE COMPANY AND ITS AFFILIATES.

Without limiting the generality of **Section 2.17**, Notes that the Company or any of its Subsidiaries have purchased or otherwise acquired will be promptly delivered to the Trustee for cancellation. The Company will use commercially reasonable efforts to prevent any of its controlled Affiliates from acquiring any Note (or any beneficial interest therein).

Section 3.08. CORPORATE EXISTENCE.

Subject to **Article 6**, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and the corporate existence of each of its Subsidiaries; *provided, however*, that the Company shall not be required to preserve any such corporate existence of any of its Subsidiaries if, in the judgment of the Company, the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries, taken as a whole, and all material assets of any such Subsidiaries have been assigned to the Company or another Subsidiary (that is, to the extent such Subsidiary is a Note Party, also a Note Party), and that the loss thereof is not adverse in any material respect to the Holders.

Section 3.09. LIMITATION ON INCURRENCE OF INDEBTEDNESS.

(A) The Company will not, and will not permit any of its Subsidiaries to, directly or indirectly, create, incur, issue, assume, enter into a guarantee of or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, “**incur**”) any Indebtedness, and the Company will not issue any Disqualified Stock and will not permit any of its Subsidiaries to issue any shares of Disqualified Stock or Preferred Stock.

(B) Notwithstanding anything to the contrary therein, **Section 3.09(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) (a) Indebtedness of the Company under the Existing Convertible Notes outstanding on the Issue Date, and any Permitted Refinancing Indebtedness in respect

thereof, and (b) the incurrence by the Note Parties of the Notes and the related Guarantees;

(ii) the incurrence by the Company or any Subsidiary of purchase money Indebtedness to finance the acquisition of personal property, including Capital Lease Obligations, synthetic lease obligations or mortgage financings and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and Permitted Refinancing Indebtedness to refinance such Indebtedness; *provided, however*, that (x) the aggregate principal amount of Indebtedness permitted by this **clause (ii)** shall not exceed, at any one time outstanding, \$15,000,000 and (y) if secured, such Liens shall attach only to the assets acquired with such

Indebtedness and shall not extend to any other property or assets of the Company and any of its Subsidiaries;

(iii) 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 to the extent specifically excluded from the definition of Investment or otherwise constituting a Permitted Investment, *provided, however*, that any such Indebtedness owed by the Company or a Subsidiary Guarantor to a Non-Guarantor Subsidiary is subordinated in right of payment of the Obligations of the Company or such Subsidiary Guarantor under the Notes or the applicable Guarantee, and *provided, further*, that (x) any subsequent issuance or transfer of Capital Stock that results in any such Indebtedness being held by a Person other than the Company or a Subsidiary and (y) any sale or other transfer of any such Indebtedness to a Person that is not the Company or a Subsidiary, will be deemed, in each case, to constitute an incurrence of such Indebtedness by the Company or such Subsidiary, as the case may be, that was not permitted by this **clause (iii)**;

(iv) the issuance by any of the Company's Subsidiaries to the Company or any Subsidiary Guarantor of shares of Preferred Stock; *provided, however*, that (x) any subsequent issuance or transfer of Capital Stock that results in any such Preferred Stock being held by a Person other than the Company or a Subsidiary Guarantor and (y) any sale or other transfer of any such Preferred Stock to a Person that is not the Company or a Subsidiary Guarantor, will be deemed, in each case, to constitute an issuance of such Preferred Stock by such Subsidiary that was not permitted by this **clause (iv)**;

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

(vi) the incurrence by the Company (and the guaranty by any Subsidiary Guarantors) of Second Lien Indebtedness in an aggregate principal amount not to exceed \$274,245,000 at any time outstanding (together with any Permitted Refinancing Indebtedness in respect thereof); *provided*, that such Second Lien Indebtedness or the proceeds thereof shall be used solely to finance or effect the repurchase, redemption, defeasance or exchange or other acquisition or retirement for value of Existing Convertible Notes;

(vii) the incurrence by the Company and the Subsidiary Guarantors of Indebtedness under the Permitted ABL Facility in an aggregate principal amount not to exceed \$100,000,000 at any time outstanding;

(viii) the incurrence by the Company of the St. James Indebtedness in an aggregate principal amount not to exceed \$50,000,000 at any time outstanding;

(ix) Unsecured Indebtedness in respect of Permitted Junior Indebtedness in an aggregate principal amount not to exceed the difference between (a) \$250,000,000 minus (b) the aggregate principal amount of (1) Existing Convertible Notes then outstanding plus

(2) any Second Lien Indebtedness issued after the date of this Indenture (and, in each case, any Permitted Refinancing Indebtedness with respect thereto);

(x) 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;

(xi) 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;

(xii) Indebtedness (other than for borrowed money) owed to any Person providing property, casualty, liability or other insurance to the Company or any of its Subsidiaries, 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;

(xiii) Obligations in respect of governmental grants, financial aid, tax incentives, subsidies, tax holidays and other similar governmental benefits or incentives, and guarantees or restrictions related thereto;

(xiv) 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 to landlords, utilities and/or vendors in the ordinary course of business, or other Indebtedness with respect to reimbursement-type obligations regarding workers' compensation claims;

(xv) Indebtedness representing deferred compensation or similar obligation to employees of the Company or any of its 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 and services in the ordinary course of business;

(xvii) Indebtedness incurred in connection with judgments, decrees, attachments or awards that do not constitute an Event of Default under **Section 7.01(A)(x)**;

(xviii) Indebtedness in the form of reimbursements owed to officers, directors, consultants and employees of the Company or any of its Subsidiaries in the ordinary course of business;

(xix) Indebtedness or issuance of Disqualified Stock of the Company and the incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock of any Subsidiary in an aggregate outstanding principal amount or liquidation preference that,

- 49 -

when aggregated with the outstanding principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred or issued, as applicable, pursuant to this **clause (xix)**, together with any Permitted Refinancing Indebtedness in respect thereof, does not exceed (as of the date such Indebtedness, Disqualified Stock or Preferred Stock is issued, incurred or otherwise obtained) \$500,000 in the aggregate;

(xx) Swap Agreements not entered into for speculative purposes;

(xxi) (a) Indebtedness of the Luminar China Subsidiary in respect of the Permitted China Facility in an aggregate principal amount not to exceed \$75,000,000 at any time outstanding, *less* any Net Proceeds applied to the repayment the Permitted China Facility in accordance with (i) of the definition of “**Net Proceeds**” and (b) Indebtedness of the Company constituting a guaranty of or other credit support for the Permitted China Facility that, is unsecured and is subordinated in right of payment to the Notes on terms and pursuant to documentation acceptable to the Required Holders;

(xxii) Indebtedness of a Person existing at the time such Person was acquired by the Company or became its Subsidiary or assets were acquired from such Person; *provided* that (w) such Indebtedness was not incurred in connection with, or in contemplation of, such Person becoming a Subsidiary or the acquisition of such assets, (x) neither the Company nor any of its Subsidiaries other than the Person (and its Subsidiaries) or assets acquired has any liability or obligation with respect to such Indebtedness, (y) the aggregate principal amount at any time outstanding of Indebtedness under this **clause (xxii)** shall not exceed \$25,000,000 at any time outstanding, and any Permitted Refinancing Indebtedness in respect thereof and (z) such Person shall become a Note Party and shall grant a Lien (which may be junior to any existing Lien securing such assumed Indebtedness) to secure the Notes;

(xxiii) Indebtedness arising from agreements of the Company or any of its Subsidiaries providing for indemnification, adjustment of purchase price, earn-out, deferred payment, deferred purchase price, royalty, milestone or similar obligations, in each case incurred or assumed with the acquisition or 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, in an aggregate amount not to exceed \$10,000,000 at any time outstanding;

(xxiv) Indebtedness incurred by the Company or any of its Subsidiaries consisting of (a) the financing of insurance premiums in the ordinary course of business or (b) take-

or (a) the financing of insurance premiums in the ordinary course of business or (b) take-or-pay obligations contained in supply agreements in the ordinary course of business;

(xxv) Indebtedness incurred by the Company or any of its Subsidiaries in the ordinary course of business arising from treasury, payment processing services, cash pooling, depository, over-draft and cash management services;

- 50 -

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

(xxvii) Indebtedness not to exceed \$1,000,000 at any time outstanding in the form of (a) guarantees of loans and advances to officers, directors and employees and (b) reimbursements owed to officers, directors and employees of the Company or any of its Subsidiaries;

(xxviii) performance guarantees by the Company or any Subsidiary with respect to the performance of any obligation of any other Subsidiary; and

(xxix) other Indebtedness in an aggregate amount not to exceed \$1,000,000 at any time outstanding.

(C) For purposes of determining compliance with this **Section 3.09**, 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 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 or Disqualified Stock (based on circumstances existing on the date of reclassification), in any manner that complies with this covenant. The accrual of interest, the accrual of dividends, 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 or an issuance of Disqualified Stock for purposes of this covenant.

(D) 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 3.09**, the maximum amount of Indebtedness that the Company may incur pursuant to this **Section 3.09** 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.

Section 3.10. LIMITATION ON LIENS.

The Company shall not, nor will it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or suffer to exist any Lien to secure Indebtedness on any property or asset of, whether now owned or hereafter acquired, the Company or any of its Subsidiaries, except for Permitted Liens.

Section 3.11. LIMITATION ON RESTRICTED PAYMENTS.

(A) The Company will not, and the Company will not permit any of its Subsidiaries to:

(i) declare or pay any dividend or make any payment or distribution (a) on account of the Company's or any of its Subsidiaries' Capital Stock (including any payment made in connection with any merger or consolidation involving the Company or any of its Subsidiaries) or (b) to the direct or indirect holders of the Company's or any of its Subsidiaries' Capital Stock in their capacity as holders, other than (x) dividends or distributions by the Company payable solely in Capital Stock (other than Disqualified Stock) of the Company or (y) dividends or distributions by the Company or any of its Subsidiaries to the Company or another Subsidiary (and in the case of any dividend or distribution payable on or in respect of any class or series of securities issued by a Subsidiary other than a Wholly-Owned Subsidiary, the Company or such Subsidiary receives at least its pro rata share of such dividend or distribution in accordance with its Capital Stock in such class or series of securities);

(ii) purchase, redeem, defease or otherwise acquire or retire for value (including any payment made in connection with any merger or consolidation involving the Company or any of its Subsidiaries) any Capital Stock of the Company or any Subsidiary held by Persons other than the Company or any Subsidiary;

(iii) purchase, repay, prepay, repurchase, redeem, defease, acquire or retire for value any Indebtedness of the Company and its Subsidiaries junior in right of payment or lien priority to the Notes (including the Second Lien Indebtedness) or the Existing Convertible Notes (and any Permitted Refinancing Indebtedness in respect thereof), except in each case any payment of principal at the stated maturity thereof; or

(iv) make any Investment other than a Permitted Investment,

(all such payments and other actions set forth in clauses (i) through (iv) above being collectively referred to as "**Restricted Payments**").

(B) Notwithstanding anything to the contrary contain herein, the provisions of this **Section 3.11** will not prohibit:

(i) the payment of any dividend or distribution or consummation of any redemption within sixty (60) days after the date of declaration thereof or the giving of a redemption notice related thereto, if at the date of declaration or notice such payment would have complied with any other provision of this **Section 3.11**;

(ii) cashless repurchases of Capital Stock deemed to occur upon the exercise of stock options, warrants or other securities convertible into or exercisable or exchangeable for Capital Stock if such Capital Stock represents a portion of the exercise, conversion or exchange price thereof;

(iii) any purchase, repurchase, redemption, defeasance or other acquisition or retirement for value of the Indebtedness of the Company or any Subsidiary junior to the Notes upon a Change of Control or Asset Sale or analogous construct contained in the instrument pursuant to which such Indebtedness or Disqualified Stock was issued pursuant to a provision no more favorable, including purchase price, to the holders thereof than the provisions set forth under **Section 3.12** and **Section 3.17**, as applicable, but only if the Company or such Subsidiary has first complied with its obligations under **Section 3.12** and **Section 3.17**, as applicable;

(iv) each Subsidiary may make Restricted Payments to the Company or another Subsidiary which is the immediate parent of the Subsidiary making such Restricted Payment;

(v) repurchases of Capital Stock deemed to occur (a) upon the exercise or conversion of stock options, warrants, convertible notes or similar rights to acquire Capital Stock to the extent that such Capital Stock represents all or a portion of the exercise, exchange or conversion price of those stock options, warrants, convertible notes or similar rights, or (b) upon the withholding of a portion of Capital Stock granted or awarded to a current or former director, officer, employee, manager or director of the Company or any of its Subsidiaries (or consultant or advisor or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) solely to the extent necessary to pay for the taxes payable by such Person upon such grant or award (or upon the vesting thereof);

(vi) a Restricted Payment to pay for the repurchase, retirement or other acquisition for value of Capital Stock of the Company (a) held by any future, present or former employee, director, officer or consultant of the Company or any other Subsidiary upon such Person's death, disability, retirement or termination of employment and (b) pursuant to and accordance with any management equity plan or stock option plan or any other management or employee benefit plan or other agreement or arrangement; *provided, however*, that the aggregate Restricted Payments made under this **clause (vi)(b)** do not exceed \$2,500,000 in any calendar year;

(vii) the making of any Restricted Payment using, 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, Capital Stock (other than Disqualified Stock) of the Company to the extent such proceeds are not otherwise applied to the making of Restricted Payments

pursuant to this **Section 3.11**;

(viii) any non Wholly-Owned Subsidiary may make Restricted Payments (which may be in cash) to its shareholders, members or partners generally, so long as the Company

- 53 -

or the Subsidiary which owns the Capital Stock in the Subsidiary making such Restricted Payment receives at least its pro rata share thereof (based upon its relative holding of the Capital Stock in the Subsidiary making such Restricted Payment and taking into account the relative preferences, if any, of the various classes of Capital Stock of such Subsidiary);

(ix) the payment of cash in lieu of the issuance of fractional shares of Capital Stock in connection with any dividend or split of, or upon exercise, conversion or exchange of warrants, options or other securities exercisable or convertible into, or exchangeable for Capital Stock of the Company or in connection with the issuance of any dividend otherwise permitted to be made under this **Section 3.11**;

(x) (a) any conversion of the Second Lien Indebtedness to Capital Stock of the Company in accordance with the Second Lien Indenture, and (b) the payment (either in cash or by converting such cash amount into additional Capital Stock of the Company) of any Make-Whole Amount under and as defined in the Second Lien Indenture, or any other amount that may become due in connection with any conversion of the Second Lien Indebtedness (other than in respect of the Conversion Consideration due thereon under and as defined in the Second Lien Indenture); *provided* that any such cash payment shall be subject to no Default or Event of Default and pro forma compliance with **Section 3.16** after giving effect to such cash payment;

(xi) the repurchase, redemption, defeasance or other acquisition or retirement for value of the Existing Convertible Notes in exchange for, or with the net proceeds from, a substantially concurrent incurrence of Permitted Refinancing Indebtedness or of Second Lien Indebtedness, in each case, as permitted under **Section 3.09**;

(xii) payments or distributions to dissenting stockholders pursuant to applicable law, pursuant to or in connection with a consolidation, amalgamation, merger or transfer of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, that complies with **Section 6.01**; *provided* that as a result of such consolidation, amalgamation, merger or transfer of assets, the Company shall have made a Change of Control Offer (if required by this Indenture) and that all Notes tendered by Holders in connection with such Change of Control Offer have been repurchased, redeemed or acquired for value; and

(xiii) other Restricted Payments in an amount not to exceed \$2,500,000 in the aggregate.

(C) For purposes of determining compliance with this **Section 3.11**, if any Restricted Payment (or portion thereof) would be permitted pursuant to one or more provisions described

Payment (or portion thereof) would be permitted pursuant to one or more provisions described above, the Company may divide and classify such Restricted Payment in any manner that complies with this covenant and may later divide and classify any such Restricted Payment so long as the 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.

- 54 -

(D) Notwithstanding the foregoing or anything else contained in this Indenture, no Disposition of Material Intellectual Property to a Person other than a Note Party shall be permitted other than a Disposition constituting a Permitted IP License.

Section 3.12. LIMITATION ON ASSET SALES.

(A) The Company will not, and will not permit any of its Subsidiaries to, consummate, directly or indirectly, 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, (ii) no Event of Default set forth in **Section 7.01(A)(i)**, **Section 7.01(A)(ii)**, **Section 7.01(A)(iii)**, **Section 7.01(A)(iv)**, **Section 7.01(A)(viii)** or **Section 7.01(A)(ix)** shall have occurred and be continuing at the time of the consummation of such Asset Sale or would be caused thereby and (iii) at least 75% of the consideration received from such Asset Sale 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 the amount of:

(i) any notes or other obligations or other securities or assets received by the Company or such Subsidiary from such transferee that are converted by the Company or such Subsidiary into cash within 180 days of the receipt thereof (to the extent of the cash received); and

(ii) Indebtedness of any Subsidiary that is no longer a Subsidiary as a result of such Asset Sale, to the extent that the Company and each other Subsidiary are released from any guarantee of payment of such Indebtedness in connection with the Asset Sale;

shall be deemed to be Cash Equivalents for the purposes of this **Section 3.12(A)**.

Notwithstanding the foregoing, no Disposition of Material Intellectual Property to a Person other than a Note Party shall be permitted other than a Disposition constituting a Permitted IP License.

(B) Within 365 days after the Company's or any Subsidiary's receipt of the Net Proceeds of any Asset Sale, the Company or such Subsidiary may apply, at its option:

(i) all or a portion of the Net Proceeds from such Asset Sale, to repay (x) to the extent such Net Proceeds constitute proceeds from the sale of collateral from priority Liens securing the Permitted ABL Facility or the Permitted China Facility, obligations under the Permitted ABL Facility or the Permitted China Facility, as applicable; or (y) to the extent such Net Proceeds are from a Disposition of assets of a Non-Guarantor Subsidiary or are subject to Liens permitted hereunder that are senior in priority to the Notes, any Indebtedness of such Non-Guarantor Subsidiary or so secured; or

(ii) up to 40% of the Net Proceeds from such Asset Sale, to make a Permitted Investment in any one or more businesses (*provided* that if such investment is in the form of the acquisition of Capital Stock of a Person, such acquisition results in such Person

becoming a Subsidiary Guarantor of the Company), assets, research and product development, property or capital expenditures, in each case (a) used or useful in the business or activities conducted by the Company and its Subsidiaries as of the Issue Date or a Similar Business or (b) that replace the properties and assets that are the subject of such Asset Sale or to reimburse the cost of any of the foregoing incurred on or after the date on which the Asset Sale giving rise to such Net Proceeds was contractually committed; *provided*, that any such Investment, assets, property or capital expenditures, to the extent acquired with Net Proceeds of an Asset Sale of Collateral, shall be pledged as Collateral (including any assets held by a Person acquired using such Net Proceeds).

In the case of **clause (ii)** above, a binding commitment shall be treated as a permitted application of such Net Proceeds from the date of such commitment until the 18-month anniversary of the date of the receipt of such Net Proceeds; *provided* that in the event such binding commitment is later canceled or terminated for any reason before such Net Proceeds are so applied, then such Net Proceeds shall constitute Excess Proceeds unless the Company or such Subsidiary enters into another binding commitment (a “**Second Commitment**”) within six (6) months of such cancellation or termination of the prior binding commitment; *provided, further*, that the Company or such Subsidiary may only enter into a Second Commitment under the foregoing provision one time with respect to each Asset Sale and to the extent such Second Commitment is later cancelled or terminated for any reason before such Net Proceeds are applied or are not applied within 180 days of such Second Commitment, then such Net Proceeds shall constitute Excess Proceeds.

Subject to the preceding paragraph, pending the final application of any such Net Proceeds, the Company or such Subsidiary may temporarily reduce Indebtedness under the Permitted ABL Facility, if any, or otherwise invest such Net Proceeds in any manner not prohibited by this Indenture.

Any Net Proceeds from any Asset Sale that are not applied as provided and within the time period set forth in the first sentence of this **Section 3.12(B)** will be deemed to constitute “**Excess Proceeds**”.

Notwithstanding anything to the contrary set forth herein, to the extent that repatriation to the United States of any or all of the Net Proceeds of any Asset Sale by a Foreign Subsidiary (x) is prohibited or delayed by applicable local law or (y) would result in material adverse tax consequences as determined by the Company in its sole discretion, the portion of such Net Proceeds so affected will not be required to be applied in compliance with this **Section 3.12**; *provided* that clause (x) of this paragraph of clause (B) shall apply to such amounts for so long, but only for so long, as the applicable local law will not permit repatriation to the United States (the Company hereby agreeing to use commercially reasonable efforts to cause the applicable Foreign Subsidiary to take all actions reasonably required by the applicable local law, applicable organizational impediments or other impediment to permit such repatriation), and if such repatriation of any of such affected Net Proceeds is permitted under the applicable local law and is not subject to clause (y) of this paragraph of clause (B), then such Net Proceeds will be applied (net of additional taxes that would be payable or reserved against as a result of repatriating such amounts) in compliance with this **Section 3.12**. The time periods set forth in this **Section 3.12** shall not start until such time as the applicable Net Proceeds may be repatriated (whether or not such repatriation actually occurs).

The Company may satisfy the foregoing obligations with respect to any Asset Sale by making an Asset Sale Offer at any time prior to the expiration of the 365-day reinvestment period.

(C) Within ten (10) Business Days of the aggregate amount of Excess Proceeds exceeding \$3,500,000, the Company will make an offer (each, an “**Asset Sale Offer**”) to all Holders of Notes, to purchase, prepay or redeem the maximum principal amount of Notes that may be purchased out of Excess Proceeds after taking into account in the calculation of such amount all accrued and unpaid interest on the Notes and the amount of all fees and expenses, including premiums, incurred in connection with such purchase, prepayment or redemption (the “**Offer Amount**”). The offer price in any Asset Sale Offer will be an amount in cash equal to 103% of the principal amount so purchased, prepaid or redeemed, *plus* accrued and unpaid interest on such principal amount to the date of purchase, unless such date of purchase 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 any accrued and unpaid interest that would have accrued on such Notes to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that such Notes remained outstanding through such Interest Payment Date, if such date of purchase is before such Interest Payment Date), to Holders of record as of such Regular Record Date on or, at the Company’s election, before such Interest Payment Date, and the offer price in such Asset Sale Offer shall be an amount in cash equal to 103% of the aggregate principal amount purchased, prepaid or redeemed. If 103% of 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 any such Asset Sale Offer, the amount of Excess Proceeds shall be reset at zero.

(D) To the extent applicable, the Company will comply with all federal and state securities laws in connection with an Asset Sale Offer (including complying with Rules 13e-4 and 14e-1 under the Exchange Act) so as to permit effecting such Asset Sale Offer in the manner set forth in this Indenture. To the extent that the provisions of any applicable federal or state securities laws conflict with the provisions of this **Section 3.12**, the Company will comply with the applicable securities laws and will not be deemed to have breached its obligations under this **Section 3.12** by virtue of such compliance.

Section 3.13. TRANSACTIONS WITH AFFILIATES.

(A) The Company will not, and will not permit any of its Subsidiaries to, directly or indirectly, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction or series of transactions, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Company or any of its Subsidiaries (each, an “**Affiliate Transaction**”) involving aggregate payments or consideration in excess of \$100,000, unless:

(i) such Affiliate Transaction is in the ordinary course of business and is on terms that are not materially less favorable to the Company or the relevant Subsidiary, taken as a whole, than those that could have been obtained in a comparable arm's-length

- 57 -

transaction by the Company or such Subsidiary with a Person that is not an Affiliate of the Company or any of its Subsidiaries; and

(ii) the Company delivers to the Trustee, with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate payments or consideration in excess of \$250,000, a resolution of the Board of Directors accompanied by an Officer's Certificate certifying that such Affiliate Transaction complies with this **Section 3.13** and that such Affiliate Transaction has been approved by a majority of the disinterested members of the Board of Directors (or by the audit committee or any committee of the Board of Directors consisting of disinterested members of the Board of Directors) (a director shall be disinterested if he or she has no interest in such Affiliate Transaction other than through the Company and its Subsidiaries).

(B) The following items will be deemed not to be Affiliate Transactions and, therefore, will not be subject to the provisions of this **Section 3.13**:

(i) the Notes and the Guarantees;

(ii) any consulting or employment agreement or compensation plan, stock option or stock ownership plan or reasonable and customary officer or director indemnification arrangement entered into by the Company or any of its Subsidiaries in the ordinary course of business for the benefit of directors, officers, employees and consultants of the Company or its Subsidiaries and payments and transactions pursuant thereto;

(iii) transactions between or among the Company and/or the Subsidiary Guarantors (or an entity that becomes a Subsidiary Guarantor as a result of such transaction) and/or the Company's Wholly-Owned Subsidiaries;

(iv) payment of reasonable fees or other reasonable compensation to, provision of customary benefits or indemnification agreements to and reimbursement of expenses of directors, officers and employees of the Company or any of its Subsidiaries;

(v) Restricted Payments that do not violate the provisions of **Section 3.11** of this Indenture;

(vi) transactions pursuant to agreements or arrangements as in effect on the Issue Date, or any amendment, modification, or supplement thereto or replacement thereof (so long as such agreement or arrangement, as so amended, modified or supplemented or replaced, taken as a whole, is not materially more disadvantageous, to the Holders than such agreement or arrangement as in effect on the Issue Date, as determined in good faith by

the Company);

(vii) purchases or sales of goods or services with customers, suppliers, sales agents or sellers of goods and services in the ordinary course of business on terms that are no less favorable to the Company or the relevant Subsidiary than those that would have been obtained at the time in a comparable transaction by the Company or such Subsidiary with a Person that is not an Affiliate of the Company;

- 58 -

(viii) if such Affiliate Transaction is with an Affiliate in its capacity as a minority holder of Indebtedness of the Company or any Subsidiary, a transaction in which such Affiliate is treated no more favorably than the other non-Affiliated holders of Indebtedness of the Company or such Subsidiary;

(ix) transactions in the ordinary course of business between the Company or a Subsidiary with any joint venture; *provided* that all the outstanding ownership interests of such joint venture are owned only by the Company, its Subsidiaries and Persons that are not Affiliates of the Company (other than by virtue of such joint venture arrangement);

(x) any Investment of the Company or any of its Subsidiaries existing on the Issue Date and listed on **Schedule 1.01**, and any extension, modification or renewal of such existing Investments, to the extent not involving any additional Investment other than as the result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities, in each case, pursuant to the terms of such Investments as in effect on the Issue Date;

(xi) the formation and maintenance of any consolidated group or subgroup for tax, accounting or cash pooling or management purposes in the ordinary course of business or transactions undertaken in good faith for the purpose of improving the consolidated tax efficiency of the Company or any of their Subsidiaries and not for the purpose of circumventing any provision of this Indenture;

(xii) to the extent permitted under this Indenture, any merger, consolidation or reorganization of the Company with an Affiliate of the Company solely for the purpose of (A) forming or collapsing a holding company structure or (B) reincorporating the Company in a new jurisdiction;

(xiii) entering into one or more agreements that provide registration or information rights to the security holders of the Company or any Subsidiary or any direct or indirect parent of the Company or amending such agreement with security holders of the Company or any Subsidiary or any direct or any indirect parent of the Company;

(xiv) transactions contemplated by, or in connection with, any customary transition services agreement entered into in connection with any Disposition which is permitted hereunder;

(xv) customary fees, indemnities and reimbursements as may be paid to non-officer directors of the Company and its Subsidiaries;

(xvi) the issuance, sale or transfer of Capital Stock (other than Disqualified Stock) of the Company, and any contribution to the capital of the Company;

(xvii) advances to employees of the Company or any of its Subsidiaries made in the ordinary course of business, in a manner that is consistent with past practice; and

(xviii) transactions between the Company or any Subsidiary and any Person, a director of which is also a director of the Company (*provided* that such director is not

otherwise Affiliated with the Company and is not a Permitted Party); *provided, however*, that such common director abstains from voting as a director of the Company on any matter involving such other Person.

Section 3.14. BURDENSOME AGREEMENTS.

Except as provided herein or in any other Notes Document, the Company shall not, nor shall it permit any of its Subsidiaries to, enter into or cause or permit to exist any agreement restricting the ability of (x) any Subsidiary that is not a Note Party to pay dividends or other distributions to the Company or any Note Party, (y) any Subsidiary that is not a Note Party to make cash loans or advances to the Company or any Note Party or (z) any Note Party to create, permit or grant a Lien on any of its properties or assets to secure the Obligations under the Notes, except for (A) restrictions imposed by applicable federal, state or local law and those in the Notes Documents; (B) any organizational documents of a Note Party as in effect as of the date hereof; and (C) any agreement or restriction or condition that applies to any Person that becomes a Subsidiary, or the assets or property of such Person, pursuant to a Permitted Investment so long as such agreement or restriction is in effect at the time of such Permitted Investment, it was not entered into in contemplation of such Permitted Investment and does not extend to any assets, properties or businesses other than those acquired pursuant to such Permitted Investment.

Section 3.15. MODIFICATION OF TERMS OF JUNIOR INDEBTEDNESS.

(A) The Company shall not, nor shall the Company permit any Subsidiary to, amend, modify or change in any manner materially adverse to the interests of the Holders, in the good-faith judgement of the Board of Directors, any term or condition of any Second Lien Indebtedness, the St. James Indebtedness or, following the entry into any such facility in accordance with the terms hereof, the Permitted China Facility or any Permitted ABL Facility; *provided* that, in the case of the St. James Indebtedness, the Permitted China Facility and the Permitted ABL Facility, any amendment, modification or change that adds a liquidity covenant or other financial covenant to such Indebtedness shall be deemed to be materially adverse to the interests of the Holders.

(B) If any amendment, modification or change to any term or condition of any Second Lien Indebtedness shall contain any financial covenant that is either more restrictive (or more favorable to the holders of such Indebtedness) than the corresponding financial covenant set forth in this Indenture or is not comparable to any financial covenant set forth in this Indenture, then, in each case, this Indenture shall automatically be deemed to have been amended to incorporate such restrictive or financial covenant or event of default, *mutatis mutandis*, as if set forth fully herein, except that any such restrictive or financial covenant or event of default that is incorporated into this Indenture shall be more restrictive to the Company by an amount or percentage consistent with the respective differences in baskets or financial tests applicable to the Second Lien Indebtedness as compared to the Notes on the date of this Indenture, without any further action required on the part of any Person; *provided*, that the Trustee shall not be charged with knowledge of any such amendment unless and until it receives the Company's written notice thereof. The Company shall give prompt written notice to the Trustee and each Holder of the effectiveness of any such amendment, modification or change, providing to the Trustee and each Holder true and complete copies thereof, and shall execute a supplemental indenture hereto and any and all further

documents and agreements, , and take all such further actions, as shall be reasonably requested by the Required Holders to give effect to the provisions of this paragraph.

Section 3.16. MINIMUM LIQUIDITY.

The Company will not permit Liquidity to be less than \$35,000,000 (the “**Minimum Liquidity Amount**”) on the last Business Day of any calendar month, or for more than 5 days during any calendar month, commencing with the first calendar month ended after the issuance of the Notes.

Section 3.17. CHANGE OF CONTROL.

(A) Upon the occurrence of a Change of Control, each Holder shall have the right to require the Company to repurchase all or any part of such Holder’s Notes at a purchase price in cash equal to 103% of the principal amount repurchased, plus accrued and unpaid interest, if any, to, but excluding, the date of repurchase (subject to the right of Holders of record on the relevant Regular Record Date to receive interest due on the relevant Interest Payment Date), in accordance with the terms contemplated in this **Section 3.17**; *provided, however*, that notwithstanding the occurrence of a Change of Control, the Company shall not be obligated to purchase any Notes pursuant to this **Section 3.17** in the event that it has previously or concurrently elected to redeem such Notes at the applicable Redemption Price in accordance with **Article 4**.

(B) Within thirty (30) days following any Change of Control, except to the extent that the Company has exercised its right to redeem the Notes in accordance with **Article 4**, the Company shall mail to each Holder’s registered address, or deliver electronically if held by the Depository, with a copy to the Trustee a notice (a “**Change of Control Offer**”) stating:

(i) that a Change of Control has occurred and that such Holder has the right to require the Company to repurchase such Holder’s Notes at a repurchase price in cash equal to 103% of the principal amount, thereof, *plus* accrued and unpaid interest, if any, to, but excluding, the date of repurchase (subject to the right of the Holders of record on the relevant Regular Record Date to receive interest on the relevant Interest Payment Date);

(ii) the circumstances and relevant facts and financial information regarding such Change of Control;

(iii) the repurchase date (which shall be no earlier than thirty (30) days nor later than sixty (60) days from the date such notice is mailed or delivered electronically); and

(iv) the instructions determined by the Company in good faith, consistent with this **Section 3.17**, that a Holder must follow in order to have its Notes purchased.

(C) Holders electing to have their Notes purchased shall be required to surrender their Notes, with an appropriate form duly completed, to the Company at the address specified in the

notice at least three (3) Business Days prior to the purchase date or otherwise in accordance with the customary and applicable procedures of the Depository. The Holders shall be entitled to withdraw their election if the Company receives not later than one (1) Business Day prior to the purchase date a facsimile transmission or letter setting forth the name of the Holder, the principal

- 61 -

amount of the Note which was delivered for purchase by the Holder and a statement that such Holder is withdrawing its election to have such Notes purchased or the Holder otherwise withdraws its election to have its Notes repurchased in accordance with the customary and applicable procedures of the Depository. Holders whose Notes are purchased only in part shall be issued new Notes equal in principal amount to the unpurchased portion of the Notes surrendered.

(D) On the purchase date, all Notes purchased by the Company under this **Section 3.17** shall be delivered to the Trustee for cancellation, and the Company shall pay the purchase price plus accrued and unpaid interest, if any, to, but excluding, the date of repurchase to the Holders entitled thereto.

(E) A Change of Control Offer may be made in advance of a Change of Control, and conditioned upon such Change of Control, if a definitive agreement is in place for the Change of Control at the time of making of the Change of Control Offer.

(F) Notwithstanding the provisions of this **Section 3.17**, the Company shall not be required to make a Change of Control Offer upon a Change of Control if a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in this Indenture applicable to a Change of Control Offer made by the Company and purchases all Notes validly tendered and not withdrawn under such Change of Control Offer.

(G) Notes repurchased by the Company pursuant to a Change of Control Offer will be retired and canceled in accordance with **(B)**. Notes purchased by a third party pursuant to the preceding clause (D) will have the status of Notes issued and outstanding.

(H) At the time the Company delivers Notes to the Trustee which are to be accepted for purchase, the Company shall also deliver an Officer's Certificate stating that such Notes are to be accepted by the Company pursuant to and in accordance with the terms of this **Section 3.17**. A Note shall be deemed to have been accepted for purchase at the time the Trustee, directly or through an agent, mails or delivers payment therefor to the surrendering holder.

(I) Prior to any Change of Control Offer, the Company shall deliver to the Trustee an Officer's Certificate stating that all conditions precedent contained herein to the right of the Company to make such offer have been complied with.

(J) The Company shall comply, to the extent applicable, with the requirements of Section 14(e) of the Exchange Act and any other securities laws or regulations in connection with the repurchase of Notes pursuant to this **Section 3.17**. To the extent that the provisions of any securities laws or regulations conflict with provisions of this **Section 3.17**, the Company shall

comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under this **Section 3.17** by virtue thereof.

(K) If Holders of not less than 90% in aggregate principal amount of the outstanding Notes validly tender and do not withdraw such Notes in a Change of Control Offer and the Company, or any third party making a Change of Control Offer in lieu of the Company as described above, purchases all of the Notes validly tendered and not withdrawn by such Holders, the Company or such third party will have the right, upon not less than 15 nor more than 60 days'

- 62 -

prior notice, given not more than 30 days following such purchase pursuant to the Change of Control Offer, to redeem all Notes that remain outstanding following such purchase at a price in cash equal to 103% of the principal amount thereof, without any premium, plus accrued and unpaid interest, if any, to, but excluding, the date of redemption. Any such redemption shall be effected in accordance with **Article 4**.

Section 3.18. FURTHER INSTRUMENTS AND ACTS.

Upon request of the Trustee, the Note Parties shall execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

Section 3.19. ADDITIONAL SUBSIDIARY GUARANTORS.

(A) On and after the date hereof, the Company will cause each of the Company's Subsidiaries that is not an Excluded Subsidiary to promptly (but in any event within forty-five (45) calendar days of (x) such Subsidiary that was previously deemed an Excluded Subsidiary ceasing to be an Excluded Subsidiary, or (y) the acquisition or formation of a Subsidiary which is not an Excluded Subsidiary):

(i) execute and deliver a supplemental indenture to this Indenture, pursuant to which such Subsidiary will agree to be a Subsidiary Guarantor under this Indenture and be bound by the terms of this Indenture applicable to Subsidiary Guarantors, including, but not limited to, **Article 12**; *provided* that such Subsidiary Guarantor shall deliver to the Trustee and the Collateral Agent an Opinion of Counsel to the effect that: (A) such Guarantee has been duly executed and authorized by such Subsidiary Guarantor; and (B) such Guarantee and joinders to any applicable Collateral Documents pursuant to **Section 3.19(B)** constitute a valid, binding and enforceable obligation of such Subsidiary Guarantor, except insofar as enforcement thereof may be limited by bankruptcy, insolvency or similar laws (including, without limitation, all laws relating to fraudulent transfers) and except insofar as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is sought in equity or at law) and other exceptions; and

(ii) waive and not in any manner whatsoever claim or take the benefit or advantage of, any rights of reimbursement, indemnity or subrogation or any other rights against the Company or any other Subsidiary as a result of any payment by such Subsidiary

under its Guarantee.

(B) In addition, the Company shall cause each Subsidiary Guarantor to become a party to the applicable Collateral Documents and take such actions required thereby to grant to the Collateral Agent, for the benefit of itself, the Trustee and the Holders, a perfected security interest in any Collateral held by such Subsidiary Guarantor, subject to Permitted Liens, including, if required by the Intercreditor Agreement, executing and delivering a joinder to the Intercreditor Agreement.

Section 3.20. FURTHER ASSURANCES.

(A) Promptly following (and in any event, within the applicable time periods specified by any Collateral Document) any Note Party's acquisition of any assets or property (other than Excluded Assets (as defined in the Security Agreement)) after the date hereof, which in each case constitutes Collateral ("**After-Acquired Collateral**"), such Note Party shall execute and deliver such security instruments and financing statements as shall be reasonably necessary to vest in the Collateral Agent a perfected first-priority security interest in such After-Acquired Collateral and to have such After-Acquired Collateral added to the Collateral, in each case to the extent required by and subject to the limitations under this Indenture and the Collateral Documents, and thereupon all provisions of this Indenture relating to the Collateral shall be deemed to relate to such After-Acquired Collateral to the same extent and with the same force and effect.

(B) The Company shall, and shall cause each Subsidiary Guarantor to, at its own cost and expense, execute any and all further Collateral Documents, financing statements, agreements and instruments and take all further action that may be required under applicable law, or that the Collateral Agent may reasonably request (including without limitation, the delivery of Officer's Certificates and Opinions of Counsel), in order to grant, preserve, protect and perfect the validity and priority of the security interests and Liens created or intended to be created by the Collateral Documents, in each case, subject to the limitations set forth in this Indenture and the Collateral Documents. The Company shall, and shall cause each Subsidiary Guarantor to, take all actions necessary to ensure the recordation of appropriate evidence of the Liens and security interests granted hereunder and/or under the Collateral Documents in the Company's or such Subsidiary Guarantor's Intellectual Property (i) with the United States Patent and Trademark Office and the United States Copyright Office, as applicable, and (ii) as promptly as practicable (and in no event later than ninety (90) days) following, as applicable (x) the Issue Date, with respect to the Company's or such Subsidiary Guarantor's Intellectual Property that is registered in any Material Foreign Jurisdiction as of the Issue Date, (y) the date on which the Company or any Subsidiary Guarantor shall register any Intellectual Property in any Material Foreign Jurisdiction after the Issue Date and (z) with respect to the Company's or such Subsidiary Guarantor's Intellectual Property that has been registered in any Immaterial Foreign Jurisdiction as of the Issue Date, the date on which such Immaterial Foreign Jurisdiction shall become or is deemed to be a Material Foreign Jurisdiction in accordance with the terms hereof, in each case, with the applicable filing office of any Material Foreign Jurisdictions, shall file financing statements in the appropriate jurisdictions and take such other actions as appropriate to record and perfect the Liens and security interests granted under the Collateral Documents, in each case subject to the limitations on required perfection actions set out in this Indenture and the Collateral Documents. In addition, from time to time, the Company shall, and shall cause each Subsidiary Guarantor, to reasonably promptly secure the obligations under this Indenture, the Notes, the Guarantees and the Collateral Documents by pledging or creating, or causing to be pledged or created, perfected security interests in and Liens on the Collateral, in each case, to the extent required under this Indenture and/or the Collateral Documents subject to no Liens other than Permitted Liens. Such security interests and Liens will be created under the Collateral Documents and other security agreements and other instruments and documents.

Notwithstanding anything in this Indenture or the Collateral Documents to the contrary, none of the Note Parties shall be required to (i) take any actions to perfect a security interest in

letters of credit or letter of credit rights other than the filing of a UCC-1 financing statement; or (ii) perfect any security interest in (x) any real property (whether fee owned or leasehold) that is not a Material Real Property; or (y) any motor vehicles, airplanes, vessels and other assets subject to certificates of title; or (iii) except as required by the Security Agreement, obtain any landlord waivers, bailee letters or waivers or the like.

Section 3.21. PAYMENT FOR CONSENT.

Neither the Company nor any Affiliate of the Company shall, directly or indirectly, pay or cause to be paid or provide or cause to be provided any fee, cash or otherwise, opportunity, benefit or other consideration, to any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Notes or any other Notes Documents unless such consideration is offered to be paid or provided to all Holders that so consent, waive or agree to amend such consent, waiver or amendment, on the same terms and in the same time frame related thereto.

Article 4. REPURCHASE AND REDEMPTION

Section 4.01. NO SINKING FUND.

No sinking fund is required to be provided for the Notes.

Section 4.02. [RESERVED].

Section 4.03. RIGHT OF THE COMPANY TO REDEEM THE NOTES.

(A) *Right to Redeem the Notes.* Subject to the terms of this **Section 4.03**, the Company has the right, at its election, to redeem all, or any portion in an Authorized Denomination, of the Notes, at any time, and from time to time, on a Redemption Date after the Issue Date, for a cash purchase price equal to the Redemption Price; *provided*, that if fewer than all Notes then outstanding are called for Redemption, the Company shall be in pro forma compliance with **Section 3.16** before and after giving effect to such partial redemption.

(B) *Redemption Prohibited in Certain Circumstances.* If the principal amount of the Notes has been accelerated and such acceleration has not been rescinded on or before the Redemption Date (including as a result of a default in the payment of the related Redemption Price, and any related interest pursuant to the proviso to **Section 4.03(D)**, on such Redemption Date), then (i) the Company may not call for partial Redemption or otherwise partially redeem any Notes pursuant to this **Section 4.03**; and (ii) the Company will cause any Notes theretofore surrendered for such Redemption to be returned to the Holders thereof (or, if applicable with respect to Global Notes, cancel any instructions for book-entry transfer to the Company, the Trustee or the Paying Agent of the applicable beneficial interests in such Notes in accordance with the Depository Procedures).

(C) *Redemption Date.* The Redemption Date for any Redemption will be a Business Day of the Company's choosing that is no more than sixty-five (65), nor less than fifteen (15), days after the Redemption Notice Date for such Redemption.

- 65 -

(D) *Redemption Price.* Any Note called for Redemption will be redeemed an amount in cash equal to the Redemption Price which is inclusive of accrued and unpaid interest on such Note to, but excluding, the Redemption Date for such Redemption; *provided, however,* that if such Redemption Date is after a Regular Record Date and on or before the next Interest Payment Date, then (i) the Holder of such Note at the Close of Business on such Regular Record Date will be entitled, notwithstanding such Redemption, to receive, on or, at the Company's election, before such Interest Payment Date, the unpaid interest that would have accrued on such Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that such Note remained outstanding through such Interest Payment Date, if such Redemption Date is before such Interest Payment Date); and (ii) the Redemption Price will not include accrued and unpaid interest on such Note to, but excluding, such Redemption Date. For the avoidance of doubt, if an Interest Payment Date is not a Business Day within the meaning of **Section 2.05(C)** and such Redemption Date occurs on the Business Day immediately after such Interest Payment Date, then (x) accrued and unpaid interest on Notes to, but excluding, such Interest Payment Date will be paid, in accordance with **Section 2.05(C)**, on the next Business Day to Holders as of the Close of Business on the immediately preceding Regular Record Date; and (y) the Redemption Price will include interest on Notes to be redeemed from, and including, such Interest Payment Date. For the avoidance of doubt, the Company shall be responsible for calculating the Redemption Price and the Trustee may rely conclusively on such calculation without inquiry or investigation.

(E) *Redemption Notice.* To call any Notes for Redemption, the Company must send to each Holder of such Notes, the Trustee and the Paying Agent a written notice of such Redemption (a "**Redemption Notice**").

Such Redemption Notice must state:

(i) that such Notes have been called for Redemption, briefly describing the Company's Redemption right under this Indenture;

(ii) the Redemption Date for such Redemption;

(iii) the applicable Redemption Price per \$1,000 principal amount of Notes for such Redemption (and, if the Redemption Date is after a Regular Record Date and on or before the next Interest Payment Date, the amount, manner and timing of the interest payment payable pursuant to the proviso to **Section 4.03(D)**), including any applicable Make-Whole Premium;

(iv) the name and address of the Paying Agent; and

(v) the CUSIP and ISIN numbers, if any, of the Notes.

On or before the Redemption Notice Date, the Company will send a copy of such Redemption Notice to the Trustee and the Paying Agent.

Such Redemption Notice may, at the Company's discretion, be given prior to the completion of a transaction (including an Asset Sale, an incurrence of Indebtedness, a Change of Control or other transaction) and be subject to the satisfaction (or waiver by the Company) of one or more conditions precedent, including, but not limited to, completion of a related transaction. If

- 66 -

such Redemption is so subject to satisfaction of one or more conditions precedent, such Redemption Notice shall describe each such condition, and if applicable, shall state that, in the Company's discretion, the applicable Redemption Date may be delayed until such time (including more than 60 days after the date the Redemption Notice was mailed or delivered, including by electronic transmission) as any or all such conditions shall be satisfied (or waived by the Company), or such Redemption may not occur and such Redemption Notice may be rescinded in the event that any or all such conditions shall not have been satisfied (or waived by the Company) by such Redemption Date, or by such Redemption Date as so delayed, *provided* that the Redemption Date may not be so delayed by more than 60 days. In addition, the Company may provide in such Redemption Notice that payment of the Redemption Price and performance of the Company's obligations with respect to such Redemption may be performed by another Person. If any such condition precedent has not been satisfied (or waived by the Company), the Company shall provide written notice to the Trustee, the Paying Agent and the Holders no later than the close of business on the third (3rd) Business Day prior to the applicable Redemption Date (or such other date as may be required pursuant to the applicable procedures of the Depository). To the extent any such condition precedent is satisfied prior to the Redemption Date, the Company shall promptly provide written notice to the Trustee, the Paying Agent and the Holders of the completion of the conditions precedent. Upon the Company providing such written notice to the Trustee and the Paying Agent and mailing or causing to be mailed by first-class mail or delivering electronically in accordance with the Depository's procedures if held by the Depository, such written notice to the Holders, the Redemption Notice shall be rescinded or delayed, and the Redemption of the Notes shall be rescinded or delayed, in each case, as provided in such Redemption Notice.

(F) *Selection of Notes to Be Redeemed in Part.* If fewer than all Notes then outstanding are called for Redemption, then the Notes to be redeemed will be selected as follows: (1) in the case of Global Notes, in accordance with the Depository Procedures; and (2) in the case of Physical Notes, pro rata, by lot or by such other method the Trustee considers fair and appropriate.

(G) *Payment of the Redemption Price.* Without limiting the Company's obligation to deposit the Redemption Price by the time proscribed by **Section 3.01(B)**, the Company will cause the Redemption Price for a Note (or portion thereof) subject to Redemption to be paid to the Holder thereof on or before the applicable Redemption Date. For the avoidance of doubt, interest payable pursuant to the proviso to **Section 4.03(D)** on any Note (or portion thereof) subject to Redemption must be paid pursuant to such proviso.

Article 5. [RESERVED]

Article 6. SUCCESSORS

Section 6.01. WHEN THE COMPANY MAY MERGE OR TRANSFER ASSETS

(A) *Generally.* The Company shall not, directly or indirectly, consolidate, amalgamate or merge with or into or wind up or convert into (whether or not the Company is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to, any Person unless:

(i) (a) the Company is the surviving Person or the Person formed by or surviving any such consolidation, amalgamation, merger, winding up or conversion (if other than the Company) or to which such sale, assignment, transfer, lease, conveyance or other disposition shall have been made is a corporation, partnership, limited liability company or similar entity organized or existing under the laws of an Approved Jurisdiction (the Company or such Person, as the case may be, being herein called the “**Successor Entity**”); and (b) the Successor Entity (if other than the Company) expressly assumes all the obligations of the Company under the Notes Documents pursuant to supplemental indentures, any applicable Collateral Documents or other documents or instruments in form reasonably satisfactory to the Trustee and will take such action (or agree to take such action) and deliver such agreements, instruments, or documents as may be necessary or appropriate to cause any property or assets that constitute Collateral owned by or transferred to the Successor Entity to be subject to the Liens of the Collateral Agent in the manner and to the extent required under this Indenture;

(ii) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Entity or any of its Subsidiaries as a result of such transaction as having been incurred by the Successor Entity or such Subsidiary at the time of such transaction) no Default shall have occurred and be continuing;

(iii) each Subsidiary Guarantor, unless it is the other party to the transactions described above, shall have by supplemental indenture confirmed that its Guarantee shall apply to such Person’s obligations under this Indenture and the Securities; and

(iv) before the effective time of any such transaction, the Company will deliver to the Trustee and the Collateral Agent (1) an Officer’s Certificate and Opinion of Counsel, each stating that (i) such transaction (and, if applicable, the related supplemental indenture(s) and any Collateral Documents or other documents required by this Section 6.01(A)) comply with this Indenture, including this Section 6.01(A); and (ii) all conditions precedent to such transaction provided in this Indenture have been satisfied and (2) an Officer’s Certificate stating that the obligations of the Company and the Subsidiary Guarantors under the Notes Documents remain obligations of the Successor Entity and the Subsidiary Guarantors (respectively) and confirming the necessary actions to continue the perfection and priority of the Collateral Agent’s lien in the Collateral and of the preservation of its rights therein and that all such necessary actions have been taken (together with evidence thereof).

(B) The Successor Entity (if other than the Company) shall succeed to, and be substituted for, the Company under the Notes Documents, and, except in the case of a lease, in such event the Company will automatically be released and discharged from its obligations under the Notes. Notwithstanding clause (ii) of **Section 6.01(A)**, the Company may consolidate, amalgamate or merge with or into, or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets to, an Affiliate of the Company incorporated or organized solely for the purpose of reincorporating or reorganizing the Company in another Approved Jurisdiction, and notwithstanding such clause (ii) the Company may consolidate, amalgamate or merge with or into or wind up or convert into (whether or not the Company is the

surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to, any Subsidiary of the Company, in each case, so long as the amount of Indebtedness of the Company and the Subsidiaries is not increased thereby. This **Article 6** will not apply to a sale, assignment, transfer, lease, conveyance or other disposition of property or assets between or among any Subsidiary to the Company.

Section 6.02. WHEN THE SUBSIDIARY GUARANTORS MAY MERGE OR TRANSFER ASSETS.

(A) Subject to the provisions of **Section 12.06** (which govern the release of a Guarantee upon the sale, disposition, exchange or other transfer of the Capital Stock of a Subsidiary Guarantor), none of the Subsidiary Guarantors shall, and the Company shall not permit any Subsidiary Guarantor to, directly or indirectly, consolidate, amalgamate or merge with or into or wind up or convert into (whether or not such Subsidiary Guarantor is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to, any Person unless:

(i) either (A) such Subsidiary Guarantor is the surviving Person or the Person formed by or surviving any such consolidation, amalgamation, merger, winding up or conversion (if other than such Subsidiary Guarantor) or to which such sale, assignment, transfer, lease, conveyance or other disposition shall have been made is a corporation, partnership, limited liability company or similar entity organized or existing under the laws of an Approved Jurisdiction (such Subsidiary Guarantor or such Person, as the case may be, being herein called the “**Successor Subsidiary Guarantor**”) and the Successor Subsidiary Guarantor (if other than such Subsidiary Guarantor) expressly assumes all the obligations of such Subsidiary Guarantor under the Notes Documents, including its Guarantee, pursuant to a supplemental indenture, any applicable Collateral Documents or other documents or instruments in form reasonably satisfactory to the Trustee and the Successor Subsidiary Guarantor will take such action (or agree to take such action) and deliver such agreements, instruments, or documents as may be necessary or appropriate to cause any property or assets that constitute Collateral owned by or transferred to the Successor Subsidiary Guarantor to be subject to the Liens of the Collateral Agent in the manner and to the extent required under this Indenture, and immediately after giving effect to such transaction, no Default or Event of Default will have occurred and be continuing, or (B) such sale or disposition or consolidation, amalgamation or merger is not in violation of **Section 3.12**; and

(ii) before the effective time of any such transaction, the Company will deliver to the Trustee and the Collateral Agent an Officer’s Certificate and Opinion of Counsel, each stating that (i) such transaction (and, if applicable, the related supplemental indenture and any Collateral Documents) comply with the Indenture, including Section 6.02; and (ii) all conditions precedent to such transaction provided in this Indenture have been satisfied.

(B) Except as otherwise provided in this Indenture, the Successor Subsidiary Guarantor (if other than such Subsidiary Guarantor) will succeed to, and be substituted for, such Subsidiary Guarantor under the Notes, and, except in the case of a lease, in such event such Subsidiary

- 69 -

Guarantor will automatically be released and discharged from its obligations under the Notes Documents.

(C) Notwithstanding the foregoing, any Subsidiary Guarantor may consolidate, amalgamate, merge with or into or wind up or convert into, or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets to, the Company or any other Subsidiary Guarantor.

Article 7. DEFAULTS AND REMEDIES

Section 7.01. EVENTS OF DEFAULT.

(A) *Definition of Events of Default.* “**Event of Default**” means the occurrence of any of the following:

(i) a default in the payment when due (whether at maturity, upon Redemption or required repurchase pursuant to **Section 3.12** or **Section 3.17** or otherwise) of the principal of, the Redemption Price or applicable repurchase price for, any Note;

(ii) a default for fifteen (15) consecutive days in the payment when due of interest on any Note;

(iii) the Company’s failure to deliver, when required by this Indenture, a notice of Change of a Control Offer when required pursuant to the terms of this Indenture, if such failure is not cured within three (3) Business Days after its occurrence;

(iv) the Company’s failure to deliver, when required by this Indenture, a notice of Asset Sale Offer when required pursuant to the terms of this Indenture, if such failure is not cured within fifteen (15) days after its occurrence;

(v) a default in the Company’s or any Subsidiary Guarantor’s obligations under **Sections 3.08** through **3.19** or **Article 6**;

(vi) a default in any of the Company’s obligations or agreements, or in any Subsidiary Guarantor’s obligations or agreements, under this Indenture or the Notes (other than a default set forth in **clause (i), (ii), (iii), (iv) or (v)** of this **Section 7.01(A)**) where such default is not cured or waived within thirty (30) days after written notice to the Company by the Trustee, or to the Company and the Trustee by Holders of at least twenty-five percent (25%) of the aggregate principal amount of Notes then outstanding, which notice must specify such default, demand that it be remedied and state that such notice is a

“Notice of Default”;

(vii) a default by the Company or any of the Company’s Subsidiaries with respect to any one or more mortgages, agreements or other instruments under which there is outstanding, or by which there is secured or evidenced, any indebtedness for money borrowed of at least five million dollars (\$5,000,000) (or its foreign currency equivalent)

- 70 -

in the aggregate of the Company or any of the Company’s Subsidiaries, whether such indebtedness exists as of the Issue Date or is thereafter created, where such default:

(1) constitutes a failure to pay the principal of, or premium or interest on, any of such indebtedness when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise, in each case after the expiration of any applicable grace period; or

(2) results in such indebtedness becoming or being declared due and payable before its stated maturity;

(viii) the Company or any of the Subsidiary Guarantor’s or any of the Company’s Significant Subsidiaries, pursuant to or within the meaning of any Bankruptcy Law, either:

(1) commences a voluntary case or proceeding;

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

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

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

(5) takes any comparable action under any foreign Bankruptcy Law; or

(6) generally is not paying its debts as they become due; or

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

(1) is for relief against the Company, any Subsidiary Guarantor or any of the Company’s Significant Subsidiaries in an involuntary case or proceeding;

(2) appoints a custodian of the Company, any Subsidiary Guarantor or any of the Company’s Significant Subsidiaries, or for any substantial part of the property of the Company, any Subsidiary Guarantor or any of the Company’s Significant

Subsidiaries;

(3) orders the winding up or liquidation of the Company, any Subsidiary Guarantor or any of the Company's Significant Subsidiaries; or

(4) grants any similar relief under any foreign Bankruptcy Law,

and, in each case under this **Section 7.01(A)(ix)**, such order or decree remains unstayed and in effect for at least sixty (60) days;

(x) one or more final and non-appealable judgments being rendered against the Company, any Subsidiary Guarantor or any of the Company's Subsidiaries for the payment of at least five million dollars (\$5,000,000) (or its foreign currency equivalent) in the aggregate (excluding any amounts covered by insurance or bond), where such judgment is not discharged, stayed, vacated or otherwise satisfied within sixty (60) days after (i) the date on which the right to appeal the same has expired, if no such appeal has commenced or (ii) the date on which all rights to appeal have been extinguished;

(xi) any Guarantee ceases to be in full force and effect or any Subsidiary Guarantor denies or disaffirms its obligations under the Guarantee (in each case, except (i) in connection with a transaction expressly permitted under this Indenture or the Collateral Documents, in each case solely to the extent the release of such Guarantee is permitted under this Indenture or the Collateral Documents or (ii) as a result of the satisfaction and discharge of this Indenture in accordance with **Article 9**);

(xii) any material provision of any Notes Document shall for any reason cease to be valid and binding on or enforceable against the Company or any of its Subsidiaries, or the Company or any of its Subsidiaries shall so state in writing or bring an action to limit its obligations or liabilities thereunder except (i) as permitted by the Notes Documents, (ii) resulting from the satisfaction of the obligations (other than contingent obligations that have yet to accrue) under this Indenture, or (iii) resulting from the application of applicable law;

(xiii) any security interest or Liens in favor of the Holders purported to be created by any Collateral Document on any Collateral with a value greater than two million dollars (\$2,000,000), individually or in the aggregate, shall cease to be in full force and effect, or shall be asserted by or on behalf of the Company or any of the Subsidiary Guarantors in writing 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 this Indenture or the Collateral Documents, in each case solely to the extent such termination or release is permitted under this Indenture or the Collateral Documents or (iii) or, subject to **Section 11.01(D)** resulting from acts or omissions of the Trustee or Collateral Agent or (iv) as a result of the satisfaction and discharge of this Indenture in accordance with **Article 9**);

(xiv) the Company or any Subsidiary Guarantor fails to comply for sixty (60) days after notice with its obligations contained in the Collateral Documents, except for a failure with respect to assets or property with an aggregate value of less than two million dollars (\$2,000,000); and

(xv) any representation or warranty made in writing by or on behalf of the Company or any Subsidiary Guarantor in connection with the issuance and sale of the Securities or made in writing by or on behalf of the Company or any Subsidiary Guarantor in connection with the transactions contemplated by the Notes Documents proves to have been false or incorrect in any material respect on the date as of which made (or, if such

representation or warranty is given as of a specific time, as of such time) and written notice thereof is delivered to the Company by the Trustee, at the direction of Initial Purchasers holding at least ten percent (10%) of the aggregate principal amount of Notes then outstanding, which notice must specify such default and state that such notice is a “Notice of Default”.

(B) *Cause Irrelevant.* Each of the events set forth in **Section 7.01(A)** will constitute an Event of Default regardless of the cause thereof or whether voluntary or involuntary or 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.

Section 7.02. ACCELERATION.

(A) *Automatic Acceleration in Certain Circumstances.* If an Event of Default set forth in **Section 7.01(A)(viii)** or **7.01(A)(ix)** occurs with respect to the Company or any Subsidiary Guarantor, then the Redemption Price, which is inclusive of the accrued and unpaid interest on such Note, as of the date of such Event of Default, of all of the Notes then outstanding will immediately become due and payable without any further action or notice by any Person.

(B) *Optional Acceleration.* Subject to **Section 7.03**, if an Event of Default (other than an Event of Default set forth in **Section 7.01(A)(viii)** or **7.01(A)(ix)** with respect to the Company or any Subsidiary Guarantor) occurs and is continuing, then the Trustee, by written notice to the Company, or Holders of at least twenty-five percent (25%) of the aggregate principal amount of Notes then outstanding, by written notice to the Company and the Trustee, may declare the Redemption Price, which is inclusive of the accrued and unpaid interest on such Note, as of the date of such Event of Default, of all of the Notes then outstanding to become due and payable immediately.

(C) *Rescission of Acceleration.* Notwithstanding anything to the contrary in this Indenture or the Notes, the Required Holders, by written notice to the Company and the Trustee, may, on behalf of all Holders, rescind any acceleration of the Notes and its consequences if (i) such rescission would not conflict with any judgment or decree of a court of competent jurisdiction; and (ii) all existing Events of Default (except the non-payment of the Redemption Price for the Notes that has become due solely because of such acceleration) have been cured or waived. No such rescission will affect any subsequent Default or impair any right consequent thereto.

(D) If the principal of, premium (including any premium included in the Redemption Price), and accrued and unpaid interest, if any, on the Notes becomes due and payable as provided above (an “**Acceleration**”), the principal of, and the premium (including any premium included in the Redemption Price), if any, and accrued but unpaid interest on the Notes that shall be due and payable in connection with any payment that occurs following such Acceleration shall equal the Redemption Price at such time, as if such Acceleration were an optional redemption of the Notes

affected thereby on the date such amount is paid. The amount described in the preceding sentence is intended to be liquidated damages and not unmatured interest or a penalty. EACH OF THE COMPANY AND THE SUBSIDIARY GUARANTORS EXPRESSLY WAIVES (TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO) THE PROVISIONS OF ANY PRESENT

- 73 -

OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE REDEMPTION PRICE UPON ANY SUCH ACCELERATION. Each of the Company and the Subsidiary Guarantors expressly agrees (to the fullest extent that it may lawfully do so) that: (A) the Redemption Price is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (B) no portion of the Redemption Price shall constitute, or be deemed or considered to be, unmatured interest on the Notes or other amount and none of the Company or any Subsidiary Guarantor shall argue under any circumstance that the Redemption Price or any portion thereof constitutes unmatured interest on the Notes; (C) the Redemption Price shall be payable notwithstanding the then prevailing market rates at the time payment is made; (D) there has been a course of conduct between the Holders and the Company and the Subsidiary Guarantors giving specific consideration in this transaction for such agreement to pay the Redemption Price; (E) each of the Company and each Subsidiary Guarantor shall be estopped hereafter from claiming differently than as agreed to in this paragraph; and (F) in view of the impracticability and extreme difficulty of ascertaining actual damages, the Company and the Subsidiary Guarantors on the one hand, and each of the Holders, by holding the Notes, on the other hand, mutually agree that the Redemption Price is a reasonable calculation of the Holders' lost profits as a result of any such prepayments and is not a penalty. For the avoidance of doubt, the Company or any Subsidiary Guarantor's payment of the Redemption Price shall not be in lieu of, or otherwise reduce or eliminate, the Company's obligations to the Trustee, the Collateral Agent or any Note Agent under this Indenture or any other Note Documents.

Section 7.03. SOLE REMEDY FOR A FAILURE TO REPORT.

(A) *Generally.* Notwithstanding anything to the contrary in this Indenture or the Notes, the Company may elect that the sole remedy for any Event of Default (a "**Reporting Event of Default**") pursuant to **Section 7.01(A)(vi)** arising from the Company's failure to comply with **Section 3.03** will, for each of the first one hundred and eighty (180) calendar days on which a Reporting Event of Default has occurred and is continuing, consist exclusively of the accrual of Special Interest on the Notes. If the Company has made such an election, then (i) the Notes will be subject to acceleration pursuant to **Section 7.02** on account of the relevant Reporting Event of Default from, and including, the one hundred and eighty first (181st) calendar day on which a Reporting Event of Default has occurred and is continuing or if the Company fails to pay any accrued and unpaid Special Interest when due; and (ii) Special Interest will cease to accrue on any Notes from, and including, such one hundred and eighty first (181st) calendar day (it being understood that interest on any defaulted Special Interest will nonetheless accrue pursuant to **Section 2.05(B)**).

(B) *Amount and Payment of Special Interest.* Any Special Interest that accrues on a Note pursuant to **Section 7.03(A)** will be payable on the same dates and in the same manner as the

Stated Interest on such Note and will accrue at a rate per annum equal to one quarter of one percent (0.25%) of the principal amount thereof for the first ninety (90) days on which Special Interest accrues and, thereafter, at a rate per annum equal to one half of one percent (0.50%) of the principal amount thereof; *provided, however*, that in no event will Special Interest, together with any Additional Interest, accrue on any day on a Note at a combined rate per annum that exceeds one half of one percent (0.50%). For the avoidance of doubt, any Special Interest that accrues on a Note will be in addition to the Stated Interest that accrues on such Note and, subject to the proviso

- 74 -

of the immediately preceding sentence, in addition to any Additional Interest that accrues on such Note.

(C) *Notice of Election.* To make the election set forth in **Section 7.03(A)**, the Company must send to the Holders, the Trustee and the Paying Agent, before the date on which each Reporting Event of Default first occurs, a notice that (i) briefly describes the report(s) that the Company failed to file with or furnish to the SEC; (ii) states that the Company is electing that the sole remedy for such Reporting Event of Default consist of the accrual of Special Interest; and (iii) briefly describes the periods during which and rate at which Special Interest will accrue and the circumstances under which the Notes will be subject to acceleration on account of such Reporting Event of Default.

(D) *Notice to Trustee and Paying Agent; Trustee's Disclaimer.* If Special Interest accrues on any Note, then, no later than five (5) Business Days before each date on which such Special Interest is to be paid, the Company will deliver an Officer's Certificate to the Trustee and the Paying Agent stating (i) that the Company is obligated to pay Special Interest on such Note on such date of payment; and (ii) the amount of such Special Interest that is payable on such date of payment. The Trustee will have no duty to determine whether any Special Interest is payable or the amount thereof.

(E) *No Effect on Other Events of Default.* No election pursuant to this **Section 7.03** with respect to a Reporting Event of Default will affect the rights of any Holder with respect to any other Event of Default, including with respect to any other Reporting Event of Default.

Section 7.04. OTHER REMEDIES.

(A) *Trustee and the Collateral Agent May Pursue All Remedies.* If an Event of Default occurs and is continuing, then the Trustee and the Collateral Agent may (but shall not be obligated to, except to the extent directed by the Required Holders) pursue any available remedy to collect the payment of any amounts due with respect to the Notes or to enforce the performance of any provision of this Indenture or the Notes.

(B) *Procedural Matters.* The Trustee and the Collateral Agent may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in such proceeding. A delay or omission by the Trustee, the Collateral Agent or any Holder in exercising any right or remedy following an Event of Default will not impair the right or remedy or constitute

a waiver of, or acquiescence in, such Event of Default. All remedies will be cumulative to the extent permitted by law.

Section 7.05. WAIVER OF PAST DEFAULTS.

An Event of Default pursuant to **clause (i), (ii), (iii) or (vi)** of **Section 7.01(A)** (that, in the case of **clause (vi)** only, results from a Default under any covenant that cannot be amended without the consent of each affected Holder), and a Default that could lead to such an Event of Default, can be waived only with the consent of each affected Holder. Each other Default or Event of Default may be waived, on behalf of all Holders, by the Required Holders. If an Event of Default is so waived, then it will cease to exist. If a Default is so waived, then it will be deemed to be cured and any Event of Default arising therefrom will be deemed not to occur. However, no such waiver

will extend to any subsequent or other Default or Event of Default or impair any right arising therefrom.

Section 7.06. CONTROL BY REQUIRED HOLDERS.

The Required Holders may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or the Collateral Agent or exercising any trust or power conferred on it. However, the Trustee or the Collateral Agent may refuse to follow any direction that conflicts with law, this Indenture or the Notes, or that, subject to **Section 10.01**, the Trustee or the Collateral Agent, as applicable, determines may be unduly prejudicial to the rights of other Holders or may involve the Trustee or the Collateral Agent in liability, unless the Trustee or the Collateral Agent is offered, and, if requested, provided security and indemnity reasonably satisfactory to the Trustee or the Collateral Agent against any loss, liability or expense to the Trustee or the Collateral Agent that may result from following such direction.

Section 7.07. LIMITATION ON SUITS.

No Holder may pursue any remedy with respect to this Indenture or the Notes (except to enforce its rights to receive the principal of, or the Redemption Price or any required repurchase price for, or interest on, any Notes), unless:

(A) such Holder has previously delivered to the Trustee and the Collateral Agent notice that an Event of Default is continuing;

(B) Holders of at least twenty-five percent (25%) in aggregate principal amount of the Notes then outstanding deliver a request to the Trustee and the Collateral Agent to pursue such remedy;

(C) such Holder or Holders offer and, if requested, provide to the Trustee or the Collateral Agent security and indemnity reasonably satisfactory to the Trustee against any loss, liability or expense to the Trustee and the Collateral Agent that may result from the Trustee or Collateral Agent following such request;

(D) the Trustee and the Collateral Agent do not comply with such request within sixty (60) calendar days after its receipt of such request and such offer of security or indemnity; and

(E) during such sixty (60) calendar day period, the Required Holders do not deliver to the Trustee and the Collateral Agent a direction that is inconsistent with such request.

A Holder of a Note may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder. Neither the Trustee nor the Collateral Agent will have any duty to determine whether any Holder's use of this Indenture complies with the preceding sentence.

Section 7.08. ABSOLUTE RIGHT OF HOLDERS TO INSTITUTE SUIT FOR THE ENFORCEMENT OF THE RIGHT TO RECEIVE PAYMENT.

Notwithstanding anything to the contrary in this Indenture or the Notes (but without limiting **Section 8.01**), the right of each Holder of a Note to bring suit for the enforcement of any payment of the principal of, or the required repurchase price or Redemption Price for, or any interest on, such Note on or after the respective due dates therefor provided in this Indenture and the Notes, will not be impaired or affected without the consent of such Holder.

Section 7.09. COLLECTION SUIT BY TRUSTEE.

Without limiting any other rights of the Trustee or any Holder under this Indenture or applicable law in connection with an Event of Default, the Trustee will have the right, upon the occurrence and continuance of an Event of Default pursuant to **clause (i), (ii) or (iii) of Section 7.01(A)**, to recover judgment in its own name and as trustee of an express trust against the Company for the total unpaid or undelivered principal of, or required repurchase price or Redemption Price for, or interest on, the Notes, as applicable, and, to the extent lawful, any Default Interest on any Defaulted Amounts, and such further amounts sufficient to cover the costs and expenses of collection, including compensation provided for in **Section 10.06**.

Section 7.10. TRUSTEE MAY FILE PROOFS OF CLAIM.

The Trustee has the right to (A) file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee, the Collateral Agent, the Note Agents and the Holders allowed in any judicial proceedings relative to the Company (or any other obligor upon the Notes) or its creditors or property and (B) collect, receive and distribute any money or other property payable or deliverable on any such claims. Each Holder authorizes any custodian in such proceeding to make such payments to the Trustee, and, if the Trustee consents to the making of such payments directly to the Holders, to pay to the Trustee, the Collateral Agent and the Note Agents any amount due to the Trustee for the reasonable compensation, expenses, disbursements and advances of the Trustee, the Collateral Agent, the Note Agents and their agents and counsel, and any other amounts payable to the Trustee, the Note Agents and the Collateral Agent pursuant to **Section 10.06** of this Indenture or any Notes Documents. Payment of any compensation, expenses, disbursements, advances and other amounts will be secured by a lien on, and will be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding (whether in liquidation or under any plan of reorganization or arrangement or otherwise). Nothing in this Indenture will be deemed to authorize the Trustee or the Collateral Agent to authorize, consent to, accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee or the Collateral Agent to vote in respect of the claim of any Holder in any such proceeding.

Section 7.11. PRIORITIES.

The Trustee will pay or deliver in the following order any money or other property that is collected pursuant to this **Article 7**:

First: to the Trustee, the Collateral Agent, the Note Agents and their agents and attorneys for amounts due under **Section 10.06** of this Indenture or under any Notes Documents, including payment of all fees, compensation, expenses (including fees and expenses of counsel and other advisors), indemnification amounts and liabilities incurred, and all advances made, by the Trustee, the Collateral Agent and the Note Agents and the costs and expenses of collection;

Second: to Holders for unpaid amounts or other property due on the Notes, including the principal of, or the required repurchase price or Redemption Price for, or any interest on, the Notes, ratably, and without preference or priority of any kind, according to such amounts or other property due and payable on all of the Notes; and

Third: to the Company or such other Person as a court of competent jurisdiction directs.

The Trustee may fix a record date and payment date for any payment or delivery to the Holders pursuant to this **Section 7.11**, in which case the Trustee will instruct the Company to, and the Company will, deliver, at least fifteen (15) calendar days before such record date, to each Holder, the Trustee and the Collateral Agent a notice stating such record date, such payment date and the amount of such payment or nature of such delivery, as applicable.

Section 7.12. UNDERTAKING FOR COSTS.

In any suit for the enforcement of any right or remedy under this Indenture or the Notes or in any suit against the Trustee or the Collateral Agent for any action taken or omitted by it as Trustee or the Collateral Agent, a court, in its discretion, may (A) require the filing by any litigant party in such suit of an undertaking to pay the costs of such suit; and (B) assess reasonable costs (including reasonable attorneys' fees) against any litigant party in such suit, having due regard to the merits and good faith of the claims or defenses made by such litigant party; *provided, however*, that this **Section 7.12** does not apply to any suit by the Trustee or the Collateral Agent, any suit by a Holder pursuant to **Section 7.08** or any suit by one or more Holders of more than ten percent (10%) in aggregate principal amount of the Notes then outstanding.

Article 8. AMENDMENTS, SUPPLEMENTS AND WAIVERS

Section 8.01. WITHOUT THE CONSENT OF HOLDERS.

Notwithstanding anything to the contrary in **Section 8.02**, the Company, the Subsidiary Guarantors, the Collateral Agent and the Trustee may amend or supplement any Notes Document without the consent of any Holder to:

(A) cure any ambiguity or correct any omission, defect or inconsistency in this Indenture or the Notes;

(B) add guarantees with respect to the Company's obligations under this Indenture or the Notes to the extent such guarantees are contemplated by this Indenture or to confirm and evidence the release, termination or discharge of any guarantee (including any Guarantee) with respect to the Notes when such release, termination or discharge is permitted under this Indenture or the other Notes Documents, as applicable;

(C) add additional assets to Collateral to further secure the Notes or any Guarantee, or to release Collateral from the Lien of this Indenture and the Collateral Documents when permitted or required by the Collateral Documents or this Indenture;

(D) add to the Company's or any Subsidiary Guarantor's covenants or Events of Default for the benefit of the Holders or surrender any right or power conferred on the Company;

(E) provide for the assumption of the Company's or any Subsidiary Guarantor's obligations under this Indenture and the Notes pursuant to, and in compliance with, **Article 3**, **Article 6** and **Article 12**, as applicable;

(F) evidence or provide for the acceptance of the appointment, under this Indenture, of a successor Trustee, Collateral Agent, Registrar or Paying Agent;

(G) comply with any requirement of the SEC in connection with any qualification of this Indenture or any supplemental indenture under the Trust Indenture Act, as then in effect;

(H) comply with the Depository Procedures in a manner that does not adversely affect the rights of any Holder;

(I) enter into a supplemental indenture to implement amendments to this Indenture required by **Section 3.15(B)**; or

(J) make any other change to this Indenture or any of the Notes Documents that does not, individually or in the aggregate with all other such changes, adversely affect the rights of the Holders (other than Holders that have consented to such change).

Section 8.02. WITH THE CONSENT OF HOLDERS.

(A) *Generally.* Subject to **Sections 8.01, 7.05 and 7.08** and the immediately following sentence, the Company, the Subsidiary Guarantors, the Collateral Agent and the Trustee may, with the consent of the Required Holders, amend or supplement any Notes Document or waive compliance with any provision of any Notes Document. Notwithstanding anything to the contrary in the foregoing sentence, but subject to **Section 8.01**, without the consent of each affected Holder, no amendment or supplement to any Notes Documents, or waiver of any provision of any Notes Documents, may:

(i) reduce the principal, or extend the stated maturity (or amend the definition of “Maturity Date”, as in effect on the Issue Date) of any Note;

(ii) reduce the Redemption Price or the repurchase price specified in **Section 3.12** or **Section 3.17** for any Note or change the times at which, or the circumstances under which, the Notes may or will be redeemed or repurchased by the Company;

(iii) reduce the rate, or extend the stated time for the payment, of interest on any Note;

(iv) impair the rights of any Holder set forth in **Section 7.08** (as such section is in effect on the Issue Date);

(v) change or modify the ranking of the Notes or the Guarantees, change or modify the lien priority or payment priority of the Notes or the Guarantees, release any Guarantee except as permitted by the terms of the Notes Documents, or subordinate the Notes, the Guarantee, or the liens securing the Notes or the Guarantees to any other Indebtedness of the Company or any Subsidiary Guarantor except as permitted by the terms of the Notes Documents;

(vi) make any Note payable in money, or at a place of payment, other than that stated in this Indenture or the Note;

(vii) reduce the amount of Notes whose Holders must consent to any amendment, supplement, waiver or other modification; or

(viii) make any direct or indirect change to any amendment, supplement, waiver or modification provision of the Notes Documents that requires the consent of each affected Holder.

For the avoidance of doubt, pursuant to **clauses (i), (ii) and (iii)** of this **Section 8.02(A)**, no amendment or supplement to any Notes Document, or waiver of any provision of any Notes Document, may change the amount or type of consideration due on any Note (whether on an Interest Payment Date, Redemption Date, required repurchase date or the Maturity Date, or otherwise), or the date(s) or time(s) such consideration is payable or deliverable, as applicable, without the consent of each affected Holder.

In addition, without the consent of the Holders of at least 66 2/3% in principal amount of Notes then outstanding, no amendment, supplement or waiver may modify any Collateral Document or the provisions in this Indenture dealing with the Collateral or the Collateral Documents in a manner that would (i) have the impact of releasing all or substantially all of the Collateral from the Liens of the Collateral Documents (except as permitted by the terms of this Indenture or the Collateral Documents as in effect on the Issue Date) or (ii) permit the Company to issue additional Notes under this Indenture (except as permitted as of the date hereof) or incur Indebtedness that is *pari passu* with the Notes as it relates to the Collateral.

(B) *Holders Need Not Approve the Particular Form of any Amendment.* A consent of any Holder pursuant to this **Section 8.02** need approve only the substance, and not necessarily the particular form, of the proposed amendment, supplement or waiver.

Section 8.03. NOTICE OF AMENDMENTS, SUPPLEMENTS AND WAIVERS.

As soon as reasonably practicable after any amendment, supplement or waiver pursuant to **Section 8.01** or **8.02** becomes effective, the Company will send to the Holders and the Trustee notice that (A) describes the substance of such amendment, supplement or waiver in reasonable detail and (B) states the effective date thereof; *provided, however*, that the Company will not be required to provide such notice to the Holders if such amendment, supplement or waiver is included in a periodic report filed by the Company with the SEC within four (4) Business Days of its effectiveness. The failure to send, or the existence of any defect in, such notice will not impair or affect the validity of such amendment, supplement or waiver.

Section 8.04. REVOCATION, EFFECT AND SOLICITATION OF CONSENTS; SPECIAL RECORD DATES; ETC.

(A) *Revocation and Effect of Consents.* The consent of a Holder of a Note to an amendment, supplement or waiver will bind (and constitute the consent of) each subsequent Holder of any Note to the extent the same evidences any portion of the same indebtedness as the consenting Holder's Note, subject to the right of any Holder of a Note to revoke (if not prohibited pursuant to **Section 8.04(B)**) any such consent with respect to such Note by delivering notice of revocation to the Trustee before the time such amendment, supplement or waiver becomes effective.

(B) *Special Record Dates.* The Company may, but is not required to, fix a record date for the purpose of determining the Holders entitled to consent or take any other action in connection with any amendment, supplement or waiver pursuant to this **Article 8**. If a record date is fixed, then, notwithstanding anything to the contrary in **Section 8.04(A)**, only Persons who are Holders as of such record date (or their duly designated proxies) will be entitled to give such consent, to revoke any consent previously given or to take any such action, regardless of whether such Persons continue to be Holders after such record date; *provided, however*, that no such consent will be valid or effective for more than one hundred and twenty (120) calendar days after

(C) *Solicitation of Consents.* For the avoidance of doubt, each reference in this Indenture or the Notes to the consent of a Holder will be deemed to include any such consent obtained in connection with a repurchase of, or tender or exchange offer for, any Notes.

(D) *Effectiveness and Binding Effect.* Each amendment, supplement or waiver pursuant to this **Article 8** will become effective in accordance with its terms and, when it becomes effective with respect to any Note (or any portion thereof), will thereafter bind every Holder of such Note (or such portion).

Section 8.05. NOTATIONS AND EXCHANGES.

If any amendment, supplement or waiver changes the terms of a Note, then the Trustee or the Company may, in its discretion, require the Holder of such Note to deliver such Note to the Trustee so that the Trustee may place an appropriate notation prepared by the Company on such Note and return such Note to such Holder. Alternatively, at its discretion, the Company may, in exchange for such Note, issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, a new Note that reflects the changed terms. The failure to make any appropriate notation or issue a new Note pursuant to this **Section 8.05** will not impair or affect the validity of such amendment, supplement or waiver.

Section 8.06. TRUSTEE AND COLLATERAL AGENT TO EXECUTE SUPPLEMENTAL INDENTURES.

The Trustee and the Collateral Agent will execute and deliver any amendment or supplemental indenture authorized pursuant to this **Article 8**; *provided, however*, that the Trustee and the Collateral Agent need not (but may, in its sole and absolute discretion) execute or deliver any such amendment or supplemental indenture that adversely affects the Trustee's, the Note Agent's or the Collateral Agent's rights, duties, liabilities or immunities. In executing any amendment or supplemental indenture, the Trustee and the Collateral Agent will be entitled to receive, and (subject to **Sections 10.01** and **10.02**) will be fully protected in relying on, an Officer's Certificate and an Opinion of Counsel stating that (A) the execution and delivery of such amendment or supplemental indenture is authorized or permitted by this Indenture; and (B) in the case of the Opinion of Counsel, such amendment or supplemental indenture is valid, binding and enforceable against the Company (and any Subsidiary Guarantor) in accordance with its terms.

Section 8.07. ADDITIONAL VOTING TERMS; CALCULATION OF PRINCIPAL AMOUNT.

All Notes issued under this Indenture shall vote and consent together on all matters (as to which any of such Notes may vote) as one class. Determinations as to whether Holders of the

which any of such Notes may vote) as one class. Determinations as to whether Holders of the requisite aggregate principal amount of Notes have concurred in any direction, waiver or consent shall be made in accordance with this **Article 8**. Any reference to “consent,” “direction,” “approval,” “objection,” “acceptance,” “election,” “determination,” “satisfaction,” “request” or “waiver” by or of the Required Holders (or any other requisite percentage of Holders) hereunder shall include the consent, direction, approval, objection, acceptance, election, determination, satisfaction, request or waiver made or granted by the written consent of Indirect Participants holding beneficial interests in Global Notes representing a majority (or such other requisite

- 82 -

percentage expressly provided for in this Indenture) of the aggregate principal amounts of the Notes then outstanding (excluding any Notes held by the Company or any of its Affiliates), *provided* that such written consent contains, as to each Indirect Participant, a representation as to the amount of such Indirect Participant’s beneficial ownership in the Notes and reasonably contemporary evidence thereof in the form of a brokerage statement identifying the Indirect Participant and the amount of Notes (by CUSIP) beneficially held. The Trustee, the Collateral Agent, each Note Agent and the Company may each rely on such written consent and representations, without independent verification, as evidence of the Indirect Participants’ consent, direction, approval, objection, acceptance, election, determination, satisfaction, request or waiver.

Article 9. SATISFACTION AND DISCHARGE

Section 9.01. TERMINATION OF COMPANY’S OBLIGATIONS.

This Indenture will be discharged, and will cease to be of further effect as to all Notes issued under this Indenture, when:

(A) all Notes then outstanding (other than Notes replaced pursuant to **Section 2.12**) have (i) been delivered to the Trustee for cancellation; or (ii) become due and payable (whether on a Redemption Date, the Maturity Date, or otherwise) for an amount of cash that has been fixed;

(B) the Company has caused there to be irrevocably deposited with the Trustee, or with the Paying Agent, in each case for the benefit of the Holders, or has otherwise caused there to be delivered to the Holders, cash sufficient to satisfy all amounts or other property due on all Notes then outstanding (other than Notes replaced pursuant to **Section 2.12**);

(C) the Company has paid all other amounts payable by it under this Indenture; and

(D) the Company has delivered to the Trustee and the Collateral Agent an Officer’s Certificate and an Opinion of Counsel, each stating that the conditions precedent to the discharge of this Indenture have been satisfied;

provided, however, that **Section 2.10(E)**, **Article 10** and **Section 13.01** will survive such discharge and, until no Notes remain outstanding, **Section 2.14** and the obligations of the Trustee, the Paying Agent with respect to money or other property deposited with them will survive such discharge.

At the Company's request, the Trustee will acknowledge the satisfaction and discharge of this Indenture.

Section 9.02. REPAYMENT TO COMPANY.

Subject to applicable unclaimed property law, the Trustee and the Paying Agent will, at the Company's written request, promptly deliver to the Company any cash or other property held by any of them for payment or delivery on the Notes that remain unclaimed two (2) years after the date on which such payment or delivery was due. After such delivery to the Company, the Trustee and the Paying Agent will have no further liability to any Holder with respect to such cash or other property, and Holders entitled to the payment or delivery of such cash or other property must look to the Company for payment as a general creditor of the Company.

Section 9.03. REINSTATEMENT.

If the Trustee or the Paying Agent is unable to apply any cash or other property deposited with it pursuant to **Section 9.01** because of any legal proceeding or any order or judgment of any court or other governmental authority that enjoins, restrains or otherwise prohibits such application, then the discharge of this Indenture pursuant to **Section 9.01** will be rescinded; *provided, however*, that if the Company thereafter pays or delivers any cash or other property due on the Notes to the Holders thereof, then the Company will be subrogated to the rights of such Holders to receive such cash or other property from the cash or other property, if any, held by the Trustee or the Paying Agent, as applicable.

Article 10. TRUSTEE

Section 10.01. DUTIES OF THE TRUSTEE.

(A) If an Event of Default has occurred and is continuing, and a Responsible Officer of the Trustee has received written notice thereof, the Trustee will (subject in all cases to the receipt of written directions from the required percentage of Holders as permitted or required by this Indenture) exercise such of the rights and powers vested in it by this Indenture, as so directed, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs; *provided* that 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 Trustee in its sole discretion against any loss, liability or expense that might be incurred by it in compliance with such request or direction.

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

(i) the duties of the Trustee will be determined solely by the express provisions of this Indenture, and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations will be read into this Indenture against the Trustee;

(ii) the Trustee shall not be liable, answerable or accountable under any circumstances, except for its own gross negligence, or willful misconduct, as conclusively determined by the final judgment of a court of competent jurisdiction, no longer subject to appeal or review and

(iii) in the absence of bad faith or willful misconduct on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon Officer's Certificates or Opinions of Counsel that are provided to the Trustee and conform to the requirements of this Indenture. However, the Trustee will examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture.

(C) The Trustee may not be relieved from liabilities for its gross negligence or willful misconduct, except that:

(i) this paragraph will not limit the effect of **Section 10.01(B)**;

(ii) the Trustee will not be liable for any error of judgment made in good faith by the Trustee, unless it is proved that the Trustee was grossly negligent in ascertaining the pertinent facts as conclusively determined by the final judgment of a court of competent jurisdiction, no longer subject to appeal or review; and;

(iii) the Trustee will not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to the terms of the Indenture or any Notes Document.

(D) Each provision of this Indenture and the Notes Documents that in any way relates to the Trustee is subject to **Article 10**, regardless of whether such provision so expressly provides.

(E) No provision of this Indenture will require the Trustee to expend or risk its own funds or incur any liability nor shall the Trustee be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

(F) The Trustee will not be liable for interest on any money received by it, except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds, except to the extent required by law.

(G) Unless a Responsible Officer of the Trustee has received notice from the Company that Additional Interest is owing on the Notes or that the Company has elected to pay Special Interest on the Notes, the Trustee may assume without liability that no Additional Interest or Special Interest, as applicable, is payable.

(H) The rights, privileges, protections, immunities and benefits given to the Trustee, including its right to be indemnified, are extended to, and will be enforceable by, the Trustee in each of its capacities under this Indenture, including as Note Agent and Collateral Agent.

(I) The Trustee will not be charged with knowledge of any document or agreement other than this Indenture and the Notes.

Section 10.02. RIGHTS OF THE TRUSTEE.

(A) The Trustee may conclusively rely on and be fully protected in acting or refraining from acting upon any document (whether in its original or facsimile form) that it believes to be genuine and signed or presented by the proper Person, and the Trustee need not investigate any fact or matter stated in such document.

(B) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate, an Opinion of Counsel or both. The Trustee will not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel. The Trustee may consult with counsel; and the written advice of such counsel, or any Opinion of

- 85 -

Counsel, will constitute full and complete authorization of the Trustee to take or omit to take any action in good faith in reliance thereon without liability.

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

(D) The Trustee will not be liable for any action it takes or omits to take in good faith and that it believes to be authorized or within the rights or powers vested in it by this Indenture.

(E) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company will be sufficient if signed by an Officer of the Company.

(F) The Trustee need not exercise any rights or powers vested in it by this Indenture or any other Notes Document at the request or direction of any Holder unless such Holder has offered the Trustee security or indemnity satisfactory to the Trustee in its sole discretion against any loss, liability or expense that it may incur in complying with such request or direction.

(G) The Trustee will not be responsible or liable for any punitive, special, indirect or consequential loss or damage (including lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(H) The Trustee will not be bound to make any investigation into (i) 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, (including any Officer's Certificate or Company Order) but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit and the Trustee will incur no liability or additional liability of any kind by reason of such inquiry or investigation, (ii) the performance or observance by the Company or any other Person of any of the covenants, agreements or other terms or conditions set forth in this Indenture or in any other Notes Document, or (iii) the occurrence of any Default, or the validity, enforceability, effectiveness or genuineness of this Indenture, any other Notes Document or any other agreement, instrument or document or any collateral or Lien.

(I) The permissive rights of the Trustee enumerated in this Indenture will not be construed as duties.

(J) If the Trustee requests instructions from the Company or the Holders with respect to any action or omission in connection with this Indenture, or any other Notes Document, the Trustee shall be entitled (without incurring any liability therefor) to refrain from taking such action and continue to refrain from acting unless and until the Trustee shall have received written

instructions from the Company or the Required Holders, as applicable, with respect to such request. For purposes of clarity, but without limiting any rights, protections, immunities or indemnities afforded to the Trustee hereunder (including without limitation this **Article 10**), phrases such as “satisfactory to the Trustee,” “approved by the Trustee,” “acceptable to the Trustee,” “as determined by the Trustee,” “in the Trustee’s discretion,” “selected by the Trustee,” “elected by the Trustee,” “requested by the Trustee,” and phrases of similar import that authorize or permit the Trustee to approve, disapprove, determine, act or decline to act in its discretion shall be subject to the Trustee receiving written direction from the Required Holders to take such action

- 86 -

or to exercise such rights. Nothing contained in this Indenture or any other Notes Document shall require the Trustee to exercise any discretionary acts.

(K) The Trustee shall not be liable for failing to comply with its obligations under this Indenture or any other Notes Document in so far as the performance of such obligations is dependent upon the timely receipt of instructions and/or other information from the Company, any Holder (or percentage of Holders) or any other Person which are not received or not received by the time required.

(L) The Trustee shall not be liable in failing or refusing to take any action under this Indenture or any other Notes Document if the taking of such action, in the reasonable opinion of the Trustee (which may be based on the advice or opinion of counsel), (i) would violate applicable law, this Indenture or such other Notes Document or (ii) is not provided for in this Indenture or such other Notes Document.

(M) The Trustee shall not be required to take any action under this Indenture or any other Notes Document if taking such action (A) would subject the Trustee to a tax in any jurisdiction where it is not then subject to a tax or (B) would require the Trustee to qualify to do business in any jurisdiction where it is not then so qualified.

(N) The Trustee will not be charged with knowledge of any document or agreement other than this Indenture and the Notes.

(O) The Trustee may consult with counsel and an opinion or advise of such counsel or any Opinion of Counsel will be full and complete authorization and protection from liability in respect of any action take, suffered or omitted by it hereunder in good faith in reliance thereon.

(P) The Trustee may, from time to time, request that the Company and any other applicable party deliver a certificate (upon which the Trustee may conclusively rely) setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture or any related document together with a specimen signature of such authorized officers; *provided, however*, that from time to time, the Company or such other applicable party may, by delivering to the Trustee a revised certificate, change the information previously provided by it, but the Trustee shall be entitled to conclusively rely on the then current certificate until receipt of a superseding certificate.

Section 10.03. INDIVIDUAL RIGHTS OF THE TRUSTEE.

The Trustee, in its individual or any other capacity, may become the owner or pledgee of any Note and may otherwise deal with the Company or any of its Affiliates with the same rights that it would have if it were not Trustee; *provided, however*, that if the Trustee acquires a “conflicting interest” (within the meaning of Section 310(b) of the Trust Indenture Act), then it must promptly notify the Company and the Holders of such conflicting interest or resign as Trustee; *provided*, that the Company and the Holders acknowledge that GLAS Trust Company LLC is the trustee under the Second Lien Indenture and no further notice of such potential or actual conflicting interest shall be required. Each Note Agent will have the same rights and duties as the Trustee under this **Section 10.03**.

Section 10.04. TRUSTEE'S DISCLAIMER.

The Trustee will not be (A) responsible for, and makes no representation as to, the validity or adequacy of this Indenture or the Notes or the Notes Documents; (B) accountable for the Company's use of the proceeds from the Notes or any money paid to the Company or upon the Company's direction under any provision of this Indenture; (C) responsible for the use or application of any money received by any Paying Agent other than the Trustee; and (D) responsible for any statement or recital in this Indenture, the Notes, the Guarantees or any other document relating to the sale of the Notes or this Indenture, other than the Trustee's certificate of authentication.

Section 10.05. NOTICE OF DEFAULTS.

If a Default or Event of Default occurs and is continuing and is known to a Responsible Officer of the Trustee, then the Trustee will send Holders a notice of such Default or Event of Default within ninety (90) days after it occurs or, if it is not known to the Trustee at such time, promptly (and in any event within ten (10) Business Days) after it becomes known to a Responsible Officer; *provided, however*, that, except in the case of a Default or Event of Default in the payment of the principal of, or interest on, any Note, the Trustee may withhold such notice if and for so long as it in good faith determines that withholding such notice is in the interests of the Holders. The Trustee will not be deemed to have notice or be charged with knowledge of any Default or Event of Default unless written notice thereof has been received by a Responsible Officer, and such notice references the Notes and this Indenture and states on its face that a Default or Event of Default has occurred.

Section 10.06. COMPENSATION AND INDEMNITY.

(A) The Company will, pay the Trustee, the Collateral Agent and the Note Agents reasonable compensation for its acceptance of this Indenture and the other Notes Documents and services under this Indenture and the other Notes Documents as agreed in writing from time to time with the Company. Such compensation will not be limited by any law on compensation of a trustee of an express trust. In addition to such compensation, the Company will reimburse the Trustee, Collateral Agent and the Note Agents promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it under this Indenture and the other Notes Documents, including the reasonable compensation, disbursements and expenses of their agents and counsel.

(B) The Company and Guarantors will, jointly and severally, indemnify the Trustee, the Collateral Agent and each Note Agent and their directors, officers, employees and agents, in their capacities as such, against any and all losses, liabilities or expenses incurred by it arising out of or in connection with the acceptance or administration of its duties under this Indenture and the other Notes Documents, including the costs and expenses of enforcing this Indenture against the Company or Subsidiary Guarantors (including this **Section 10.06**) and defending itself against any claim (whether asserted by the Company, any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties under this Indenture and the other Notes Documents, except to the extent any such loss, liability or expense is proved to be attributable to its gross negligence or willful misconduct, as determined by a final decision of a

court of competent jurisdiction. The Trustee, the Collateral Agent or applicable Note Agent will promptly notify the Company of any claim for which it may seek indemnity, but the Trustee's, the Collateral Agent's or applicable Note Agent's failure to so notify the Company will not relieve the Company or any Subsidiary Guarantor of its obligations under this **Section 10.06(B)**, except to the extent the Company or a Subsidiary Guarantor is materially prejudiced by such failure. The Company will defend such claim, and the Trustee, the Collateral Agent or applicable Note Agent, as applicable, will cooperate in such defense, at the reasonable request, and at the expense of the Company. If the Trustee, the Collateral Agent or any Note Agent is advised by counsel that it may have defenses available to it that are in conflict with the defenses available to the Company, or that there is an actual or potential conflict of interest, then the Trustee, the Collateral Agent or applicable Note Agent, as applicable, may retain separate counsel, and the Company will pay the reasonable fees and expenses of such counsel (including the reasonable fees and expenses of counsel to the Trustee, the Collateral Agent and Note Agents incurred in evaluating whether such a conflict exists). The Company shall not settle any such claim defended by it without the Trustee's, Note Agent's or Collateral Agent's, as applicable consent, which consent will not be unreasonably withheld.

(C) The obligations of the Company under this **Section 10.06** will survive the resignation or removal of the Trustee, Collateral Agent or Note Agent and the discharge of this Indenture.

(D) To secure the Company's payment obligations in this **Section 10.06**, the Trustee will have a lien prior to the Notes on all money or property held or collected by the Trustee or the Collateral Agent, except that held in trust to pay principal of, or interest on, particular Notes, which lien will survive the discharge of this Indenture.

(E) If the Trustee, any Note Agent or the Collateral Agent incurs expenses or renders services after an Event of Default pursuant to **clause (viii) or (ix) of Section 7.01(A)** occurs, then such expenses and the compensation for such services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

Section 10.07. REPLACEMENT OF THE TRUSTEE.

(A) Notwithstanding anything to the contrary in this **Section 10.07**, a resignation or removal of the Trustee, and the appointment of a successor Trustee, will become effective only upon such successor Trustee's acceptance of appointment as provided in this **Section 10.07**.

(B) The Trustee may resign at any time and be discharged from the trust created by this Indenture by so notifying the Company. The Required Holders may remove the Trustee by so notifying the Trustee and the Company in writing. The Company may remove the Trustee if:

- (i) the Trustee fails to comply with **Section 10.09**;

(ii) the Trustee is adjudged to be bankrupt or insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;

(iii) a custodian or public officer takes charge of the Trustee or its property; or

- 89 -

(iv) the Trustee becomes incapable of acting.

(C) If the Trustee resigns or is removed, or if a vacancy exists in the office of the Trustee for any reason, then (i) the Company will promptly appoint a successor Trustee; and (ii) at any time within one (1) year after the successor Trustee takes office, the Required Holders may appoint a successor Trustee to replace such successor Trustee appointed by the Company.

(D) If a successor Trustee does not take office within sixty (60) days after the retiring Trustee resigns or is removed, then the retiring Trustee, the Company or the Holders of at least ten percent (10%) in aggregate principal amount of the Notes then outstanding may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(E) If the Trustee, after written request by a Holder of at least six (6) months, fails to comply with **Section 10.09**, then such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(F) A successor Trustee will deliver a written acceptance of its appointment to the retiring Trustee and to the Company, upon which notice the resignation or removal of the retiring Trustee will become effective and the successor Trustee will have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee will send notice of its succession to Holders. The retiring Trustee will, upon payment of all amounts due to it under this Indenture, promptly transfer all property held by it as Trustee to the successor Trustee, which property will, for the avoidance of doubt, be subject to the lien provided for in **Section 10.06(D)**.

Section 10.08. SUCCESSOR TRUSTEE BY MERGER, ETC.

Any organization or entity into which the Trustee may be merged or converted or with which it may be consolidated, or any organization or entity resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any organization or entity succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such organization or entity shall be otherwise qualified and eligible under this Article 10, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

Section 10.09. ELIGIBILITY; DISQUALIFICATION.

There will at all times be a Trustee under this Indenture that is a corporation or limited liability company organized and doing business under the laws of the United States of America or of any state thereof, that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital

and surplus of at least \$500,000 as set forth in its most recent published annual report of condition.

Article 11. COLLATERAL AND SECURITY

Section 11.01. SECURITY INTEREST; COLLATERAL AGENT.

The due and punctual payment of the principal of, any repurchase price or Redemption Price, if applicable of, and accrued and unpaid interest on the Notes when and as the same shall be

- 90 -

due and payable, whether on an Interest Payment Date, at maturity, by acceleration, repurchase, redemption, prepayment, demand or otherwise, and interest on the overdue principal (including any repurchase price or Redemption Price, if applicable) of, and accrued and unpaid interest on, the Notes and payment and performance of all other obligations of the Company and the Subsidiary Guarantors to the Holders, the Trustee, the Note Agents and the Collateral Agent under this Indenture, the Notes and the Guarantees, according to the terms hereunder or thereunder, are secured as provided in the Collateral Documents.

(A) The Company consents and agrees to be bound, and, subject to **Section 11.04**, to cause the Subsidiary Guarantors to consent and agree to be bound by the terms of the Collateral Documents, as the same may be in effect from time to time, and agrees to perform its, and to cause the Subsidiary Guarantors to perform their, obligations thereunder in accordance therewith. The Company will and, subject to **Section 11.05**, will cause each Subsidiary Guarantor to, do or cause to be done all such acts and things as may be required by the provisions of the Collateral Documents to assure and confirm to the Trustee that the Collateral Agent holds for the benefit of the Trustee and the Holders duly created, enforceable and perfected Liens as contemplated by the Collateral Documents or any part thereof, as from time to time constituted.

(B) The Collateral Agent agrees that it will hold 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 11.01**, to act, when directed by the Required Holders, in preservation of the security interest in the Collateral. The Collateral Agent is authorized and empowered, when directed by the Required Holders, to appoint one or more co-Collateral Agents as may be 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. Except as so directed (subject to **Section 3.11(D)**), and only if indemnified to its reasonable 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.

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.

(C) In acting as Collateral Agent hereunder and under the Collateral Documents, the Collateral Agent shall be afforded, and shall be entitled to enforce, each and all of the rights, privileges, protections, immunities, indemnities and benefits of the Trustee in this Indenture and the other Notes Documents, including, without limitation, under **Article 10**; *provided* that in that context any references in this Indenture to “Trustee” shall be references to “Collateral Agent”, and **Section 10.01(A)** does not apply to the Collateral Agent. 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 10.06**.

(D) Neither the Trustee nor the Collateral Agent nor any of their respective officers, directors, employees, attorneys or agents shall:

(i) be responsible or liable for the existence, genuineness, value or protection of any Collateral, for the legality, enforceability, effectiveness, or sufficiency of the Collateral Documents, for the creation, perfection, continuation, 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 to monitor the status of any Lien or performance of the Collateral, or for any failure to demand, collect, foreclose or realize upon or otherwise enforce any of the Liens or Collateral Documents or any delay in doing so. 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 any filings with respect to the U.S. Patent and Trademark Office or U.S. Copyright Office.

(E) At all times when the Trustee is not itself 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.

(F) Notwithstanding any provision to the contrary contained elsewhere in this Indenture and the Collateral 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 Collateral 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 this 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 this 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.

(G) 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 reasonably 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 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 unless the Collateral Agent has received security or indemnity from the Holders in an amount and in a form satisfactory to the Collateral Agent in its sole discretion, protecting the Collateral Agent from all such liability. The Collateral Agent shall at any time be entitled to cease taking any action described in this clause if it no longer reasonably deems any indemnity, security or undertaking from the Company or the Holders to be sufficient.

(H) Subject to **Section 11.04** hereof, in each case that the Collateral Agent may or is required hereunder to take any action (an “**Action**”), including without limitation to make any determination, to give consents, to exercise rights, powers or remedies, to release or sell Collateral or otherwise to act hereunder or under any Collateral Document, the Collateral Agent may seek direction from the Trustee or the Required Holders. Neither the Trustee nor the Collateral Agent shall be liable with respect to any Action taken or omitted to be taken by it in accordance with the direction from the Required Holders. If the Trustee or the Collateral Agent shall request direction from the Required Holders with respect to any Action, the Trustee and the Collateral Agent shall be entitled to refrain from such Action unless and until the Trustee or Collateral Agent, as applicable, shall have received direction from the Required Holders, and neither the Trustee nor the Collateral Agent shall incur liability to any Person by reason of so refraining.

(I) The Collateral Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, unless the Collateral Agent shall have received written notice from the Trustee, a Holder or the Company referring to this Indenture, describing such Default or Event of Default and stating that such notice is a “notice of default”. The Collateral Agent shall take such action with respect to such Default or Event of Default as may be requested by the Trustee in accordance with **Article 7** or the Required Holders subject to this **Article 11**.

(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 this 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 this Indenture and the Collateral Documents, the Collateral Agent and the Trustee may hold or obtain indicia of ownership primarily to protect the security interest of the Collateral Agent or the Trustee, as applicable, in the Collateral and that any such actions taken by the Collateral Agent or the Trustee shall not be construed as or otherwise constitute any participation in the management of such Collateral. In the event that the Collateral Agent or the Trustee 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 either the Collateral Agent's or Trustee's sole discretion may cause the Collateral Agent or Trustee, as applicable, to be considered an "owner or operator" under the provisions of the Comprehensive

- 93 -

Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601, et seq., or otherwise cause the Collateral Agent or Trustee, as applicable, to incur liability under CERCLA or any other federal, state or local law, the Collateral Agent and the Trustee 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 or the Trustee'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. If at any time it is necessary or advisable for property to be possessed, owned, operated or managed by any person (including the Collateral Agent or the Trustee) other than the Company, the Required Holders shall direct the Collateral Agent or the Trustee to appoint an appropriately qualified Person (excluding the Collateral Agent or the Trustee) who they shall designate to possess, own, operate or manage, as the case may be, the property.

(K) Beyond the exercise of reasonable care in the custody thereof, neither the Trustee nor the Collateral Agent shall have any duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto and neither the Trustee nor the Collateral Agent shall be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any security interest in the Collateral. Each of the Trustee and the Collateral Agent shall be deemed to have exercised reasonable care in the custody of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which it accords its own property and shall not be liable or responsible for any loss or diminution in the value of any of the Collateral, by reason of the act or omission of any carrier, forwarding agency or other agent or bailee selected by the Trustee or the Collateral Agent, as applicable, in good faith.

(L) Each successor Trustee may become the successor Collateral Agent as and when the successor Trustee becomes the Trustee.

(M) The Collateral Agent shall be fully justified in failing or refusing to take any action under this Indenture or the Collateral Documents unless it shall be directed by the Trustee (acting at the direction of the Required Holders) or the Required Holders. If the Collateral Agent so requests, it shall first be indemnified to its satisfaction by the Holders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Collateral Agent and the Trustee shall in all cases be fully protected in acting, or in refraining from acting, under this Indenture or the Collateral Documents in accordance with a request,

direction, instruction, or consent of the Required Holders or, in the case of the Collateral Agent, at the request, direction, instruction, or consent of the Trustee (acting at the direction of the Required Holders). Such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Holders.

(N) Except as otherwise explicitly provided herein or in the Collateral Documents, the Collateral Agent, the Trustee nor any of their respective officers, directors, employees or agents shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay

- 94 -

in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof.

(O) The Collateral Agent and the Trustee assumes no responsibility for any failure or delay in performance or any breach by the Company or any other grantor under this Indenture and the Collateral Documents. The Collateral Agent and the Trustee shall not have any obligation to any Holder or any other Person to ascertain or inquire into the existence of any Default or Event of Default, the observance or performance by any obligor of any terms of this Indenture or the Collateral Documents, or the satisfaction of any conditions precedent contained in this Indenture or any Collateral Documents. The Collateral Agent and the Trustee shall not be required to initiate or conduct any litigation or collection or other proceeding under this Indenture or the Collateral Documents.

(P) Subject to the provisions of the applicable Collateral Documents and this Indenture, each Holder, by acceptance of the Notes, agrees that the Collateral Agent and the Trustee shall execute and deliver such intercreditor agreements as it may be presented from time to time and the Collateral Documents to which it is a party and all agreements, documents and instruments incidental thereto (including any releases permitted hereunder), and act in accordance with the terms thereof. For the avoidance of doubt, the Collateral Agent shall not be required to exercise discretion under this Indenture or the Collateral Documents and shall not be required to make or give any determination, consent, approval, request or direction without the Required Holders or the Trustee (acting at the direction of the Required Holders).

Section 11.02. AUTHORIZATION OF ACTIONS TO BE TAKEN BY THE TRUSTEE OR THE COLLATERAL AGENT UNDER THE COLLATERAL DOCUMENTS.

(A) Subject to the provisions of **Section 11.01** and the terms of the Collateral Documents, the Trustee may (but shall have no obligation to), in its sole discretion and without the consent of the Holders, direct, on behalf of the Holders of Notes, the Collateral Agent to take all actions it deems necessary or appropriate in order to:

- (i) enforce any of the terms of the Collateral Documents; and
- (ii) collect and receive any and all amounts payable in respect of the obligations

of the Company and the Subsidiary Guarantors under this Indenture, the Notes and the Collateral Documents.

(B) Subject to the provisions of this Indenture and the Collateral Documents, the Trustee and/or the Collateral Agent will have power to institute and maintain such suits and proceedings as it may deem expedient (or as directed by the Required Holders) to prevent any impairment of the Collateral by any acts that may be unlawful or in violation of this Indenture or the Collateral Documents, and such suits and proceedings as may be necessary to preserve or protect the interests of the Trustee, the Collateral Agent and the interests of the Holders in the Collateral. The foregoing includes the power to institute and maintain 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 security interest under the Collateral Documents or be prejudicial to the interests of the Holders or of the Trustee and/or the Collateral Agent; *provided*, that neither the Collateral Agent nor the Trustee has any obligations to monitor or evaluate any proposed legislation, rule or order.

Section 11.03. AUTHORIZATION OF RECEIPT OF FUNDS BY THE TRUSTEE UNDER THE COLLATERAL DOCUMENTS.

The Trustee and/or the Collateral Agent is authorized to receive any funds for the benefit of the Collateral Agent and the Holders distributed under the Collateral Documents, and to make further distributions of such funds to the Holders according to the provisions of this Indenture with respect to the Collateral and such funds.

Section 11.04. TERMINATION OF SECURITY INTEREST; RELEASE OF COLLATERAL.

(A) Subject to **Section 11.04(B)**, Collateral will be released automatically from the Liens securing the Obligations of the Company and the Subsidiary Guarantors under this Indenture, the Notes, the Guarantees and the Collateral Documents without the consent or further action of any Person:

(i) in whole or in part, as applicable, upon the sale, transfer, exclusive license, agreement or other Disposition of such property or assets (including a Disposition resulting from eminent domain, condemnation or similar circumstances) by the Company or any Subsidiary Guarantor to the extent permitted pursuant to this Indenture and the Collateral Documents; *provided* that, (x) solely to the extent that such transaction constitutes the sale, Disposition of all or substantially all of the Company's property and assets, in one transaction or a series of related transactions, such transaction complies with **Section 6.01**; and (y) solely to the extent that such transaction constitutes the sale, Disposition of all or substantially all of a Subsidiary Guarantor's property and assets, in one transaction or a series of related transactions, such transaction complies with **Section 6.02**; and that the Company has delivered to the Trustee and the Collateral Agent an Officer's Certificate and Opinion of Counsel stating that such transaction complies with the provisions of this **Section 11.04**;

(ii) in whole or in part, as applicable, with the consent of the Holders of at least 66 2/3% in principal amount, the Notes then outstanding in accordance with **Section 8.02**, including consents obtained in connection with a tender offer or exchange offer, or purchase of Notes;

(iii) with respect to any Collateral securing the Guarantee of any Subsidiary Guarantor, when such Subsidiary Guarantor is released in accordance with the terms of **Section 12.06**;

(iv) in whole or in part, as applicable, as to all or any portion of the Collateral which has been taken by eminent domain, condemnation or similar circumstances;

- (v) upon satisfaction and discharge of this Indenture as described under **Article 9**; or
- (vi) in accordance with the applicable provisions of the Collateral Documents.

(B) With respect to any release of the Liens on the Collateral as provided in **Section 11.04(A)** above, upon receipt of an Officer's Certificate and (solely with respect to **Section 11.04(A)(i) and (v)**) an Opinion of Counsel each stating that all conditions precedent under this Indenture and the Notes Documents to such release or the entry into such agreements have been met and that the execution and delivery by the Trustee or the Collateral Agent of the documents requested by the Company in connection with such release or the entry into such agreements is authorized and expressly permitted by this Indenture and the other Notes Documents, and in the case of any release any appropriate instruments of termination, satisfaction, discharge or release prepared by the Company (in form and substance reasonably satisfactory to the Trustee and the Collateral Agent, without representation or warranty), the Trustee and the Collateral Agent shall execute, deliver or acknowledge (at the Company's expense) such instruments or releases as are requested to evidence the release and discharge of any Collateral expressly permitted to be released pursuant to this Indenture. Neither the Trustee nor the Collateral Agent shall have any duty or liability for determining the Company's compliance with this **Section 11.04**, but instead may rely on the Officer's Certificates issued by the Company under this **Section 11.04**. 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 (if applicable) Opinion of Counsel.

(C) The security interests granted under this Indenture and all Collateral Documents will terminate upon the full and final payment and performance of all Obligations (other than contingent indemnification obligations for which no claim has been made) of the Company and any other obligors, if any and as applicable, under this Indenture, the Notes, the Guarantees and the Collateral Documents.

(D) The release of any Collateral from the terms of the Collateral Documents shall not be deemed to impair the security under this Indenture or the Collateral Documents in contravention of the provisions hereof or affect the Lien of this Indenture or the Collateral Documents if and to the extent the Collateral is released pursuant to this Indenture or the Collateral Documents or upon the satisfaction and discharge of this Indenture. For the avoidance of doubt, the Company and the Subsidiary Guarantors shall not be required to comply with Section 314(d) of the Trust Indenture Act in connection with any release of Collateral. For the avoidance of doubt, the automatic release of any current assets constituting Collateral in connection with the sale, lease or other similar Disposition of such inventory of the Company and the Subsidiary Guarantors in the ordinary course of business shall not require delivery of any reports, certificates, opinions or other formal documentation.

(E) Upon such release or any release of Collateral or any part thereof in accordance with the provisions of this Indenture or the Collateral Documents, upon the request and at the sole cost and expense of the Company and the Subsidiary Guarantors, the Trustee shall direct the Collateral Agent to and upon such request and direction, the Collateral Agent shall:

- 97 -

(i) assign, transfer and deliver to the Company or the applicable Subsidiary Guarantor, as the case may be, against receipt and without recourse to or warranty by the Collateral Agent except as to the fact that the Collateral Agent has not encumbered the released assets, such of the Collateral or any part thereof to be released as may be in possession of the Collateral Agent and as shall not have been sold or otherwise applied pursuant to the terms of the Collateral Documents;

(ii) consent to the Company's filing of UCC financing statement amendments or releases (which shall be prepared by the Company or any Subsidiary Guarantor) to the extent necessary to delete such Collateral or any part thereof to be released from the description of assets in any previously filed financing statements; and

(iii) execute and deliver such documents, instruments or statements (which shall be prepared by the Company) and take such other action as the Company may request to cause to be released and reconveyed to the Company, or the applicable Subsidiary Guarantor, as the case may be, such Collateral or any part thereof to be released and to evidence or confirm that such Collateral or any part thereof to be released has been released from the Liens of each of this Indenture and each of the Collateral Documents.

Section 11.05. MAINTENANCE OF COLLATERAL.

The Company shall, and shall cause each of its Subsidiaries to keep and maintain all properties material to the conduct of its business or the business of any of its Subsidiaries in good working order and condition (ordinary wear and tear excepted), except where the failure to do so could not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the Company and its Subsidiaries' businesses, taken as a whole; *provided* that nothing in this **Section 11.05** shall prevent the Company or any Subsidiary from discontinuing the maintenance of any of such property if such discontinuance is, in the judgment of the Company, desirable to the conduct of the business of the Company and its Subsidiaries, taken as a whole.

To the extent the Company and the Subsidiary Guarantors are not able to execute and deliver all Collateral Documents required in connection with the creation and perfection of the Liens of the Collateral Agent on the Collateral (to the extent required by this Indenture or such Collateral Documents) on or prior to the Issue Date, the Company and the Subsidiary Guarantors will use their commercially reasonable efforts to have all security interests in the Collateral duly created and enforceable and perfected, to the extent required by this Indenture or such Collateral Documents, within the time period required by the Collateral Documents.

Section 11.06. COLLATERAL AGENT; COLLATERAL DOCUMENTS.

(A) GLAS Trust Company LLC is hereby designated and appointed as the Collateral Agent of the Secured Parties under this Indenture and the Collateral Documents and GLAS Trust Company LLC 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

- 98 -

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, privileges, immunities, indemnities and other benefits and protections granted to it under this Indenture (in addition to those that may be granted to it under the terms of such other Collateral Document or Collateral Documents).

(C) If the Company or any of its Subsidiaries (i) incurs any Indebtedness that is required to be subject to an intercreditor agreement, and (ii) delivers to the Collateral Agent and Trustee an Officer's Certificate so stating and certifying that the execution of such intercreditor agreement is authorized and permitted by this Indenture and the other Notes Documents and all conditions precedent to its execution have been satisfied, and requesting the Collateral Agent and Trustee, if applicable, to enter into an intercreditor agreement in favor of a designated agent or representative for the holders of such Indebtedness so incurred, the Collateral Agent and the Trustee (as applicable) shall (and are hereby authorized and directed to) enter into such intercreditor agreement (at the sole expense and cost of the Company, including fees (including legal fees) and expenses of the Collateral Agent and Trustee), bind the Holders on the terms set forth therein and perform and observe its obligations thereunder. Neither the Trustee nor the Collateral Agent shall be liable for any such execution in reliance upon any such Officer's Certificate, 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 intercreditor agreement, unless and until it receives such Officer's Certificate.

Section 11.07. REPLACEMENT OF COLLATERAL AGENT.

(A) The Collateral Agent may resign at any time by so notifying the Company in writing not less than forty-five (45) days prior to the effective date of such resignation. The Required Holders may remove the Collateral Agent by so notifying the removed Collateral Agent in writing not less than forty-five (45) 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

... removal 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 resolution of the Board of Directors 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 11.08**, 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) Any corporation or other entity into which the Collateral Agent 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 Collateral Agent shall be a party, or any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Collateral Agent (including the administration of this Indenture) shall be the successor to the Collateral Agent hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto.

Section 11.08. ACCEPTANCE BY COLLATERAL AGENT.

Any successor Collateral Agent appointed as provided in **Section 11.07** 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 10.06**, 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 claim 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 10.06**.

Upon acceptance of appointment by a successor Collateral Agent as provided in this **Section 11.08**, 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 13.01**. If the Company fails to give such notice within ten (10) days after acceptance of appointment by the successor Collateral Agent, the successor Collateral Agent shall cause such notice to be given at the expense of the Company.

Section 11.09. 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 11** 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 11**; and if the Trustee, Collateral Agent, or their nominee or agent, shall be in possession of the Collateral under any provision of this Indenture, then such powers may be exercised by the Trustee, the Collateral Agent, or their nominee or agent.

Article 12. GUARANTEES

Section 12.01. GUARANTEE

Subject to this **Article 12**, each of the Subsidiary Guarantors hereby, jointly and severally, irrevocably and unconditionally guarantees, on a senior basis, to each Holder, the Trustee, each Note Agent and the Collateral Agent and each of their successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the Obligations under this Indenture and the Notes, that: (i) the principal, any repurchase price or Redemption Price, if applicable, of and accrued and unpaid interest on each of the Notes shall be promptly paid in full when due, whether at maturity, by acceleration, redemption, required repurchase 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, the Note Agents or the Collateral Agent hereunder or thereunder shall be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and (ii) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. Each Subsidiary Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

(A) The Subsidiary Guarantors hereby agree that their obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver, amendment or consent by any Holder with respect to any provisions hereof or thereof, the recovery of any judgment against the Company, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor. Each Subsidiary Guarantor 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 and covenants that this Guarantee shall not be discharged except by complete performance of the obligations contained in the Notes, the Collateral Documents and this Indenture, or pursuant to **Section 12.06**. No obligation of any Subsidiary Guarantor hereunder shall be discharged other than by complete payment or performance of the guaranteed Obligations under the Notes (other than contingent obligations that have yet to accrue) in accordance with this Indenture, the Notes Documents and the Notes. Each Subsidiary Guarantor further waives any right such Subsidiary Guarantor may have under any applicable requirement of law to require the Trustee, any Note Agent, the Collateral Agent, or any Holder to seek recourse first against the Company or any of its Subsidiaries or any other Person, or to realize upon any Collateral for any of the Obligations under the Notes, as a condition

precedent to enforcing such Subsidiary Guarantor's liability and obligations under this **Article 12**.

(B) If any Holder, any Note Agent, the Trustee or the Collateral Agent is required by any court or otherwise to return to the Company, the Subsidiary Guarantors or any custodian,

- 101 -

trustee, liquidator or other similar official acting in relation to the Company or the Subsidiary Guarantors, any amount paid either to the Trustee, such Note Agent, the Collateral Agent or such Holder, this Guarantee, to the extent theretofore discharged, shall be reinstated in full force and effect.

(C) Each Subsidiary Guarantor agrees that it 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 (other than contingent indemnity obligations) guaranteed hereby. Each Subsidiary Guarantor further agrees that, as between the Subsidiary Guarantors, on the one hand, and the Holders, the Trustee, the Note Agents and the Collateral Agent, on the other hand, (i) the maturity of the Obligations guaranteed hereby may be accelerated as provided in **Article 7** for the purposes of this Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Obligations guaranteed hereby, and (ii) in the event of any declaration of acceleration of such Obligations as provided in **Article 7**, such Obligations (whether or not due and payable) shall forthwith become due and payable by the Subsidiary Guarantors for the purpose of this Guarantee. The Subsidiary Guarantors shall have the right to seek contribution from any non-paying Subsidiary Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Guarantees.

(D) Each Guarantee shall remain in full force and effect and continue to be effective should any petition be filed by or against the Company or any Subsidiary Guarantor for liquidation or reorganization, should the Company or any Subsidiary Guarantor 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 or any Subsidiary Guarantor's assets, and shall, to the fullest extent expressly 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 or the Guarantees are, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee on the Notes or the Guarantees, whether as a "voidable preference," "fraudulent transfer" or otherwise, all as though such payment or performance had not been made. In the event that any payment or any part thereof, is rescinded, reduced, restored or returned, the Notes and such Guarantees shall, to the fullest extent expressly permitted by law, be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

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

(F) Each payment to be made by a Subsidiary Guarantor in respect of its Guarantee shall be made without set-off, counterclaim, reduction or diminution of any kind or nature.

(G) Neither the Company nor any Subsidiary Guarantor shall be required to make a notation on the Notes to reflect any such Guarantee or any such release, termination or discharge.

(H) Each Subsidiary Guarantor also agrees to pay any and all costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Trustee, any Note Agent, the Collateral Agent or any Holder in enforcing any rights under this **Section 12.01**.

- 102 -

Section 12.02. LIMITATION ON GUARANTOR LIABILITY.

Each Subsidiary Guarantor, and, by its acceptance of any Note, each Holder, confirms that each Subsidiary Guarantor and the Holders intend that the Guarantee of each Subsidiary Guarantor does not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Guarantee. Each of the Trustee, the Holders and each Subsidiary Guarantor irrevocably agrees that the obligations of each Subsidiary Guarantor under its Guarantee will be limited to the maximum amount that will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Subsidiary Guarantor that are relevant under such laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Subsidiary Guarantor in respect of the obligations of such other Subsidiary Guarantor under its Guarantee, result in the obligations of such Subsidiary Guarantor under its Guarantee not constituting a fraudulent transfer or fraudulent conveyance under federal or state law and not otherwise being void or voidable under any similar laws affecting the rights of creditors generally.

Section 12.03. EXECUTION AND DELIVERY.

To evidence a Guarantee set forth in **Section 12.01**, each Subsidiary Guarantor shall execute this Indenture or, if after the date hereof, a supplemental indenture pursuant to which it will agree to be a Subsidiary Guarantor and become bound by the terms of this Indenture applicable to Subsidiary Guarantors, including without limitation, this **Article 12**.

(A) Pursuant to any such supplemental indenture, each Subsidiary Guarantor shall agree that its Guarantee set forth in Section 12.01 shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Guarantee on the Notes.

(B) The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of any Guarantee set forth in this Indenture on behalf of the Subsidiary Guarantors.

A Guarantee's validity will not be affected by the failure of any officer of a Subsidiary Guarantor executing this Indenture or any such amended or supplemental indenture on such Subsidiary Guarantor's behalf to hold, at the time any Note is authenticated, the same or any other office at each Subsidiary Guarantor. and each Guarantee will be valid and enforceable even if no

...of each Subsidiary, and then cause the same to be executed in its notation, certificate or other instrument is set upon or attached to, or otherwise executed and delivered to the Holder of, any Note.

(C) If required by **Section 3.19**, the Company shall cause any newly created or acquired Subsidiary that is not an Excluded Subsidiary, or any Subsidiary previously deemed to be an Excluded Subsidiary that ceases to be an Excluded Subsidiary, to comply with the provisions of **Section 3.19** and this **Article 12**, to the extent applicable, within thirty (30) calendar days on which such Subsidiary that is not an Excluded Subsidiary is created or acquired or ceases to be an Excluded Subsidiary.

Section 12.04. WHEN A SUBSIDIARY GUARANTOR MAY MERGE, ETC.

No Subsidiary Guarantor will 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 Subsidiary Guarantor and its Subsidiaries, taken as a whole, to another Person (other than the Company or another Subsidiary Guarantor), except in accordance with, and in compliance with the terms of, **Section 6.02**.

Section 12.05. BENEFITS ACKNOWLEDGED.

Each Subsidiary Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by this Indenture and that the guarantee and waivers made by it pursuant to its Guarantee are knowingly made in contemplation of such benefits.

Section 12.06. RELEASE OF GUARANTEES.

A Guarantee by a Subsidiary Guarantor shall be automatically and unconditionally released and discharged, and such Guarantee shall thereupon terminate and be discharged and of no further force and effect, and no further action by such Subsidiary Guarantor, the Company or the Trustee shall be required for the release of such Subsidiary Guarantor's Guarantee:

(i) concurrently with any sale, exchange, Disposition or transfer (by merger or otherwise) of (x) any Capital Stock of such Subsidiary Guarantor following which such Subsidiary Guarantor is no longer a Subsidiary of the Company (*provided* that such release shall only apply if such transaction is entered into for a bona fide business purpose and not to circumvent the requirement to provide a Guarantee or grant security) or (y) all or substantially all assets of such Subsidiary Guarantor to a Person other than the Company or one of its Subsidiaries, in each case, if such sale, exchange, transfer or other disposition is not prohibited by the applicable provisions of this Indenture and, (a) such sale, exchange, transfer or other disposition is in compliance with **Section 3.12** or (b) unless such sale, exchange, transfer or other disposition is with or to the Company, the surviving or transferee Person expressly assumes such Subsidiary Guarantor's obligations in accordance with **Section 12.04**;

(ii) upon the merger or consolidation of such Subsidiary Guarantor with and into either the Company or any other Subsidiary Guarantor wherein the Company or such other Subsidiary Guarantor, as applicable, is the surviving Person in such merger or consolidation, if such merger, consolidation or amalgamation is not prohibited by the applicable provisions of this Indenture and such surviving Person expressly assumes such Subsidiary Guarantor's obligations in accordance with **Section 12.04**;

(iii) upon the dissolution or liquidation of such Subsidiary Guarantor following the transfer of all or substantially all of its assets to either the Company or another Subsidiary Guarantor;

(iv) upon satisfaction and discharge of this Indenture as described under **Article**

- (v) concurrently with such Subsidiary becoming an Excluded Subsidiary; and

upon such Subsidiary Guarantor delivering to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for in this **Section 12.06** relating to such release have been complied with.

At the written request, and sole cost and expense, of the Company, the Trustee (or the Collateral Agent, if applicable) shall execute and deliver any documents reasonably requested by the Company in order to evidence such release, discharge and termination in respect of the applicable Guarantee.

Article 13. MISCELLANEOUS

Section 13.01. NOTICES.

Any notice or communication by the Company or the Trustee (including in its capacity as Collateral Agent and any Note Agent) to the other will be deemed to have been duly given if in writing and delivered in person or by first class mail (registered or certified, return receipt requested), facsimile transmission, electronic transmission or other similar means of unsecured electronic communication or overnight air courier guaranteeing next day delivery, or to the other's address, which initially is as follows:

If to the Company:

Luminar Technologies, Inc.
2603 Discovery Drive, Suite 100
Orlando, FL 32826
Attention: Tom Fennimore
Email: tom@luminartech.com
with a copy (which will not constitute notice) to: legal.notices@luminartech.com

with a copy (which will not constitute notice) to:

Orrick, Herrington & Sutcliffe LLP
405 Howard Street
San Francisco, CA 94105
Attention: Dan Kim; Brett Cooper
Email: dan.kim@orrick.com; bcooper@orrick.com

If to the Trustee:

GLAS Trust Company LLC

3 Second Street, Suite 206
Jersey City, NJ 07311
Attention: Luminar Technologies First Lien Notes
Email: tmgus@glas.agency

- 105 -

The Company or the Trustee, by notice to the other, may designate additional or different addresses (including facsimile numbers and electronic addresses) for subsequent notices or communications.

All notices and communications (other than those sent to Holders) will be deemed to have been duly given: (A) at the time delivered by hand, if personally delivered; (B) five (5) Business Days after being deposited in the mail, postage prepaid, if mailed; (C) when receipt acknowledged, if transmitted by electronic transmission or other similar means of unsecured electronic communication; and (D) the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

The Trustee shall not have any duty to confirm that the person sending any notice, instruction or other communication by electronic transmission (including by e-mail, web portal or other electronic methods) is, in fact, a person authorized to do so. Electronic signatures believed by the Trustee to comply with the ESIGN Act of 2000 or other applicable law (including electronic images of handwritten signatures and digital signatures provided by DocuSign, Orbit, Adobe Sign or any other digital signature provider acceptable to the Trustee) shall be deemed original signatures for all purposes. Each other party assumes all risks arising out of the use of electronic signatures and electronic methods to send communications to the Trustee, including without limitation the risk of the Trustee acting on an unauthorized communication, and the risk of interception or misuse by third parties. Notwithstanding the foregoing, the Trustee may in any instance and in its sole discretion require that an original document bearing a manual signature be delivered to the Trustee in lieu of, or in addition to, any such electronic communication.

All notices or communications required to be made to a Holder pursuant to this Indenture must be made in writing and will be deemed to be duly sent or given in writing if mailed by first class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery, to its address shown on the Register; *provided, however*, that a notice or communication to a Holder of a Global Note may, but need not, instead be sent pursuant to the Depositary Procedures (in which case, such notice will be deemed to be duly sent or given in writing). The failure to send a notice or communication to a Holder, or any defect in such notice or communication, will not affect its sufficiency with respect to any other Holder.

If the Trustee is then acting as the Depositary's custodian for the Notes, then, at the reasonable request of the Company to the Trustee, the Trustee will cause any notice prepared by the Company to be sent to any Holder(s) pursuant to the Depositary Procedures, *provided* such request is evidenced in a Company Order delivered, together with the text of such notice, to the Trustee at least two (2) Business Days before the date such notice is to be so sent. For the avoidance

of doubt, such Company Order need not be accompanied by an Officer's Certificate or Opinion of Counsel. The Trustee will not have any liability relating to the contents of any notice that it sends to any Holder pursuant to any such Company Order.

If a notice or communication is mailed or sent in the manner provided above within the time prescribed, it will be deemed to have been duly given, whether or not the addressee receives it.

- 106 -

Notwithstanding anything to the contrary in this Indenture or the Notes, (A) whenever any provision of this Indenture requires a party to send notice to another party, no such notice need be sent if the sending party and the recipient are the same Person acting in different capacities; and (B) whenever any provision of this Indenture requires a party to send notice to more than one receiving party, and each receiving party is the same Person acting in different capacities, then only one such notice need be sent to such Person.

Section 13.02. DELIVERY OF OFFICER'S CERTIFICATE AND OPINION OF COUNSEL AS TO CONDITIONS PRECEDENT.

Upon any request or application by the Company to the Trustee or the Collateral Agent to take any action under this Indenture (other than the initial authentication of Notes under this Indenture), the Company will furnish to the Trustee and the Collateral Agent:

(A) an Officer's Certificate in form and substance reasonably satisfactory to the Trustee that complies with **Section 13.03** and states that, in the opinion of the signatory thereto, all conditions precedent and covenants, if any, provided for in this Indenture and each Notes Document relating to such action have been satisfied; and

(B) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee that complies with **Section 13.03** and states that, in the opinion of such counsel, all such conditions precedent and covenants, if any, have been satisfied.

Section 13.03. STATEMENTS REQUIRED IN OFFICER'S CERTIFICATE AND OPINION OF COUNSEL.

Each Officer's Certificate (other than an Officer's Certificate pursuant to **Section 3.05**) or Opinion of Counsel with respect to compliance with a covenant or condition provided for in this Indenture will include:

(A) a statement that the signatory thereto has read such covenant or condition;

(B) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained therein are based;

(C) a statement that, in the opinion of such signatory, he, she or it has made such examination or investigation as is necessary to enable him, her or it to express an informed opinion as to whether or not such covenant or condition has been satisfied; and

(D) a statement as to whether, in the opinion of such signatory, such covenant or condition has been satisfied.

Section 13.04. RULES BY THE TRUSTEE, THE REGISTRAR AND THE PAYING AGENT.

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Registrar and Paying Agent each may make reasonable rules and set reasonable requirements for its functions.

Section 13.05. NO PERSONAL LIABILITY OF DIRECTORS, OFFICERS, EMPLOYEES AND STOCKHOLDERS.

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

Section 13.06. GOVERNING LAW; WAIVER OF JURY TRIAL.

THIS INDENTURE, THE NOTES AND THE GUARANTEES, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS INDENTURE OR THE NOTES AND THE GUARANTEES, WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. EACH OF THE COMPANY, THE SUBSIDIARY GUARANTORS, THE TRUSTEE, THE NOTE AGENTS, AND THE COLLATERAL AGENT AND EACH HOLDER (BY ACCEPTANCE OF ITS NOTE) 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, THE GUARANTEES OR THE TRANSACTIONS CONTEMPLATED BY THIS INDENTURE OR THE NOTES AND THE GUARANTEES.

Section 13.07. SUBMISSION TO JURISDICTION.

Any legal suit, action or proceeding arising out of or based upon this Indenture or the transactions contemplated by this Indenture may be instituted in the federal courts of the United States of America located in the City of New York or the courts of the State of New York, in each case located in the City of New York (collectively, the “**Specified Courts**”), and each party irrevocably submits to the non-exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail (to the extent allowed under any applicable statute or rule of court) to such party’s address set forth in **Section 13.01** will be effective service of process for any such suit, action or proceeding brought in any such court. Each of the Company, the Subsidiary Guarantors, the Trustee, the Note Agents and the Collateral Agent and each Holder (by its acceptance of any Note) irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or other proceeding in the Specified Courts and irrevocably and unconditionally waives and agrees not to plead or claim any such suit, action or other proceeding has been brought in an inconvenient forum.

Section 13.08. NO ADVERSE INTERPRETATION OF OTHER AGREEMENTS.

Neither this Indenture nor the Notes may be used to interpret any other indenture, note, loan or debt agreement of the Company or its Subsidiaries or of any other Person, and no such indenture, note, loan or debt agreement may be used to interpret this Indenture or the Notes.

Section 13.09. SUCCESSORS.

All agreements of the Company and the Subsidiary Guarantors in this Indenture and the Notes will bind their respective successors. All agreements of the Trustee in this Indenture will bind successors.

Section 13.10. FORCE MAJEURE.

The Trustee, the Collateral Agent and each Note Agent will not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility under this Indenture or the Notes by reason of any occurrence beyond its control (including any act or provision of any present or future law or regulation or governmental authority, act of God or war, civil unrest, local or national disturbance or disaster, pandemic, epidemic, act of terrorism or unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility).

Section 13.11. U.S.A. PATRIOT ACT.

Each of the Company and the Subsidiary Guarantors acknowledges that, in accordance with Section 326 of the U.S.A. PATRIOT Act, the Trustee, like all financial institutions, in order to help fight the funding of terrorism and money laundering, is required to obtain, verify and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. Each of the Company and the Subsidiary Guarantors agrees to provide the Trustee with such information as it may request to enable the Trustee to comply with the U.S.A. PATRIOT Act.

Section 13.12. CALCULATIONS.

Except as otherwise expressly provided in this Indenture, the Company will be solely responsible for making all calculations called for under this Indenture or the Notes. These calculations include, but are not limited to, any related to an interest payment methodology, including any Additional Interest or Special Interest and the Redemption Price and Make-Whole Amount.

The Company will make all calculations in good faith, and, absent manifest error, its calculations will be final and binding on all Holders. The Company will provide a schedule of its calculations to the Trustee and each Note Agent, and the Trustee and each Note Agent may rely conclusively on the accuracy of the Company's calculations without independent verification. The

Trustee will make available a copy of each such schedule to a Holder upon its written request therefor. Neither the Trustee nor any Note Agent shall have any responsibility to verify or determine the accuracy of any calculations or amounts, including those related to any interest,

- 109 -

including any Additional Interest or Special Interest and the Redemption Price and Make-Whole Amount.

Section 13.13. SEVERABILITY.

If any provision of this Indenture or the Notes is invalid, illegal or unenforceable, then the validity, legality and enforceability of the remaining provisions of this Indenture or the Notes will not in any way be affected or impaired thereby.

Section 13.14. COUNTERPARTS.

This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes. The words “delivery,” “execution,” “execute,” “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this Indenture and the transactions contemplated hereby shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Trustee and the Collateral Agent, or 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, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the 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, or any other similar state laws based on the Uniform Electronic Transactions Act. The Note Parties agree to assume all risks arising out of the use of digital signatures and electronic methods, including without limitation the risk of the Trustee or the Collateral Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties. Each of the parties hereto agrees that the transaction consisting of this Indenture may be conducted by electronic means. Each party agrees, and acknowledges that it is such party’s intent, that if such party signs this Indenture using an electronic signature, it is signing, adopting, and accepting this Indenture and that signing this Indenture using an electronic signature is the legal equivalent of having placed its handwritten signature on this Indenture on paper. Each party acknowledges that it is being provided with an electronic or paper copy of this Indenture in a usable format. Electronic signatures complying with the ESIGN Act of 2000 or other applicable law (including electronic images of handwritten signatures and digital signatures provided by DocuSign, Orbit, Adobe Sign or any other digital signature provider acceptable to the Trustee and

the Company) shall be deemed original signatures for all purposes of this Indenture.

Section 13.15. TABLE OF CONTENTS, HEADINGS, ETC.

The table of contents and the headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and will in no way modify or restrict any of the terms or provisions of this Indenture.

- 110 -

[The Remainder of This Page Intentionally Left Blank; Signature Page Follows]

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

LUMINAR TECHNOLOGIES, INC.

By: /s/ Thomas J. Fennimore

Name: Thomas J. Fennimore

Title: Chief Financial Officer

LUMINAR, LLC, AS SUBSIDIARY GUARANTOR
LUMINAR SEMICONDUCTOR, INC., AS
SUBSIDIARY GUARANTOR

By: /s/ Thomas J. Fennimore

Name: Thomas J. Fennimore

Title: Chief Financial Officer

FREEDOM PHOTONICS LLC, AS SUBSIDIARY
GUARANTOR
EMFOUR ACQUISITION CO., LLC, AS
SUBSIDIARY GUARANTOR

By: Luminar Semiconductor, Inc.,
its Sole Member

By: /s/ Thomas J. Fennimore

Name: Thomas J. Fennimore

Title: Chief Financial Officer

EM4, LLC, AS SUBSIDIARY GUARANTOR

By: EMFOUR Acquisition Co., LLC,
its Sole Member

By: Luminar Semiconductor, Inc.,
its Sole Member

By: /s/ Thomas J. Fennimore

Name: Thomas J. Fennimore

Title: Chief Financial Officer

OPTOGRATION, INC., AS SUBSIDIARY
GUARANTOR

By: /s/ Mark Itzler

Name: Mark Itzler

Title: President

[Signature Page to First Lien Indenture]

GLAS Trust Company LLC, AS TRUSTEE AND
COLLATERAL AGENT

By: /s/ Katie Fischer
Name: Katie Fischer
Title: Vice President

[Signature Page to First Lien Indenture]

EXHIBIT A

FORM OF NOTE

[Insert Global Note Legend, if applicable]

[Insert Restricted Note Legend, if applicable]

[Insert Non-Affiliate Legend]

LUMINAR TECHNOLOGIES, INC.

Floating Rate Senior Secured Note due 2028

CUSIP No.: **550424 AC9**
ISIN No.: **US550424AC99**

Certificate No. []

Luminar Technologies, Inc., a Delaware corporation, for value received, promises to pay to [Cede & Co.], or its registered assigns, the principal sum of [] dollars (\$[]) [(as revised by the attached Schedule of Exchanges of Interests in the Global Note)]* on the Maturity Date (as defined in the Indenture referred to below) and to pay interest thereon and any other premium (including any premium included in the Redemption Price) or other amounts due hereunder, as provided in the Indenture referred to below, until the principal, premium (including any premium included in the Redemption Price), and all accrued and unpaid interest are paid or duly provided for.

Interest Payment Dates: February 15, May 15, August 15, and November 15 of each year, commencing on November 15, 2024.

Regular Record Dates: February 1, May 1, August 1 and November 1.

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

[The Remainder of This Page Intentionally Left Blank; Signature Page Follows]

* Insert bracketed language for Global Notes only.

IN WITNESS WHEREOF, Luminar Technologies, Inc. has caused this instrument to be duly executed as of the date set forth below.

LUMINAR TECHNOLOGIES, INC.

Date: _____

By: _____

Name:

Title:

A-2

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

GLAS Trust Company LLC, as Trustee, certifies that this is one of the Notes referred to in the within-mentioned Indenture.

Date: _____ By: _____
Authorized Signatory

LUMINAR TECHNOLOGIES, INC.**Floating Rate Senior Secured Notes due 2028**

This Note is one of a duly authorized issue of notes of Luminar Technologies, Inc., a Delaware corporation (the “**Company**”), designated as its Floating Rate Senior Secured Notes due 2028 (the “**Notes**”), all issued or to be issued pursuant to an indenture, dated as of August 8, 2024 (as the same may be amended from time to time, the “**Indenture**”), between the Company, the Subsidiary Guarantors from time to time party thereto and GLAS Trust Company LLC, as trustee and collateral agent. Capitalized terms used in this Note without definition have the respective meanings ascribed to them in the Indenture.

The Indenture sets forth the rights and obligations of the Company, the Subsidiary Guarantors, the Trustee, the Collateral Agent and the Holders and the terms of the Notes. Notwithstanding anything to the contrary in this Note, to the extent that any provision of this Note conflicts with the provisions of the Indenture, the provisions of the Indenture will control.

1. **Interest.** This Note will accrue interest at a rate and in the manner set forth in **Section 2.05** of the Indenture. Stated Interest on this Note will begin to accrue from, and including, [date].
2. **Maturity.** This Note will mature on the Maturity Date, unless earlier repurchased or redeemed.
3. **Method of Payment.** Amounts due on this Note will be paid in the manner set forth in **Section 2.04** of the Indenture.
4. **Persons Deemed Owners.** The Holder of this Note will be treated as the owner of this Note for all purposes.
5. **Denominations; Transfers and Exchanges.** All Notes will be in registered form, without coupons, in principal amounts equal to any Authorized Denominations. Subject to the terms of the Indenture, the Holder of this Note may transfer or exchange this Note by presenting it to the Registrar and delivering any required documentation or other materials.
6. **Right of Holders to Require the Company to Repurchase Notes Upon Certain Events.** Upon the occurrence of certain events, then each Holder will have the right to require the Company to repurchase such Holder’s Notes (or any portion thereof in an Authorized Denomination) for cash in the manner, and subject to the terms, set forth in **Section 3.12** and **Section 3.17** of the Indenture.
7. **Right of the Company to Redeem the Notes.** The Company will have the right to redeem the Notes for cash in the manner, and subject to the terms, set forth in **Section 4.03** of

to receive the Notes for cash in the manner, and subject to the terms, set forth in **Section 7.05** of the Indenture.

A-4

8. **When the Company May Merge, Etc.** **Article 6** of the Indenture places limited restrictions on the Company's and the Subsidiary Guarantors' ability to engage in certain corporate transactions or certain sales of their assets and property.

9. **Defaults and Remedies.** If an Event of Default occurs, then the principal amount of, and all accrued and unpaid interest and any other amounts due on, all of the Notes then outstanding may (and, in certain circumstances, will automatically) become due and payable in the manner, and subject to the terms, set forth in **Article 7** of the Indenture, including, for the avoidance of doubt, any premium included in the Redemption Price.

10. **Amendments, Supplements and Waivers.** The Company and the Trustee may amend or supplement the Indenture or the Notes or waive compliance with any provision of the Indenture or the Notes in the manner, and subject to the terms, set forth in **Section 7.05** and **Article 8** of the Indenture.

11. **No Personal Liability of Directors, Officers, Employees and Stockholders.** No past, present or future director, officer, employee, incorporator or stockholder of the Company or any Subsidiary Guarantor, as such, will have any liability for any obligations of the Company under the Indenture or the Notes or any Guarantee or for any claim based on, in respect of, or by reason of, such obligations or their creation. By accepting any Note, each Holder waives and releases all such liability. Such waiver and release are part of the consideration for the issuance of the Notes.

12. **Authentication.** No Note will be valid until it is authenticated by the Trustee. A Note will be deemed to be duly authenticated only when an authorized signatory of the Trustee (or a duly appointed authenticating agent) manually signs the certificate of authentication of such Note.

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

14. **Governing Law.** THIS NOTE AND THE GUARANTEES, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS NOTE AND THE GUARANTEES, WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

* * *

* Insert for Global Notes only.

REPURCHASE NOTICE

LUMINAR TECHNOLOGIES, INC.

Floating Rate Senior Secured Notes due 2028

Subject to the terms of the Indenture, by executing and delivering this Repurchase Notice, the undersigned Holder of the Note identified below is exercising its Repurchase Right with respect to (check one):

the entire principal amount of

\$ _____ * aggregate principal amount of

the Note identified by CUSIP No. _____ and Certificate No. _____.

The undersigned acknowledges that this Note, duly endorsed for transfer, must be delivered to the Paying Agent before the applicable repurchase price will be paid.

Date: _____

(Legal Name of Holder)

By: _____

Name:

Title:

Signature Guaranteed:

Participant in a Recognized Signature
Guarantee Medallion Program

By: _____

Authorized Signatory

ASSIGNMENT FORM

LUMINAR TECHNOLOGIES, INC.

Floating Rate Senior Secured Notes due 2028

Subject to the terms of the Indenture, the undersigned Holder of the Notes identified below assigns (check one):

the entire principal amount of

\$ _____ * aggregate principal amount of

the Notes identified by CUSIP No. _____ and Certificate No. _____, and all rights thereunder, to:

Name: _____

Address: _____

Social security or tax id. #: _____

and irrevocably appoints: _____

as agent to transfer the within Note on the books of the Company. The agent may substitute another to act for him/her.

Date: _____
_____ (Legal Name of Holder)

By: _____
Name:
Title:

Signature Guaranteed:

Participant in a Recognized Signature
Guarantee Medallion Program

By: _____

* Must be an Authorized Denomination.

TRANSFEROR ACKNOWLEDGMENT

If the within Note bears a Restricted Note Legend, the undersigned further certifies that (check one):

- 1. Such Transfer is being made to the Company or a Subsidiary of the Company.
- 2. Such Transfer is being made pursuant to, and in accordance with, a registration statement that is effective under the Securities Act at the time of the Transfer.
- 3. Such Transfer is being made pursuant to, and in accordance with, Rule 144A under the Securities Act, and, accordingly, the undersigned further certifies that the within Note is being transferred to a Person that the undersigned reasonably believes is purchasing the within Note for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act in a transaction meeting the requirements of Rule 144A. **If this item is checked, then the transferee must complete and execute the acknowledgment contained on the next page.**
- 4. Such Transfer is being made pursuant to, and in accordance with, any other available exemption from the registration requirements of the Securities Act (including, if available, the exemption provided by Rule 144 under the Securities Act).

Dated: _____

(Legal Name of Holder)

By: _____

Name:

Title:

Signature Guaranteed:

(Participant in a Recognized Signature
Guarantee Medallion Program)

By: _____
Authorized Signatory

A-9

TRANSFeree ACKNOWLEDGMENT

The undersigned represents that it is purchasing the within Note for its own account, or for one or more accounts with respect to which the undersigned exercises sole investment discretion, and that and the undersigned and each such account is a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act. The undersigned acknowledges that the transferor is relying, in transferring the within Note on the exemption from the registration and prospectus-delivery requirements of the Securities Act of 1933, as amended, provided by Rule 144A and that the undersigned has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A.

Dated: _____

(Name of Transferee)

By: _____
Name:
Title:

EXHIBIT B-1

FORM OF RESTRICTED NOTE LEGEND

THE OFFER AND SALE OF THIS NOTE AND THE RELATED GUARANTEE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND THIS NOTE 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 THE COMPANY THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS NOTE OR ANY BENEFICIAL INTEREST HEREIN, EXCEPT ONLY:
 - (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF;
 - (B) PURSUANT TO A REGISTRATION STATEMENT THAT IS EFFECTIVE UNDER THE SECURITIES ACT;
 - (C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT;
 - (D) PURSUANT TO RULE 144 UNDER THE SECURITIES ACT; OR
 - (E) PURSUANT TO ANY OTHER EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

BEFORE THE REGISTRATION OF ANY SALE OR TRANSFER IN ACCORDANCE WITH (2)(C), (D) OR (E) ABOVE, THE COMPANY, THE TRUSTEE AND THE REGISTRAR RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH CERTIFICATES OR OTHER DOCUMENTATION OR EVIDENCE AS THEY MAY REASONABLY REQUIRE IN ORDER FOR THE COMPANY TO DETERMINE THAT THE PROPOSED SALE OR TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS.

THE FOLLOWING INFORMATION IS SUPPLIED SOLELY FOR U.S. FEDERAL INCOME TAX PURPOSES. THIS NOTE WAS ISSUED WITH ORIGINAL ISSUE DISCOUNT (“OID”) WITHIN THE MEANING OF SECTION 1273 OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”), AND THIS LEGEND IS REQUIRED BY SECTION 1275(c) OF THE CODE. HOLDERS MAY OBTAIN INFORMATION

REGARDING THE AMOUNT OF ANY OID, THE ISSUE PRICE, THE ISSUE DATE, AND THE YIELD TO MATURITY RELATING TO THIS NOTE BY CONTACTING THE COMPANY AT LUMINAR TECHNOLOGIES, INC., 2603 DISCOVERY DRIVE, SUITE 100, ORLANDO, FL 32826, ATTENTION: CHIEF FINANCIAL OFFICER.

EXHIBIT B-2

FORM OF GLOBAL NOTE LEGEND

THIS IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITARY OR A NOMINEE OF THE DEPOSITARY, WHICH MAY BE TREATED BY THE COMPANY, THE TRUSTEE AND ANY AGENT THEREOF AS THE OWNER AND HOLDER OF THIS NOTE FOR ALL PURPOSES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (“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 HEREON 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 SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL NOTE WILL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC, OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR’S NOMINEE, AND TRANSFERS OF PORTIONS OF THIS GLOBAL NOTE WILL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN ARTICLE 2 OF THE INDENTURE HEREINAFTER REFERRED TO.

THE FOLLOWING INFORMATION IS SUPPLIED SOLELY FOR U.S. FEDERAL INCOME TAX PURPOSES. THIS NOTE WAS ISSUED WITH ORIGINAL ISSUE DISCOUNT (“OID”) WITHIN THE MEANING OF SECTION 1273 OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”), AND THIS LEGEND IS REQUIRED BY SECTION 1275(c) OF THE CODE. HOLDERS MAY OBTAIN INFORMATION REGARDING THE AMOUNT OF ANY OID, THE ISSUE PRICE, THE ISSUE DATE, AND THE YIELD TO MATURITY RELATING TO THIS NOTE BY CONTACTING THE COMPANY AT LUMINAR TECHNOLOGIES, INC., 2603 DISCOVERY DRIVE, SUITE 100, ORLANDO, FL 32826, ATTENTION: CHIEF FINANCIAL OFFICER.

B2-1

EXHIBIT B-3

FORM OF NON-AFFILIATE LEGEND

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT OF 1933, AS AMENDED) OF THE COMPANY OR PERSON THAT HAS BEEN AN AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT OF 1933, AS AMENDED) OF THE COMPANY DURING THE PRECEDING THREE MONTHS MAY PURCHASE, OTHERWISE ACQUIRE OR HOLD THIS SECURITY OR A BENEFICIAL INTEREST HEREIN.

B3-1

EXHIBIT C

FORM OF SUPPLEMENTAL INDENTURE

(TO BE DELIVERED BY SUBSEQUENT SUBSIDIARY GUARANTORS)

[] Supplemental Indenture (this “**Supplemental Indenture**”), dated as of [] among Luminar Technologies, Inc. (the “**Company**”), [] (the “**Guaranteeing Subsidiary**”), a subsidiary of the Company, and GLAS Trust Company LLC, as trustee (in such capacity, the “**Trustee**”) and as collateral agent (in such capacity, the “**Collateral Agent**”).

WITNESETH

WHEREAS, the Company has heretofore executed and delivered to the Trustee and the Collateral Agent an Indenture (as amended, modified or supplemented from time to time, the “**Indenture**”), dated as of August 8, 2024, providing for the issuance of Floating Rate Senior Secured Notes due 2028, the “**Notes**”);

WHEREAS, the Indenture provides that under certain circumstances the Guaranteing Subsidiary shall execute and deliver to the Trustee and the Collateral Agent a supplemental indenture pursuant to which the Guaranteing 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**”); and

WHEREAS, pursuant to **Section 8.01(B)** of the Indenture, the Trustee and the Collateral Agent are authorized to execute and deliver this Supplemental Indenture without the consent of Holders.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties mutually covenant and agree for the equal and ratable benefit of the 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 Guaranteing Subsidiary hereby agrees to be a Subsidiary Guarantor under the Indenture and to be bound by the terms of the Indenture applicable to Subsidiary Guarantors, including **Article 12** thereof. By its signature below, the Guaranteing Subsidiary becomes (I) a Subsidiary Guarantor under the Indenture with the same force and effect as if originally named therein as a Subsidiary Guarantor and the Guaranteing Subsidiary hereby (a) agrees to all the terms and provisions of the Indenture applicable to it as a Subsidiary Guarantor thereunder and (b) represents and warrants that the representations and warranties made by it as a Subsidiary Guarantor thereunder are true and correct in all material respects on and as of the date hereof and (II) bound under the Indenture as a Subsidiary Guarantor and the Guaranteing Subsidiary hereby (a) agrees to all the terms and provisions of the Indenture applicable to it as a Subsidiary guarantor thereunder and (b) represents and warrants that the representations and warranties made by it as a Subsidiary Guarantor thereunder

are true and correct in all material respects on and as of the date hereof), *provided* that in each case of clause (I)(b) and (II)(b), to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date. Each reference to a “Subsidiary Guarantor” in the Indenture shall be deemed to include the Guaranteeing Subsidiary as if originally named therein as a Subsidiary Guarantor.

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. Governing Law. THIS SUPPLEMENTAL INDENTURE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

5. Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy will be an original, and all of them together represent the same agreement. Delivery of an executed counterpart of this Supplemental Indenture by facsimile, electronically in portable document format or in any other format will be effective as delivery of a manually executed counterpart.

6. Effect of Headings. The headings of the Sections of this Supplemental Indenture have been inserted for convenience of reference only, are not to be considered a part of this Supplemental Indenture and will in no way modify or restrict any of the terms or provisions of this Supplemental Indenture.

7. The Trustee and the 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 or for or in respect of the recitals contained herein, all of which recitals are made solely by the Guaranteeing Subsidiary.

8. Ratification of Indenture; Supplemental Indenture Part of Indenture. Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. This Supplemental Indenture shall form a part of the Indenture for all purposes, and every Holder heretofore or hereafter authenticated and delivered shall be bound hereby.

9. Representations and Warranties by Guaranteeing Subsidiary. The Guaranteeing Subsidiary hereby represents and warrants to the Trustee and the Collateral Agent that this Supplemental Indenture has been duly and validly executed and delivered by it and constitutes its valid and binding obligation, enforceable against it in accordance with its terms and the terms of the Indenture.

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

LUMINAR TECHNOLOGIES, INC.

By: _____
Name:
Title:

[GUARANTEEING SUBSIDIARY]

By: _____
Name:
Title:

GLAS Trust Company LLC, AS TRUSTEE AND
COLLATERAL AGENT

By: _____
Name:
Title:

LUMINAR TECHNOLOGIES, INC.,
as Issuer,

THE SUBSIDIARY GUARANTORS PARTY HERETO,
as Guarantors,

and

GLAS TRUST COMPANY LLC,
as Trustee and Collateral Agent

SECOND LIEN INDENTURE

Dated as of August 8, 2024

9.0% Convertible Second Lien Senior Secured Notes due 2030
11.5% Convertible Second Lien Senior Secured Notes due 2030

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1. DEFINITIONS; RULES OF CONSTRUCTION	1
SECTION 1.01. DEFINITIONS	1
SECTION 1.02. OTHER DEFINITIONS	32
SECTION 1.03. RULES OF CONSTRUCTION	32
ARTICLE 2. THE NOTES	33
SECTION 2.01. FORM, DATING AND DENOMINATIONS	33
SECTION 2.02. EXECUTION, AUTHENTICATION AND DELIVERY	34
SECTION 2.03. INITIAL NOTES AND ADDITIONAL NOTES	34
SECTION 2.04. METHOD OF PAYMENT	35
SECTION 2.05. ACCRUAL OF INTEREST; DEFAULTED AMOUNTS; WHEN PAYMENT DATE IS NOT A BUSINESS DAY	36
SECTION 2.06. REGISTRAR, PAYING AGENT AND CONVERSION AGENT	37
SECTION 2.07. PAYING AGENT AND CONVERSION AGENT TO HOLD PROPERTY IN TRUST	37
SECTION 2.08. HOLDER LISTS	38
SECTION 2.09. LEGENDS	38
SECTION 2.10. TRANSFERS AND EXCHANGES; CERTAIN TRANSFER RESTRICTIONS	39
SECTION 2.11. EXCHANGE AND CANCELLATION OF NOTES TO BE CONVERTED OR TO BE REPURCHASED PURSUANT TO AN ASSET SALE OFFER, A REPURCHASE UPON FUNDAMENTAL CHANGE OR REDEMPTION	44
SECTION 2.12. REPLACEMENT NOTES	45
SECTION 2.13. REGISTERED HOLDERS; CERTAIN RIGHTS WITH RESPECT TO GLOBAL NOTES	45
SECTION 2.14. CANCELLATION	46
SECTION 2.15. NOTES HELD BY THE COMPANY OR ITS AFFILIATES	46
SECTION 2.16. TEMPORARY NOTES	46
SECTION 2.17. OUTSTANDING NOTES	47
SECTION 2.18. REPURCHASES BY THE COMPANY	48
SECTION 2.19. CUSIP AND ISIN NUMBERS	48
SECTION 2.20. BENEFICIAL OWNERSHIP LIMITATION	48

ARTICLE 3.	COVENANTS	50
SECTION 3.01.	PAYMENT ON NOTES.....	50
- i -		
SECTION 3.02.	EXCHANGE ACT REPORTS; RULE 144A INFORMATION	51
SECTION 3.03.	FINANCIAL REPORTING INFORMATION.....	51
SECTION 3.04.	ADDITIONAL INTEREST	54
SECTION 3.05.	COMPLIANCE AND DEFAULT CERTIFICATES.....	54
SECTION 3.06.	STAY, EXTENSION AND USURY LAWS.....	55
SECTION 3.07.	ACQUISITION OF NOTES BY THE COMPANY AND ITS AFFILIATES	55
SECTION 3.08.	CORPORATE EXISTENCE.....	55
SECTION 3.09.	LIMITATION ON INCURRENCE OF INDEBTEDNESS	56
SECTION 3.10.	LIMITATION ON LIENS.....	60
SECTION 3.11.	LIMITATION ON RESTRICTED PAYMENTS	60
SECTION 3.12.	LIMITATION ON ASSET SALES	63
SECTION 3.13.	TRANSACTIONS WITH AFFILIATES.....	66
SECTION 3.14.	BURDENSOME AGREEMENTS	68
SECTION 3.15.	MODIFICATION OF TERMS OF OTHER INDEBTEDNESS	68
SECTION 3.16.	MINIMUM LIQUIDITY	68
SECTION 3.17.	[RESERVED].....	69
SECTION 3.18.	FURTHER INSTRUMENTS AND ACTS	69
SECTION 3.19.	ADDITIONAL SUBSIDIARY GUARANTORS.....	69
SECTION 3.20.	FURTHER ASSURANCES.....	69
SECTION 3.21.	PAYMENT FOR CONSENT.....	71
ARTICLE 4.	REPURCHASE AND REDEMPTION	71
SECTION 4.01.	NO SINKING FUND	71
SECTION 4.02.	RIGHT OF HOLDERS TO REQUIRE THE COMPANY TO REPURCHASE NOTES UPON A FUNDAMENTAL CHANGE.....	71
SECTION 4.03.	RIGHT OF THE COMPANY TO REDEEM THE NOTES	76
SECTION 4.04.	MAKE-WHOLE PREMIUM.....	79
ARTICLE 5.	CONVERSION.....	82
SECTION 5.01.	RIGHT TO CONVERT	82
SECTION 5.02.	CONVERSION PROCEDURES.....	83

SECTION 5.03.	SETTLEMENT UPON CONVERSION	85
SECTION 5.04.	RESERVE AND STATUS OF COMMON STOCK ISSUED UPON CONVERSION.....	88
SECTION 5.05.	ADJUSTMENTS TO THE CONVERSION RATE	89
SECTION 5.06.	VOLUNTARY ADJUSTMENTS	99

- ii -

SECTION 5.07.	ADJUSTMENTS TO THE CONVERSION RATE IN CONNECTION WITH A MAKE-WHOLE FUNDAMENTAL CHANGE	100
SECTION 5.08.	EXCHANGE IN LIEU OF CONVERSION	101
SECTION 5.09.	EFFECT OF COMMON STOCK CHANGE EVENT	102
ARTICLE 6.	SUCCESSORS	104
SECTION 6.01.	WHEN THE COMPANY MAY MERGE OR TRANSFER ASSETS	104
SECTION 6.02.	WHEN THE SUBSIDIARY GUARANTORS MAY MERGE OR TRANSFER ASSETS	105
ARTICLE 7.	DEFAULTS AND REMEDIES	106
SECTION 7.01.	EVENTS OF DEFAULT	106
SECTION 7.02.	ACCELERATION.....	109
SECTION 7.03.	SOLE REMEDY FOR A FAILURE TO REPORT	111
SECTION 7.04.	OTHER REMEDIES	112
SECTION 7.05.	WAIVER OF PAST DEFAULTS.....	112
SECTION 7.06.	CONTROL BY REQUIRED HOLDERS	112
SECTION 7.07.	LIMITATION ON SUITS	113
SECTION 7.08.	ABSOLUTE RIGHT OF HOLDERS TO INSTITUTE SUIT FOR THE ENFORCEMENT OF THE RIGHT TO RECEIVE PAYMENT AND CONVERSION CONSIDERATION.....	113
SECTION 7.09.	COLLECTION SUIT BY TRUSTEE	113
SECTION 7.10.	TRUSTEE MAY FILE PROOFS OF CLAIM.....	114
SECTION 7.11.	PRIORITIES	114
SECTION 7.12.	UNDERTAKING FOR COSTS.....	115
ARTICLE 8.	AMENDMENTS, SUPPLEMENTS AND WAIVERS	115
SECTION 8.01.	WITHOUT THE CONSENT OF HOLDERS	115
SECTION 8.02.	WITH THE CONSENT OF HOLDERS.....	116
SECTION 8.03.	NOTICE OF AMENDMENTS, SUPPLEMENTS AND WAIVERS	118

SECTION 8.03.	NOTICE OF AMENDMENTS, SUPPLEMENTS AND WAIVERS.....	118
SECTION 8.04.	REVOCATION, EFFECT AND SOLICITATION OF CONSENTS; SPECIAL RECORD DATES; ETC	118
SECTION 8.05.	NOTATIONS AND EXCHANGES.....	119
SECTION 8.06.	TRUSTEE AND COLLATERAL AGENT TO EXECUTE SUPPLEMENTAL INDENTURES	119
SECTION 8.07.	ADDITIONAL VOTING TERMS; CALCULATION OF PRINCIPAL AMOUNT	119
ARTICLE 9.	SATISFACTION AND DISCHARGE.....	120

SECTION 9.01.	TERMINATION OF COMPANY’S OBLIGATIONS	120
SECTION 9.02.	REPAYMENT TO COMPANY	120
SECTION 9.03.	REINSTATEMENT.....	121
ARTICLE 10.	TRUSTEE AND COLLATERAL AGENT.....	121
SECTION 10.01.	DUTIES OF THE TRUSTEE.....	121
SECTION 10.02.	RIGHTS OF THE TRUSTEE.....	122
SECTION 10.03.	INDIVIDUAL RIGHTS OF THE TRUSTEE.....	124
SECTION 10.04.	TRUSTEE’S DISCLAIMER	125
SECTION 10.05.	NOTICE OF DEFAULTS	125
SECTION 10.06.	COMPENSATION AND INDEMNITY	125
SECTION 10.07.	REPLACEMENT OF THE TRUSTEE	126
SECTION 10.08.	SUCCESSOR TRUSTEE BY MERGER, ETC.....	127
SECTION 10.09.	ELIGIBILITY; DISQUALIFICATION	127
ARTICLE 11.	COLLATERAL AND SECURITY	127
SECTION 11.01.	SECURITY INTEREST; COLLATERAL AGENT	127
SECTION 11.02.	AUTHORIZATION OF ACTIONS TO BE TAKEN BY THE TRUSTEE OR THE COLLATERAL AGENT UNDER THE COLLATERAL DOCUMENTS.....	132
SECTION 11.03.	AUTHORIZATION OF RECEIPT OF FUNDS BY THE TRUSTEE UNDER THE COLLATERAL DOCUMENTS	133
SECTION 11.04.	TERMINATION OF SECURITY INTEREST; RELEASE OF COLLATERAL	133
SECTION 11.05.	MAINTENANCE OF COLLATERAL.....	135
SECTION 11.06.	COLLATERAL AGENT; COLLATERAL DOCUMENTS.....	135
SECTION 11.07.	REPLACEMENT OF COLLATERAL AGENT	136
SECTION 11.08.	ACCEPTANCE BY COLLATERAL AGENT	137
SECTION 11.09.	POWERS EXERCISABLE BY RECEIVER OR TRUSTEE	137
ARTICLE 12.	GUARANTEES.....	138
SECTION 12.01.	GUARANTEE.....	138
SECTION 12.02.	LIMITATION ON GUARANTOR LIABILITY	140
SECTION 12.03.	EXECUTION AND DELIVERY	140
SECTION 12.04.	WHEN A SUBSIDIARY GUARANTOR MAY MERGE, ETC.....	141
SECTION 12.05.	BENEFITS ACKNOWLEDGED	141
SECTION 12.06.	RELEASE OF GUARANTEES.....	141
ARTICLE 13.	MISCELLANEOUS	142

SECTION 13.01. NOTICES.....	142
SECTION 13.02. DELIVERY OF OFFICER’S CERTIFICATE AND OPINION OF COUNSEL AS TO CONDITIONS PRECEDENT	144
SECTION 13.03. STATEMENTS REQUIRED IN OFFICER’S CERTIFICATE AND OPINION OF COUNSEL	144
SECTION 13.04. RULES BY THE TRUSTEE, THE COLLATERAL AGENT, THE REGISTRAR, THE PAYING AGENT AND THE CONVERSION AGENT.....	145
SECTION 13.05. NO PERSONAL LIABILITY OF DIRECTORS, OFFICERS, EMPLOYEES AND STOCKHOLDERS	145
SECTION 13.06. GOVERNING LAW; WAIVER OF JURY TRIAL.....	145
SECTION 13.07. SUBMISSION TO JURISDICTION	145
SECTION 13.08. NO ADVERSE INTERPRETATION OF OTHER AGREEMENTS.....	146
SECTION 13.09. SUCCESSORS	146
SECTION 13.10. FORCE MAJEURE.....	146
SECTION 13.11. U.S.A. PATRIOT ACT	146
SECTION 13.12. CALCULATIONS.....	146
SECTION 13.13. SEVERABILITY	147
SECTION 13.14. COUNTERPARTS	147
SECTION 13.15. TABLE OF CONTENTS, HEADINGS, ETC	148
SECTION 13.16. INTERCREDITOR AGREEMENT	148

Exhibits

Exhibit A: Form of Note	A-1
Exhibit B-1-A: Form of Restricted Note Legend (Non-Affiliate Note)	B1A-1
Exhibit B-1-B: Form of Restricted Note Legend (Affiliate Note).....	B1B-1
Exhibit B-2: Form of Global Note Legend.....	B2-1
Exhibit B-3: Form of Non-Affiliate Legend.....	B3-1
Exhibit C: Form of Supplemental Indenture.....	C-1
Exhibit D: Form of Pre-Funded Warrant	D-1

SECOND LIEN INDENTURE, dated as of August 8, 2024, between Luminar Technologies, Inc., a Delaware corporation, as issuer (the “**Company**”), the Subsidiary Guarantors from time to time party hereto, and GLAS Trust Company LLC, as trustee (in such capacity, the “**Trustee**”) and as collateral agent (in such capacity, the “**Collateral Agent**”).

Each party to this Indenture (as defined below) agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Holders (as defined below) of the Company’s 9.0% Convertible Second Lien Senior Secured Notes due 2030 (the “**Series 1 Notes**”) and 11.5% Convertible Second Lien Senior Secured Notes due 2030 (the “**Series 2 Notes**” and, together with the Series 1 Notes, the “**Notes**”).

Article 1. DEFINITIONS; RULES OF CONSTRUCTION

Section 1.01. DEFINITIONS.

“**Additional Interest**” means any interest that accrues on any Note pursuant to **Section 3.03**.

“**Additional Notes**” means additional Notes of a series (other than the Initial Notes of such series) issued under this Indenture in accordance with **Section 2.03** and **Section 3.09** hereof, as part of the same series as the Initial Notes of such series.

“**Affiliate**” has the meaning set forth in Rule 144 as in effect on the Issue Date.

“**Affiliate Note**” means any Note, which shall initially be a Physical Note, issued under this Indenture to, and initially registered in the name of, an Affiliate of the Company, and any Notes issued in exchange therefor or in substitution thereof; *provided, however*, that a Note that is an Affiliate Note will cease to be an Affiliate Note at such time, if any, when such Note ceases to be a Transfer-Restricted Security. For the avoidance of doubt, each Affiliate Note shall be deemed to be a Transfer-Restricted Security until such time until it ceases to be so in accordance with such definition. Neither the Trustee nor the Collateral Agent is under any obligation to determine or inquire whether any Note is an Affiliate Note and may conclusively rely on an Officer’s Certificate with respect thereto.

“**Affiliated Party**” means, with respect to any natural person, (i) any company, partnership, trust or other entity for which such natural person (or such natural person’s estate) has dispositive or voting power with respect to the Company’s Capital Stock held by such company, partnership, trust or other entity; (ii) any trust the beneficiaries of which consist solely of such natural person, any Family Member of such natural person or any person described in **clause (i)**; (iii) the trustees, legal representatives, beneficiaries or beneficial owners (in each case, solely in

such capacity and not in their individual or other capacities) of any such company, partnership, trust or other entity referred to in **clause (i)** or **(ii)**; (iv) the estate of such natural person (it being understood, for the avoidance of doubt, that this **clause (iv)** will not include any person to whom any securities are transferred from any such estate); and (v) the Family Members of such natural person.

“**Approved Jurisdiction**” means the United States, any state or commonwealth thereof or the District of Columbia.

- 1 -

“**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 outside the ordinary course of business of the Company or any Subsidiary;

(B) any license of Intellectual Property; or

(C) 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 or Disqualified Stock) of any Subsidiary (other than to the Company or another 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 or commercially reasonable to maintain in the conduct of the business of the Company and its Subsidiaries, taken as a whole;

(ii) any Disposition of all or substantially all of the assets of the Company in a manner permitted pursuant to, and subject to, **Article 6**, or any Disposition that constitutes a Fundamental Change;

(iii) any transaction specifically excluded from the definition of Investment or Restricted Payment or any Permitted Investment (other than as a result of the application of clause (D) or clause (T) of such definition) or any Restricted Payment permitted under the provisions of **Section 3.11(B)** (other than **clause (xiii)** thereof);

(iv) Dispositions between or among the Company and its Wholly-Owned Subsidiaries (not to exceed, in the case of any such Dispositions by Wholly-Owned Subsidiaries that are Subsidiary Guarantors to any Non-Guarantor Subsidiaries, Dispositions of assets in excess of \$2,750,000 in the aggregate for so long as the Obligations under the Notes are outstanding);

(v) any settlement of or payment in respect of any property or casualty

(v) any settlement or payment in respect of any property or casualty insurance claim or any foreclosure, condemnation, expropriation or similar proceeding relating to any property or assets of the Company or any of its Subsidiaries;

(vi) any sale or Disposition deemed to occur in connection with the granting or creation of any Permitted Lien;

(vii) issuances of Capital Stock of the Company that is not Disqualified Stock pursuant to benefit plans, employment agreements, equity plans, stock subscription or shareholder agreements, stock ownership plans and other similar plans, policies, contracts or arrangements established in the ordinary course of business or approved by the Board of Directors in good faith;

(viii) the lease, assignment, license, sublicense or sublease of any real or personal property (other than Intellectual Property and, for the sake of clarity, any related distribution or commercialization rights) in the ordinary course of business or consistent with industry practice;

(ix) 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;

(x) 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 of joint ventures;

(xi) the sale, exchange or other Disposition of cash or Cash Equivalents or marketable securities in the ordinary course of business;

(xii) the lapse, abandonment or other Disposition of Intellectual Property (other than Material Intellectual Property) by the Company and its Subsidiaries in the ordinary course of business;

(xiii) the unwinding of any Swap Agreement; or

(xiv) Dispositions of up to \$275,000 in any single transaction or series of related transactions not to exceed \$5,500,000 in the aggregate for so long as the Notes are outstanding.

“**Authorized Denomination**” means, with respect to a Note, a principal amount thereof equal to a minimum of \$1,000 or any integral multiple of \$1,000 in excess thereof.

“**Bankruptcy Law**” means Title 11, United States Code, or any similar U.S. federal or state or non-U.S. law for the relief of debtors.

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

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

“**Capital Lease Obligations**” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

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

“Cash Equivalents” means:

(A) (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 720 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;

(B) (i) corporate debt issued by any Person organized under the laws of any state of the United States of America or (b) United States dollar denominated corporate debt issued by any Person organized under the laws of any territory of Canada, in each case rated at least “Prime-2” (or the then equivalent grade) by Moody’s or at least “A-2” (or the then equivalent grade) by S&P (or, if at any time neither Moody’s nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency), in each case with maturities of not more than 365 days from the date of acquisition thereof;

(C) time and demand deposits with, or certificates of deposit or bankers’ acceptances of, any commercial bank that has combined capital and surplus of at least \$500,000,000;

(D) fully collateralized repurchase agreements with a term of not more than thirty (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;

(E) commercial paper maturing within (i) 180 days from the date of acquisition thereof and having, at such date of acquisition, a rating of at least P-2 or A-2 from either Moody’s or S&P or (ii) 365 days from the date of acquisition thereof and having, at such date of acquisition, a rating of at least P-1 or A-1 from either Moody’s or S&P;

(F) marketable short-term money market and similar liquid funds having a rating of at least P-2 or A-2 from either Moody’s or S&P, respectively (or, if at any time neither Moody’s nor S&P shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency);

(G) securities issued or fully guaranteed by any state, commonwealth or territory of the United States of America or by any political subdivision (including any municipality) or taxing authority of any such state, commonwealth or territory, the securities of which state, commonwealth, territory, political subdivision or taxing authority (as the case may be) are rated at least “A” (or A-1, SP1 or other then equivalent grade) by S&P or at least “A1” (or “Prime-1” or MIG-1 or other then equivalent grade) by Moody’s as of the date of acquisition and, in each case, with a maturity of not more than one year from the date of acquisition thereof;

(H) Investments, classified in accordance with GAAP as current assets, 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 invest solely in one or more of the types of securities described in **clauses (A) through (G)** above; and

- 4 -

(I) in the case of a Subsidiary incorporated, organized or formed outside the United States, other short-term investments that are analogous to the foregoing, are of comparable credit quality and are customarily used by companies in the jurisdiction of such Subsidiary for cash management purposes.

“Cash Settlement” means (a) with respect to the Conversion Settlement Method applicable to any conversion of any given series of Notes, that the Company shall have elected, in accordance with **Section 5.03(A)**, to settle such conversion solely in cash as provided in **Section 5.03(B)(i)(2)**; and (b) with respect to the Make-Whole Premium Settlement Method applicable to any Make-Whole Premium that becomes due, that the Company shall have elected (or been deemed to have elected), in accordance with **Section 4.04(A)**, to settle the Make-Whole Premium solely in cash as provided in **Section 4.04(B)(i)(2)**.

“CFC” means a Foreign Subsidiary that is a “controlled foreign corporation” within the meaning of section 957(a) of the Code, the dividends of which are not entitled to the dividends received deduction under Section 245A of the Code.

“Class B Common Stock” means the Class B common stock, \$0.0001 par value per share, of the Company at the date of this Indenture.

“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 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 (as defined in the Security Agreement).

“Collateral Agent” means the Person named as the “Collateral Agent” in the first paragraph of this Indenture, acting in such capacity, 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, account control agreement, pledge agreement and related agreements (including, without limitation, any mortgages), as amended, supplemented, restated, renewed, refunded, replaced, restructured, repaid, refinanced, or otherwise modified from time to time, creating, perfecting or otherwise evidencing the security interests granted by the Company or any Subsidiary Guarantor in favor of the Collateral Agent and executed and delivered pursuant to the

Notes Documents to secure any of the Obligations in respect of the Notes.

“**Combination Settlement**” means, with respect to the Conversion Settlement Method applicable to any conversion of any given series of Notes, that the Company shall have elected (or been deemed to have elected), in accordance with **Section 5.03(A)**, to settle such conversion in a combination of cash and shares of Common Stock, together, if applicable, with cash in lieu of fractional shares as provided in **Section 5.03(B)(i)(3)**.

- 5 -

“**Common Stock**” means the Class A common stock, \$0.0001 par value per share, of the Company, subject to **Section 5.09**.

“**Company**” means the Person named as such in the first paragraph of this Indenture and, subject to **Article 6**, its successors and assigns.

“**Company Order**” means a written request or order signed on behalf of the Company by one (1) of its Officers and delivered to the Trustee.

“**Contingent Obligations**” means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other obligations that do not constitute Indebtedness (“primary obligations”) of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent: (a) to purchase any such primary obligation or any property constituting direct or indirect security therefor; (b) to advance or supply funds for the purchase or payment of any such primary obligation or to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or (c) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation against loss in respect thereof.

“**Conversion Date**” means, with respect to a Note, the first Business Day on which the requirements set forth in **Section 5.02(A)** to convert such Note are satisfied, subject to **Section 5.03(C)**.

“**Conversion Price**” means, as of any time, an amount equal to (A) one thousand dollars (\$1,000) *divided by* (B) the Conversion Rate in effect at such time.

“**Conversion Rate**” initially means (A) with respect to the Series 1 Notes, 687.8525 shares of Common Stock per \$1,000 principal amount of Series 1 Notes; and (B) with respect to the Series 2 Notes, 412.7115 shares of Common Stock per \$1,000 principal amount of Series 2 Notes; *provided, however*, that the Conversion Rate is subject to adjustment pursuant to **Article 5**; *provided, further*, that whenever this Indenture refers to the Conversion Rate as of a particular date without setting forth a particular time on such date, such reference will be deemed to be to the Conversion Rate immediately after the Close of Business on such date.

“**Conversion Settlement Method**” means Cash Settlement, Physical Settlement or

Combination Settlement.

“**Conversion Share**” means any share of Common Stock issued or issuable upon conversion of any Note.

“**Daily Cash Amount**” means, with respect to any VWAP Trading Day, the lesser of (A) the applicable Daily Maximum Cash Amount; and (B) the Daily Conversion Value for such VWAP Trading Day.

“**Daily Conversion Value**” means, with respect to any VWAP Trading Day, one-fortieth (1/40th) of the product of (A) the Conversion Rate on such VWAP Trading Day; and (B) the Daily VWAP per share of Common Stock on such VWAP Trading Day.

“**Daily Maximum Cash Amount**” means, with respect to the conversion of any Note, the quotient obtained by dividing (A) the Specified Dollar Amount applicable to such conversion by (B) forty (40).

“**Daily Share Amount**” means, with respect to any VWAP Trading Day, the quotient obtained by dividing (A) the excess, if any, of the Daily Conversion Value for such VWAP Trading Day over the applicable Daily Maximum Cash Amount by (B) the Daily VWAP for such VWAP Trading Day. For the avoidance of doubt, the Daily Share Amount will be zero for such VWAP Trading Day if such Daily Conversion Value does not exceed such Daily Maximum Cash Amount.

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

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

“**Default Settlement Method**” means, with respect to each series of Notes, Physical Settlement; *provided, however*, that (x) subject to **Section 5.03(A)(iii)**, the Company may, from time to time, change the Default Settlement Method for the Notes of any series by sending notice of the new Default Settlement Method to the Holders of such series of Notes, the Trustee and the Conversion Agent; and (y) the Default Settlement Method will be subject to **Section 5.03(A)(ii)**.

“**Depository**” means The Depository Trust Company or its successor.

“**Depository Participant**” means any member of, or participant in, the Depository.

“**Depository Procedures**” means, with respect to any conversion, transfer, exchange or other transaction involving a Global Note or any beneficial interest therein, including notices to Indirect Participants and any consent solicitations through the Depository, the rules and procedures of the Depository applicable to such conversion, transfer, exchange or transaction. For the avoidance of doubt, the Trustee shall have no responsibility for the actions or inactions of the Depository pursuant to its Depository Procedures.

“**Disposition**” or “**Dispose**” means the sale, transfer, issuance, license, sublicense, lease, contribution or other disposition (including any sale and leaseback transaction or any contribution or other transfer in exchange for an Investment), whether in one transaction or in a series of transactions, of any property or assets (including, without limitation, any issuance or other disposition of Capital Stock of any Subsidiary of the Company but excluding the issuance of Capital Stock of the Company) by any Person (or the granting of any option or other right to do

recourse, of any notes or accounts receivable or any rights and claims associated therewith; *provided*, that non-exclusive licenses or sublicenses of Intellectual Property or any related distribution or commercialization rights in the ordinary course of business and on an arms' length basis granting rights to third-party contract manufacturers or distributors solely for the purpose of manufacturing or distribution shall not constitute a Disposition.

"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 one hundred and eighty (180) 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); *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 redemption provisions of, such Disqualified Stock or portion thereof, plus accrued dividends. Notwithstanding the foregoing, Disqualified Stock shall include all Preferred Stock of the Company's Subsidiaries.

"Ex-Dividend Date" means, with respect to an issuance, dividend or distribution on the Common Stock, the first date on which shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive such issuance, dividend or distribution (including pursuant to due bills or similar arrangements required by the relevant stock exchange). For the avoidance of doubt, any alternative trading convention on the applicable exchange or market in respect of the Common Stock under a separate ticker symbol or CUSIP number will not be considered "regular way" for this purpose.

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

"Exchange Agreement" means the Exchange Agreement, dated as of August 6, 2024, among the Company, the Subsidiary Guarantors party thereto and the Holders (as defined therein) signatory thereto.

"Excluded Subsidiary" means, as of any date, (A) any Immaterial Subsidiary; (B) any Subsidiary 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 (so long as in respect of

any such contractual prohibition such prohibition is not incurred in contemplation of such acquisition), in each case, from providing a Guarantee or granting security or which would require governmental (including regulatory) consent, approval, license or authorization to provide a Guarantee or to grant security unless such consent, approval, license or authorization has been

- 8 -

received; (C) any other Subsidiary with respect to which the Required Holders agree in writing that the cost or other consequences of providing a guarantee is likely to be excessive in relation to the value to be afforded to the Holders thereby; and (D) the Luminar China Subsidiary; *provided*, that no Subsidiary that is a co-borrower or guarantor of any Indebtedness of a Note Party shall be an Excluded Subsidiary; and *provided, further* that no Foreign Subsidiary organized in a country where a Subsidiary Guarantor is organized shall be an Excluded Subsidiary on the basis of being an Immaterial Subsidiary unless such Foreign Subsidiary would be deemed an Immaterial Subsidiary if it were not a Foreign Subsidiary.

“Exempted Fundamental Change” means any Fundamental Change with respect to which, in accordance with **Section 4.02(I)**, the Company does not offer to repurchase any Notes.

“Existing Convertible Notes” means the Company’s 1.25% Convertible Senior Notes due 2026 issued pursuant to the indenture dated as of December 17, 2021, between the Company and U.S. Bank National Association, as trustee.

“Fair Market Value” means the value that would be paid by a willing buyer or licensor to an unaffiliated willing seller or licensee in a transaction not involving distress or necessity of either party, reasonably determined in good faith by the Board of Directors.

“Family Member” means, with respect to any individual, any other individual having a relationship by blood (to the second degree of consanguinity), marriage (including former spouses), domestic partnership (including former domestic partners) or adoption to such individual.

“First Lien Indebtedness” means Indebtedness governed by the First Lien Indenture.

“First Lien Indenture” means that certain Indenture, dated as of the date hereof, by and among the Company and certain other Subsidiaries of the Company party thereto from time to time, the trustee thereunder, and the collateral agent named therein, as may be amended, amended and restated or modified, in each case, to the extent permitted by this Indenture and the Intercreditor Agreement.

“Foreign Subsidiary” means a Subsidiary not organized or existing under the laws of the United States of America or any state or commonwealth thereof or the District of Columbia that is a CFC or substantially all of the assets and operations of which are located outside of the United States of America. For the avoidance of doubt, any Subsidiary incorporated or organized under the laws of a territory of the United States (including the Commonwealth of Puerto Rico) that meets the foregoing criteria shall constitute a “Foreign Subsidiary”.

“**Freely Tradable**” means, with respect to any security of the Company, that such security would be eligible to be offered, sold or otherwise transferred pursuant to Rule 144 if held by a Person that is not an Affiliate of the Company, and that has not been an Affiliate of the Company during the immediately preceding three (3) months, without any requirements as to volume, manner of sale, availability of current public information or notice under the Securities Act (except that any such requirement as to the availability of current public information will be disregarded if the same is satisfied at that time)

- 9 -

“**Fundamental Change**” means any of the following events:

(A) (i) a “person” or “group” (within the meaning of Section 13(d)(3) of the Exchange Act), other than the Company or its Wholly-Owned Subsidiaries, or their respective employee benefit plans, or any Permitted Party, files any report with the SEC indicating that such person or group has become the direct or indirect “beneficial owner” (as defined below) of shares of the Common Stock representing more than fifty percent (50%) of the voting power of all of the Company’s Common Stock; or (ii) a “person” or “group” (within the meaning of Section 13(d)(3) of the Exchange Act) files any report with the SEC indicating that such person or group has become the direct or indirect “beneficial owner” (as defined below) of shares of the Common Stock representing more than 50% of the outstanding shares of the Common Stock (excluding, solely for purposes of **clause (ii)**, any of the Common Stock that such “person” or “group”, as applicable, beneficially owns solely by virtue of its beneficial ownership of the Class B Common Stock);

(B) the consummation of (i) any sale, lease or other transfer, in one transaction or a series of transactions, of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person, other than solely to one or more of the Company’s Wholly-Owned Subsidiaries; or (ii) any transaction or series of related transactions in connection with which (whether by means of merger, consolidation, share exchange, combination, reclassification, recapitalization, acquisition, liquidation or otherwise) all of the Common Stock is exchanged for, converted into, acquired for, or constitutes solely the right to receive, other securities, cash or other property; *provided, however*, that any merger, consolidation, share exchange or combination of the Company pursuant to which the Persons that directly or indirectly “beneficially owned” (as defined below) all classes of the Company’s common equity immediately before such transaction directly or indirectly “beneficially own,” immediately after such transaction, more than fifty percent (50%) of all classes of common equity of the surviving, continuing or acquiring company or other transferee, as applicable, or the parent thereof, in substantially the same proportions vis-à-vis each other as immediately before such transaction will be deemed not to be a Fundamental Change pursuant to this **clause (B)**;

(C) the Company’s stockholders approve any plan or proposal for the liquidation or dissolution of the Company; or

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

provided, however, that a transaction or event described in **clause (A)** or **(B)** above will not constitute a Fundamental Change if at least ninety percent (90%) of the consideration received or to be received by the holders of Common Stock (excluding cash payments for fractional shares or pursuant to dissenters rights), in connection with such transaction or event, consists of shares of common stock or other corporate common equity interests listed (or depositary receipts representing shares of common stock or other corporate common equity interests, which depositary receipts are listed) on any of The New York Stock Exchange, the Nasdaq Capital Market, the Nasdaq Global Market or the Nasdaq Global Select Market (or any of their respective successors), or that will be so listed when issued or exchanged in connection with such transaction or event, and such transaction or event constitutes a Common Stock Change Event whose Reference

Property consists of such consideration.

For the purposes of this definition, (x) any transaction or event described in both **clause (A)** and in **clause (B)(i)** or **(ii)** above (without regard to the proviso in **clause (B)**) will be deemed to occur solely pursuant to **clause (B)** above (subject to such proviso); and (y) whether a Person is a “**beneficial owner**,” whether shares are “**beneficially owned**,” and percentage beneficial ownership, will be determined in accordance with Rule 13d-3 under the Exchange Act.

“**Fundamental Change Repurchase Date**” means the date fixed for the repurchase of any Notes by the Company pursuant to a Repurchase Upon Fundamental Change.

“**Fundamental Change Repurchase Notice**” means a notice (including a notice substantially in the form of the “Fundamental Change Repurchase Notice” set forth in **Exhibit A**) containing the information, or otherwise complying with the requirements, set forth in **Section 4.02(F)(i)** and **Section 4.02(F)(ii)**.

“**Fundamental Change Repurchase Price**” means the cash price payable by the Company to repurchase any Note upon its Repurchase Upon Fundamental Change, calculated pursuant to **Section 4.02(D)**.

“**GAAP**” means generally accepted accounting principles in the United States of America as in effect from time to time, including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or any successor entity thereto designated by the SEC).

“**Global Note**” means a Note that is represented by a certificate substantially in the form set forth in **Exhibit A**, registered in the name of the Depository or its nominee, duly executed by the Company and authenticated by the Trustee, and deposited with the Trustee, as custodian for the Depository.

“**Global Note Legend**” means a legend substantially in the form set forth in **Exhibit B-2**

“**Guarantee**” means the guarantee by each Subsidiary Guarantor of the Company’s obligations under this Indenture, the Notes and the other Notes Documents pursuant to **Article 12**.

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

“**Immaterial Foreign Jurisdictions**” means countries or geographical regions (if perfection in the applicable Intellectual Property is effected on a regional basis), excluding the United States of America, Canada, the United Kingdom, Sweden or Germany, where the actual or projected annual revenues (other than intercompany revenues) (in the case of actual revenues, for the most recently concluded 12 calendar month period for which financial statements are available or were required to have been delivered in accordance with **Section 3.03**, and in the case of projected revenues, as determined in good faith by the Board of Directors of the Company) of the

Company and its Subsidiaries, taken as a whole, are less than \$7,500,000 individually and, taken together with all such Immaterial Foreign Jurisdictions as of such date, are less than \$15,000,000 in the aggregate; *provided* that, any country or geographical region shall cease to be deemed an Immaterial Foreign Jurisdiction hereunder following such time as the Company or the applicable Subsidiary Guarantor shall record appropriate evidence of the Liens and security interests granted hereunder and/or under the Collateral Documents in the Intellectual Property of the Company or such Subsidiary Guarantor registered in such country or geographical region.

“Immaterial Subsidiary” means any Subsidiary that is not an obligor in respect of any Indebtedness for borrowed money and that (A) with respect to any such Subsidiaries that are not Foreign Subsidiaries, did not, as of the last day of the fiscal quarter of the Company most recently ended for which financial statements have been (or were required to be) delivered pursuant to this Indenture, have assets with a value in excess of 2.5% of the total assets or revenues representing in excess of 2.5% of total revenues of the Company and its Subsidiaries on a consolidated basis as of such date (or, taken together with all such Subsidiaries that are not Foreign Subsidiaries as of such date that are Non-Guarantor Subsidiaries as a result of being Immaterial Subsidiaries, in excess of 5.0% of total assets or revenues representing in excess of 5.0% of total revenues of the Company and its Subsidiaries that are not Foreign Subsidiaries on a consolidated basis as of such date) and (B) with respect to any such Subsidiaries that are Foreign Subsidiaries are not Significant Subsidiaries (for this purpose, deeming all Foreign Subsidiaries that are located or organized in a single country as a single Subsidiary).

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money, including obligations in respect of the Permitted ABL Facility, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding accounts payable and accrued expenses incurred in the ordinary course of business and not past due by more than ninety (90) days, payroll liabilities and deferred compensation and severance, pension, health and welfare retirement and equivalent benefits to current or former employees, directors or managers of such Person and its subsidiaries), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (f) all guarantees by, and Contingent Obligations of, such Person of Indebtedness of others set forth in **clauses (a) through (e) and (g) through (i)** of this definition, (g) all attributable indebtedness in respect of Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit, letters of guaranty or bankers' acceptances; and (i) net termination obligations under Swap Agreements (other than any such obligations that are settleable at the option of such Person in Capital Stock (other than Disqualified Stock) of the Company); *provided, however*, that notwithstanding the foregoing, Indebtedness shall be deemed not to include: (1) Contingent Obligations (other than, for the avoidance of doubt, those described in **clause (d) or (f)** above) incurred in the ordinary course of business and not in

respect of borrowed money; (2) deferred or prepaid revenues; (3) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller; (4) obligations in respect of non-exclusive time-based licenses in the ordinary course of business and consistent with customary industry practices; (5)

- 12 -

deferred compensation; (6) trade payables or similar obligations to trade creditors or accrued expenses; and (7) obligations in respect of any Capital Stock of the Company that is not Disqualified Stock. Notwithstanding any other provision of this Indenture, for purposes of the definition of “Indebtedness” and **Section 3.09** hereof, any deferred purchase price or earnout obligation of the Company, shall be deemed outstanding in the maximum amount which the Company may be obligated to pay, assuming the occurrence or satisfaction of any trigger or other contingency.

“**Indenture**” means this Indenture, as amended or supplemented from time to time.

“**Indirect Participant**” means a Person who holds a beneficial interest in a Global Note through a Depositary Participant.

“**Initial Purchasers**” means the investors purchasing the Notes on the Issue Date.

“**Intellectual Property**” means (a) all compounds, formulations, materials, methods, techniques, trade secrets, copyrights, know-how, data, documentation, regulatory submissions, specifications, and other intellectual property of any kind (whether or not protectable under patent, trademark, copyright, or similar laws) and (b) all patents and patent applications claiming the foregoing, as applicable, and all divisions, continuations and continuations-in-part of such patent applications, all patents issuing thereon and all reissues, reexaminations and extensions of any of the foregoing patents.

“**Intercreditor Agreement**” means that certain Intercreditor Agreement, dated as of the date hereof, by and among the Collateral Agent, the First Lien Collateral Agent and the Control Agent parties thereto, and acknowledged by the Note Parties party thereto from time to time, as amended, restated, amended and restated, supplemented, modified or replaced, in whole or in part, from time to time, in accordance with its terms.

“**Interest Payment Date**” means, with respect to a Note, each January 15, April 15, July 15 and October 15 of each year, commencing on October 15, 2024 (or commencing on such other date specified in the certificate representing such Note). For the avoidance of doubt, the Maturity Date is an Interest Payment Date.

“**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, (ii) accounts receivable, credit card and debit card receivables, trade credit and advances to customers, (iii) 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 as well as investments that are required by GAAP to be classified on the balance sheet of such Person in the same manner as other investments included in this definition to the extent such transactions involve the transfer of cash or other property. The acquisition by the Company or any Subsidiary of a Person that holds an Investment in a third Person that was acquired in contemplation of the acquisition of such Person will be deemed to be an Investment by the Company or such Subsidiary in such third Person in an amount

- 13 -

equal to the Fair Market Value of the Investments held by the acquired Person in such third Person at the time of acquisition of such Person. Except as otherwise provided in this Indenture, the amount of an Investment will be determined at the time the Investment is made and without giving effect to subsequent changes in value but after giving effect (without duplication) to all subsequent reductions in the amount of such Investment as a result of the dividend, distribution, interest payment, return of capital, repayment or disposition thereof, in each case solely to the extent paid in or made for cash, not to exceed the original amount of such Investment.

"IP Proceeds" means proceeds received by the Company and its Subsidiaries on account of any Disposition of Intellectual Property, including applicable proceeds from Permitted IP Licenses, excluding royalty or subscription payments payable on a regular periodic basis or payable on customary terms for royalty payments, calculated based on revenues, sales, units or other customary metrics. For the sake of clarity, IP Proceeds shall include all upfront payments, any guaranteed payments (other than any guaranteed royalty or subscription payments of the type described in the foregoing sentence) and any milestone payments (whether time based or based on the achievement of performance or other hurdles).

"Issue Date" means August 8, 2024.

"Last Original Issue Date" means (A) with respect to any Notes issued pursuant to the Exchange Agreement, and any Notes issued in exchange therefor or in substitution thereof, the Issue Date; and (B) with respect to any other Notes, if any, and any Notes issued in exchange therefor or in substitution thereof, either (i) the date such Notes are originally issued or (ii) such other date as is specified in an Officer's Certificate delivered to the Trustee before the original issuance of such Notes.

"Last Reported Sale Price" of the Common Stock for any Trading Day means the closing sale price per share (or, if no closing sale price is reported, the average of the last bid price and the last ask price per share or, if more than one in either case, the average of the average last bid prices and the average last ask prices per share) of Common Stock on such Trading Day as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is then listed. If the Common Stock is not listed on a U.S. national or regional securities exchange on such Trading Day, then the Last Reported Sale Price will be the last quoted bid price per share of Common Stock on such Trading Day in the over-the-counter market as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock is not so quoted on such Trading Day, then the Last Reported Sale Price will be the average of the mid-point

of the last bid price and the last ask price per share of Common Stock on such Trading Day from a nationally recognized independent investment banking firm selected by the Company. Neither the Trustee nor the Conversion Agent will have any duty to determine the Last Reported Sale Price. The Last Reported Sale Price will be determined without regard to after-hours trading or any other trading outside of regular trading session hours.

“**Lien**” means, with respect to any asset, (A) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset; (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),

other than an operating lease, relating to such asset; and (C) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“**Liquidity**” means, as of any date of determination, the sum of (i) unused commitments then available to be drawn under the Permitted ABL Facility plus (ii) (A) on or prior to November 6, 2024, unrestricted cash and Cash Equivalents of the Company and the Subsidiary Guarantors and (B) after November 6, 2024, unrestricted cash and Cash Equivalents of the Company and its Subsidiaries that is subject to a Control Agreement (as defined in the Security Agreement) in favor of the Collateral Agent, in each case free and clear of any Liens (other than non-consensual Liens permitted by **Section 3.10**; Liens in favor of the depository bank that arise by operation of law; customary Liens in favor of the depository bank set forth in applicable treasury management agreements; the Liens in favor of the Collateral Agent; and Liens securing the Permitted ABL Facility or the First Lien Indebtedness).

The “**Liquidity Conditions**” with respect to the Redemption of any Notes will be satisfied if each of the following has been satisfied as of the Redemption Notice Date for such Redemption and is reasonably expected to continue to be satisfied through at least the thirtieth (30th) calendar day after the Redemption Date for such Redemption: (A) the Company has satisfied the reporting conditions (including, for the avoidance of doubt, the requirement for current Form 10 information) set forth in Rule 144(c) and (i)(2) under the Securities Act; and (B) the shares of Common Stock, if any, issued or issuable upon conversion of the Notes are Freely Tradable; *provided, however*, that the Liquidity Conditions will also be deemed to be satisfied with respect to such Redemption if, in accordance with **Section 5.03(A)(i)(4)**, the Company has elected to settle all conversions of Notes with a Conversion Date that occurs on or after such Redemption Notice Date and on or before the Business Day immediately before such Redemption Date, together with any applicable Make-Whole Premium Consideration due thereon upon conversion thereof, as well as any Make-Whole Premium that is part of the Redemption Price thereof, by Cash Settlement.

“**Luminar China Subsidiary**” means Luminar Technologies (Xiamen) Co., Ltd.

“**Make-Whole Fundamental Change**” means a Fundamental Change (determined after giving effect to the proviso immediately after **clause (D)** of the definition thereof, but without regard to the proviso to **clause (B)(ii)** of such definition).

“**Make-Whole Fundamental Change Conversion Period**” means the period from, and including, the Make-Whole Fundamental Change Effective Date of such Make-Whole Fundamental Change to, and including, the thirty-fifth (35th) Trading Day after such Make-Whole Fundamental Change Effective Date (or, if such Make-Whole Fundamental Change also constitutes a Fundamental Change (other than an Exempted Fundamental Change), to, but excluding, the related Fundamental Change Repurchase Date).

“**Make-Whole Fundamental Change Effective Date**” means the date on which such Make-Whole Fundamental Change occurs or becomes effective.

“**Make-Whole Premium**” means, with respect to any Note or the applicable portion thereof at the date of any Make-Whole Premium Event, an amount equal to the lesser of (A) the amount, as of the applicable Conversion Date or Redemption Date (as applicable, the

such Note or the applicable portion thereof on each Interest Payment Date occurring after such Make-Whole Premium Effective Date through and including the Maturity Date of such Note and (B) the amount, as of such Make-Whole Premium Effective Date, of all interest amounts that would have accrued after the Make-Whole Premium Effective Date on such Note or the applicable portion thereof had such Note or the applicable portion thereof remained outstanding through the second anniversary of such Make-Whole Premium Effective Date; *provided, however*, that if such Make-Whole Premium Effective Date is after a Regular Record Date and on or before the next Interest Payment Date, the Holder of such Note at the Close of Business on such Regular Record Date will, pursuant to **Section 5.02(D)** be entitled, notwithstanding the applicable Make-Whole Premium Event, to receive, on or, at the Company’s election, before such Interest Payment Date, the unpaid interest that would have accrued on such Note or the applicable portion thereof to, but excluding, such Interest Payment Date and (x) in the case of **clause (A)** above, such amount shall be deducted from the Make-Whole Premium, and (y) in the case of **clause (B)** above, the Make-Whole Premium shall be reduced by the amount of interest that would have accrued on such Note or the applicable portion thereof from and including such Make-Whole Premium Effective Date through but excluding such Interest Payment Date.

“**Make-Whole Premium Event**” means any conversion or Redemption of any Note in accordance with the terms of this Indenture; *provided, however*, that, “Make-Whole Premium Event” shall not include any conversion in connection with a Make-Whole Fundamental Change.

“**Make-Whole Premium Settlement Method**” means Cash Settlement or Physical Settlement.

“**Market Disruption Event**” means, with respect to any date, the occurrence or existence, during the one-half hour period ending at the scheduled close of trading on such date on the principal U.S. national or regional securities exchange or other market on which the Common Stock is listed for trading or trades, of any material suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

“**Material Foreign Jurisdiction**” means any jurisdiction outside of the United States of America that is not an Immaterial Foreign Jurisdiction, other than China.

“**Material Geography**” means any jurisdiction within North America, Europe, Japan or Korea.

“**Material Intellectual Property**” means all Intellectual Property that is (i) utilized by the Company and its Subsidiaries, and (ii) necessary for, and material to the business of the Company and its Subsidiaries (taken as a whole).

“**Material Real Property**” means (1) any Real Property that is owned by any Note Party and has a Fair Market Value in excess of \$2,000,000 or (2) any Real Property that is owned or

and has a fair market value in excess of \$2,000,000 or (2) any Real Property that is owned or leased by any Note Party as to which the loss or suspension of the use of such Real Property would be likely to cause a material disruption to the business operations of the Company and its Subsidiaries.

- 16 -

“Maturity Date” means the earlier of (i) January 15, 2030, and (ii) to the extent more than one hundred million (\$100,000,000) of Existing Convertible Notes are outstanding as of June 30, 2026, September 15, 2026. The Company shall notify the Trustee in writing if more than \$100,000,000 of Existing Convertible Notes are outstanding as of June 30, 2026, and the Trustee shall have no duty to independently monitor or verify the amount of Existing Convertible Notes outstanding at anytime (including as of June 30, 2026).

“Maximum Make-Whole Premium Shares” means, with respect to the Make-Whole Premium due with respect to any Note or the applicable portion thereof at the date of any Make-Whole Premium Event, to the extent payable by Physical Settlement, a number of shares of Common Stock for each \$1,000 of Notes equal to (i) with respect to the Series 1 Notes, 343.9262 shares of Common Stock and (ii) with respect to the Series 2 Notes, 619.0672 shares of Common Stock, which amount is in each case subject to adjustment in the same manner as, and at the same time and for the same events for which, the Conversion Rate is required to be adjusted pursuant to **Section 5.05(A)**.

“Net Proceeds” means, (a) with respect to any Asset Sale by the Company or any of its Subsidiaries, the excess, if any, of (i) the sum of cash and Cash Equivalents received by the Company or such Subsidiary in connection with such transaction (excluding (x) recurring periodic sales or royalty payments and subscription fees received on account of Permitted IP Licenses that do not, for the sake of clarity, constitute IP Proceeds and (y) any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, any notes or other obligations or other securities or assets received by the Company or such Subsidiary from such transferee, 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 Asset Sale received by the Company or any of its Subsidiaries for such Asset Sale) over (ii) the sum of (A) all payments on account of any Indebtedness that is secured on a priority basis to the Obligations under the Notes by a Permitted Lien on the applicable asset that is required to be repaid (or to establish an escrow for the future repayment thereof) in connection with such transaction or on account of any Indebtedness of a Non-Guarantor Subsidiary that was the transferor in respect of such transaction, (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), (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 is 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, such amounts shall constitute Net Proceeds) and (b) in connection with any issuance or sale of Indebtedness by the Company or any of its 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

- 17 -

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 that is not a Note Party, "Net Proceeds" shall be reduced to the pro rata portion thereof attributable to such minority interests.

"Non-Affiliate Legend" means a legend substantially in the form set forth in **Exhibit B-3**

"Non-Guarantor Subsidiary" means any Subsidiary of the Company that is not a Subsidiary Guarantor.

"Note Agent" means any Registrar, Paying Agent or Conversion Agent.

"Note Parties" means, collectively, the Company and each Subsidiary Guarantor.

"Notes" has the meaning assigned to it in the preamble to this Indenture. The Initial Notes of a series and the Additional Notes of such series, if any, shall be treated as a single class for all purposes under this Indenture, and unless the context otherwise requires, all references to the Notes of a series shall include all Notes of such series.

"Notes Documents" means this Indenture, the Notes, the Collateral Documents and the Intercreditor Agreement.

"Obligations" means any principal, interest, fees, expenses (including any interest, fees, expenses and other amounts accruing subsequent to the filing of a petition in bankruptcy, reorganization or similar proceeding at the rate provided for in the documentation with respect thereto, whether or not such interest, fees, expenses and other amounts are allowed or allowable claims under applicable state, federal or foreign law), penalties, indemnifications, reimbursements (including, without limitation, reimbursement obligations with respect to letters of credit and bankers' acceptances), damages and other liabilities payable under the documentation governing any Indebtedness.

"Observation Period" means, with respect to any Note to be converted, (A) subject to **clause (B)** below, if the Conversion Date for such Note occurs on or before October 15, 2029, the forty (40) consecutive VWAP Trading Days beginning on, and including, the second (2nd) VWAP Trading Day immediately after such Conversion Date; (B) if such Conversion Date occurs on or after the date the Company has sent a Redemption Notice calling such Note for Redemption pursuant to **Section 4.03(E)** and before the Business Day immediately prior to the related Redemption Date, the forty (40) consecutive VWAP Trading Days beginning on, and including,

Redemption Date, the forty (40) consecutive VWAP Trading Days beginning on, and including, the fortieth (40th) Scheduled Trading Day immediately before such Redemption Date; and (C) subject to **clause (B)** above, if such Conversion Date occurs after October 15, 2029, the forty (40) consecutive VWAP Trading Days beginning on, and including, the fortieth (40th) Scheduled Trading Day immediately before the Maturity Date.

“**Officer**” means the Chairman of the Board of Directors, the Chief Executive Officer, the President, the Chief Operating Officer, the Chief Financial Officer, the Treasurer, any Assistant Treasurer, the Controller, the Secretary or any Vice-President of the Company.

“**Officer’s Certificate**” means a certificate that is signed on behalf of the Company by one (1) of its Officers and that meets the requirements of **Section 13.03**.

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

“Opinion of Counsel” means a written opinion, from legal counsel (including an employee of, or counsel to, the Company or any of its Subsidiaries) reasonably acceptable to the Trustee, that meets the requirements of **Section 13.03**, subject to customary qualifications and exclusions.

“Permitted ABL Facility” means an asset backed revolving credit facility of the Company, which may be guaranteed by any Subsidiary Guarantors (and, for the avoidance of doubt, with availability limited by a customary borrowing base), and otherwise on customary terms reasonably satisfactory to the “Required Holders” under and as defined in the First Lien Indenture.

“Permitted China Facility” means an asset backed revolving credit facility of the Luminar China Subsidiary (and, for the avoidance of doubt, with availability limited by a customary borrowing base), on customary terms satisfactory to the “Required Holders” under and as defined in the First Lien Indenture; *provided* that except as contemplated in **clause (K)** of the definition of “Permitted Investment”, any guarantee or other credit support by the Company or any other Subsidiary of the Company must be unsecured and subordinated in right of payment to the Obligations of the Company and the Subsidiary Guarantors under the Notes on terms and pursuant to documentation satisfactory to the “Required Holders” under and as defined in the First Lien Indenture.

“Permitted Investment” means:

(A) (i) Investments by the Company or any Subsidiary in Subsidiary Guarantors, and (ii) Investments by any Note Party in Wholly-Owned Subsidiaries (other than the Luminar China Subsidiary) that are Non-Guarantor Subsidiaries of cash and Cash Equivalents or other assets (excluding Material Intellectual Property) in amounts (or with a Fair Market Value) of up to \$5,500,000 in the aggregate at any one time outstanding;

(B) any Investment in cash and Cash Equivalents;

(C) any Investment by the Company or any Subsidiary in a Person, if, as a result of, or in connection with, such Investment: (i) such Person becomes or will become a Subsidiary Guarantor; or (ii) such Person is merged, consolidated or amalgamated with or into, or transfers or conveys all or substantially all of its assets to, or is liquidated into, any Note Party;

(D) any Investment made as a result of the receipt of non-cash consideration from an Asset Sale that was made pursuant to and in compliance with **Section 3.12** or from a Disposition of assets not constituting an Asset Sale;

(E) any Investments received in compromise or resolution of (i) obligations of trade creditors or customers that were incurred in the ordinary course of business or consistent with past practice of the Company or any of its Subsidiaries, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer; or (ii) litigation, arbitration or other disputes;

(F) advances or reimbursements to officers, directors, consultants and employees in the ordinary course of business or consistent with past practice, for travel, entertainment, relocation and analogous ordinary business purposes;

(G) any Investment of the Company or any of its Subsidiaries existing on the Issue Date and set forth in **Schedule 1.01**, and any extension, modification or renewal of such existing Investments, to the extent not involving any additional Investment other than as the result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities, in each case, pursuant to the terms of such Investments as in effect on the Issue Date; *provided* that the amount of any such Investment may only be increased to the extent permitted under this Indenture;

(H) guarantees of Indebtedness (in accordance with **Section 3.09**) and of performance guarantees, leases and other ordinary course obligations otherwise permitted by the terms of this Indenture and the creation of Liens on the assets of the Company or any of its Subsidiaries permitted by the terms of this Indenture;

(I) receivables owing to the Company or any of its Subsidiaries, prepaid expenses, and lease, utility, workers' compensation and other pledges and deposits, if created, acquired or entered into in the ordinary course of business;

(J) Investments consisting of purchases of inventory, supplies, raw materials or equipment in the ordinary course of business (not, for the sake of clarity, via purchases of business, lines of businesses, or entities);

(K) Investments in the Luminar China Subsidiary consisting of (i) cash and Cash Equivalents in amounts of up to \$11,000,000 in the aggregate during the term of this Indenture; (ii) additional amounts not to exceed \$16,500,000 in the aggregate during the term of this Indenture in connection with adjustments in, or changes in the Company's past practices relating to, industrialization arrangements between or among the Company, its Subsidiaries and various third parties, to the extent that the net result of Investments under this **clause (ii)** is to reduce the aggregate cost to the Company of such industrialization arrangements as compared to such industrialization arrangements or practices prior to giving effect to such adjustments or changes, (iii) guarantees or other credit support of the Permitted China Facility that are unsecured and are subordinated in right of payment of the Obligations of the Company and the Subsidiary Guarantors under the Notes, pursuant to documentation and on terms acceptable to the Required Holders, and (iv) credit support in the form of a letter of credit the beneficiary of which is the lender or agent under the Permitted China Facility issued under the Permitted ABL Facility in a face amount not to exceed an amount equal to (x) \$12,100,000 reduced by (y) any prior draws on any such letter of credit;

(L) advances, loans, rebates and extensions of credit (including the creation of receivables and endorsements for collection and deposit) to suppliers, lessors, licensors, licensees, distributors, advisors, hosts, producers, customers and vendors, and performance guarantees in

distributors, advisors, hosts, producers, customers and vendors, and performance guarantees, in each case in the ordinary course of business or consistent with past practice;

- 20 -

(M) 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;

(N) stock, obligations or securities received in satisfaction of judgments and any renewal or replacement thereof;

(O) to the extent constituting Investments, (i) lease, utility and other similar pledges and deposits, (ii) prepaid expenses, negotiable instruments held for collection and lease, utility and workers' compensation, performance and other similar pledges and deposits, and (iii) guarantees of business obligations owed to landlords, suppliers, customers and licensees of the Company and its Subsidiaries, in each case, in the ordinary course of business;

(P) Investments consisting of earnest money deposits required in connection with a purchase agreement, or letter of intent, or other acquisitions to the extent not otherwise prohibited by this Indenture;

(Q) the granting of leases, subleases, licenses or sublicenses to others in the ordinary course of business that do not materially adversely interfere in the business of the Company and its Subsidiaries, taken as a whole, and the rights of such parties set forth in such agreements *provided* that, if pertaining to Intellectual Property, such Investments constitute Permitted IP Licenses;

(R) Investments in non-Wholly-Owned Subsidiaries, joint ventures, corporate collaborations or strategic alliances in the ordinary course of business of the Company or any of its Subsidiaries, in each case, for the purposes of bona fide collaborations with third parties in amounts of (i) up to (or with a Fair Market Value not to exceed) \$11,000,000 in the aggregate at any one time outstanding, plus (ii) an unlimited amount to the extent consisting of, or made with the net cash proceeds from, the substantially concurrent sale (other than to a Subsidiary) of Capital Stock (other than Disqualified Stock) of the Company; *provided, further*, that, to the extent the Company or any of its Subsidiaries control any such Subsidiary or joint venture and, after giving effect to such transaction, such Subsidiary or joint venture would not constitute an Excluded Subsidiary, such Person becomes a Subsidiary Guarantor in accordance with **Section 3.19**;

(S) Swap Agreements permitted under **Section 3.09**;

(T) any Investment, including any payments to customers, vendors or suppliers, (i) consisting of, or the consideration for which consists, of Capital Stock of the Company (other than Disqualified Stock) or (ii) made with the net cash proceeds from the substantially concurrent sale (other than to a Subsidiary) of Capital Stock (other than Disqualified Stock) of the Company; and

(U) intercompany accounts receivable, accounts payable or advances of services or expenses between or among the Company and its Subsidiaries in connection with transfer pricing arrangements or charge-back agreements entered into in the ordinary course of business and consistent with industry practice.

In the event that an Investment (or a portion thereof) meets the criteria of any of **clauses (A) through (U)** above, the Company may, in its sole discretion, classify, reclassify (based on

- 21 -

circumstances existing on the date of such reclassification) or divide such Investment (or a portion thereof) between such **clauses (A) through (U)** in any manner that otherwise complies with this definition.

“Permitted IP License” means a license or sublicense of Intellectual Property or any related distribution or commercialization rights; *provided* that, if related to Material Intellectual Property, such license or sublicense either (i) is non-exclusive both generally and with respect to any region, geography, field of use or therapeutic indication, (ii) provides for exclusivity with respect to a specific region or geography or with respect to a specified field of use or therapeutic indication and, in the case of any such exclusive license or sublicense described in this **clause (ii)**, (A) has a finite term or other termination right which, in each case, provides the Company with a material reversionary interest in the applicable rights, and (B) does not provide for exclusivity with respect to any use of such Material Intellectual Property in the automotive or vehicular industry (whether directly or indirectly) in a Material Geography or (iii) would not constitute a Disposition hereunder.

“Permitted Junior Indebtedness” means unsecured Indebtedness of the Company, *provided* that: (A) the stated final maturity of such Indebtedness shall not be earlier than the 180th day after the Maturity Date; (B) such Indebtedness shall not be required to be repaid, prepaid, redeemed, repurchased or defeased, in whole or in part, whether on one or more fixed dates, upon the occurrence of one or more events or at the option of any holder thereof (except, in each case, upon the occurrence of an event of default, the occurrence of a change in control or the occurrence of an asset sale) prior to the date that is the 180th day after the Maturity Date; and (C) such Indebtedness shall be expressly subordinated in right of payment or contractually subordinated to each of the Notes and the Guarantees.

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

(A) Liens imposed by law, including carriers’, warehousemen’s, mechanics’, landlords’, materialmen’s, repairmen’s, construction contractors’ or other like Liens, in each case for sums not yet overdue for a period of more than sixty (60) days after giving effect to any applicable grace period or that are bonded or being contested in good faith by appropriate proceedings;

(B) Liens on any property in favor of domestic or foreign governmental bodies to secure partial, progress, advance or other payment pursuant to any contract or statute, not yet due and

payable;

(C) (i) leases, non-exclusive licenses, subleases and non-exclusive sublicenses of real property and other assets in the ordinary course of business which do not materially interfere with the ordinary conduct of the Company's or any of its Subsidiaries' business and other Liens incidental to the conduct of the Company's or any of its Subsidiaries' business which do not in the aggregate materially detract from the value of the property or assets subject thereto or interfere with the ordinary conduct of the Company's or any of its Subsidiaries' business in an material and adverse respect, (ii) Permitted IP Licenses, (iii) encumbrances, charges, ground leases, easements (including reciprocal easement agreements), survey exceptions, restrictions, encroachments, protrusions, by-law, regulation, zoning restrictions or reservations of, or rights of others for, licenses, rights of way, sewers, electric lines, telegraph and telephone lines and other similar

purposes, or zoning, building codes or other restrictions (including minor defects or irregularities in title and similar encumbrances) as to the use of real properties or Liens incidental to the conduct of the business of the Company and its Subsidiaries or to the ownership of their properties, which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of the Company and its Subsidiaries, and (iv) rights of recapture of unused real property in favor of the seller of such property set forth in customary purchase agreements and related arrangements with any government, statutory or regulatory authority;

(D) Liens arising from UCC financing statement filings (or similar filings in other applicable jurisdictions) regarding operating leases entered into by the Company or any of its Subsidiaries in the ordinary course of business;

(E) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into in the ordinary course of business;

(F) Liens securing the Notes and the Guarantees;

(G) Liens securing purchase money Indebtedness, Capital Lease Obligations, synthetic lease obligations and mortgages permitted under this Indenture; *provided* that such Liens do not at any time encumber any property or assets other than the property and assets financed thereby (together with any additions, accessions and improvements thereto and the proceeds or distributions thereof);

(H) Liens on assets or property of the Company or any Subsidiary securing Treasury Management Arrangements or Swap Agreements;

(I) customary Liens on insurance proceeds securing financed insurance premiums in the ordinary course of business;

(J) Liens for taxes, assessments or governmental charges which are not overdue for a period of more than sixty (60) days or which are being contested in good faith by appropriate proceedings if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;

(K) Liens in favor of the Company or any Subsidiary Guarantor;

(L) Liens on Collateral securing debt permitted to be incurred under the Permitted ABL Facility;

(M) Liens on Collateral securing the First Lien Indebtedness, subject to the Intercreditor Agreement;

(N) Liens on the "Borrower Securities Accounts" under, and as defined in, the St. James Loan Agreements; *provided* that, such Liens will cease to be permitted Liens if the Collateral Value (as defined in the St. James Loan Agreements) exceeds 200% of the outstanding balance in the "Borrower Securities Accounts";

(O) Liens on the assets of the Luminar China Subsidiary securing the Permitted China Facility;

(P) pledges, deposits or Liens under workmen's compensation laws, payroll taxes, unemployment insurance laws, social security laws or similar legislation, or in connection with bids, tenders, completion guarantees (other than for borrowed money), contracts (other than for borrowed money) or leases, or to secure utilities, licenses, public or statutory obligations, or to secure the performance of bids, trade contracts, government contracts and leases, statutory obligations, surety, stay, indemnity, judgment, customs, appeal or performance bonds, guarantees of government contracts, return-of-money bonds, bankers' acceptance facilities (or other similar bonds, instruments or obligations), obligations in respect of letters of credit, bank guarantees or similar instruments that have been posted to support the same, or as security for contested taxes or import or customs duties or for the payment of rent, or other obligations of like nature, in each case incurred in the ordinary course of business or consistent with past practice;

(Q) to the extent constituting a Lien, escrow arrangements securing indemnification obligations in connection with an acquisition of a Person or a Disposition that is otherwise permitted under this Indenture;

(R) Liens (i) on advances of cash or Cash Equivalents in favor of the seller of any property to be acquired, which are to be applied against the purchase price for such acquisition; *provided* that (x) the aggregate amount of such advances shall not exceed the purchase price of such acquisition and (y) the property is acquired within ninety (90) days following the date of the first such advance so made; and (ii) consisting of any agreement, grant or option to sell, transfer or dispose of any property in a disposition of assets, in each case, solely to the extent such acquisition or disposition, as the case may be, would have been permitted on the date of the creation of such Liens;

(S) Liens securing Indebtedness permitted under **Section 3.09(B)(xxii)**; *provided* that (i) such Lien was not created in connection with, or in contemplation of, such acquisition (or such merger or consolidation), as the case may be, (ii) such Lien shall not apply to any other property or assets of the Company or any of its Subsidiaries (other than, in the case of any such merger or consolidation, the assets of any Subsidiary without significant assets that was formed solely for the purpose of effecting such acquisition), (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition (or is so merged or consolidated), as the case may be and (iv) the Collateral Agent shall have a perfected security interest in the collateral securing such Indebtedness, junior only to such Lien on terms and conditions reasonably satisfactory to the Required Holders;

(T) Liens securing or otherwise arising out of judgments, decrees, attachments, garnishments, orders, awards or other forms of levies or injunction not giving rise to an Event of Default so long as (a) any appropriate legal proceedings which may have been duly initiated for the review of such judgment, decree, order or award have not been finally terminated, (b) the

period within which such proceedings may be initiated has not expired or (c) no more than sixty (60) days have passed after (i) such judgment, decree, attachment, garnishment, order, award or other form of levy or injunction has become final or (ii) such period within which such proceedings may be initiated has expired; and

- 24 -

(U) Liens on assets of Non-Guarantor Subsidiaries securing Indebtedness or other obligations of such Subsidiaries that is permitted by **Section 3.09** or otherwise not prohibited by this Indenture, and (ii) Liens on Capital Stock of joint ventures that are not a Note Party (A) securing obligations of such joint venture or (B) pursuant to the relevant joint venture agreement or arrangement.

“Permitted Party” means (i) any of Austin Russell and his Affiliated Parties and (ii) any “group” within the meaning of Section 13(d) of the Exchange Act consisting solely of Permitted Parties.

“Permitted Refinancing Indebtedness” means any Indebtedness for borrowed money of the Company or its Subsidiaries issued in exchange for, or the Net Proceeds of which are used to renew, refund, refinance, replace, defease or discharge (**“Refinance”**) other Indebtedness for borrowed money of the Company or its Subsidiaries; *provided* that: (A) the principal amount (or accreted value, if applicable) of such Permitted Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness renewed, refunded, refinanced, replaced, defeased or discharged (such Indebtedness, the **“Refinanced Indebtedness”**) (plus all accrued interest on the Indebtedness and the amount of all fees and expenses, including premiums, incurred in connection therewith); (B) such Permitted Refinancing Indebtedness has a final maturity date no earlier than either (i) the final maturity date of the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged or (ii) one hundred and eighty (180) days after the Maturity Date; (C) such Permitted Refinancing Indebtedness has a Weighted Average Life to Maturity at the time such Permitted Refinancing Indebtedness is incurred that is no shorter than the Weighted Average Life to Maturity of the portion of the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged; (D) if the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged is subordinated in right of payment to the Notes, such Permitted Refinancing Indebtedness is subordinated in right of payment to the Notes on terms at least as favorable to the Holders of Notes as those contained in the documentation governing the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged; (E) such Indebtedness is incurred either by the Company or its Subsidiary that was the obligor on the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged and is guaranteed only by persons who were obligors on the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged; (F) such Indebtedness is not secured by a Lien on any assets other than the assets securing the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged; (G) if the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged is secured by any of the Collateral on a basis that is junior in priority to the Liens on the Collateral, such Permitted Refinancing Indebtedness is (i) unsecured, (ii) secured by Liens that are subordinated to the Liens that secure the Notes at least to the same extent as the Liens securing the applicable Indebtedness being

renewed, refunded, refinanced, replaced, defeased or discharged or (iii) solely if such Refinancing constitutes a Restricted Payment permitted by **Section 3.11** of Refinanced Indebtedness secured by Liens that are subordinated to the Liens that secure the Obligations under the Notes, secured by Liens that are subordinated to the Liens that secure the Notes pursuant to the Intercreditor Agreement or another intercreditor agreement reasonably acceptable to the Trustee (acting at the direction of the Required Holders); and (H) if the Indebtedness being renewed, refunded, refinanced, replaced, defeased or discharged is convertible or exchangeable into Capital Stock of the Company, such Permitted Refinancing Indebtedness is not convertible or exchangeable into

- 25 -

Capital Stock of the Company on terms more favorable to the holders of such Permitted Refinancing Indebtedness than the terms of the Series 2 Notes.

“**Person**” or “**person**” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or government or other agency or political subdivision thereof. Any division or series of a limited liability company, limited partnership or trust will constitute a separate “person” under this Indenture.

“**Physical Note**” means a Note (other than a Global Note) that is represented by a certificate substantially in the form set forth in **Exhibit A**, registered in the name of the Holder of such Note and duly executed by the Company and authenticated by the Trustee.

“**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.

“**Physical Settlement**” means (a) with respect to the Conversion Settlement Method applicable to any conversion of any given series of Notes, that the Company shall have elected, in accordance with **Section 5.03(A)**, to settle such conversion in shares of Common Stock, together, if applicable, with cash in lieu of fractional shares as provided in **Section 5.03(B)(i)(1)** and (b) with respect to the Make-Whole Premium Settlement Method applicable to any Make-Whole Premium that becomes due, that the Company shall have elected (or been deemed to have elected), in accordance with **Section 4.04(A)**, to settle the Make-Whole Premium in shares of Common Stock, together, if applicable, with cash in lieu of fractional shares as provided in **Section 4.04(B)(i)(1)**.

“**Real Property**” means, collectively, all right, title and interest (including any leasehold, mineral or other 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.

“**Redemption**” means the repurchase of any Note by the Company pursuant to **Section 4.03**.

“Redemption Date” means the date fixed, pursuant to **Section 4.03(C)**, for the settlement of the repurchase of any Notes by the Company pursuant to a Redemption.

“Redemption Notice Date” means, with respect to a Redemption, the date on which the Company sends the Redemption Notice for such Redemption pursuant to **Section 4.03(E)**.

“Redemption Price” means the price payable by the Company to redeem any Note upon its Redemption, calculated pursuant to **Section 4.03(D)**.

“Refinance” has the meaning assigned in the definition of “Permitted Refinancing Indebtedness” and “Refinancing” and “Refinanced” have meanings correlative to the foregoing.

“**Refinanced Indebtedness**” has the meaning assigned to such term in **clause (A)** of the definition of “Permitted Refinancing Indebtedness”.

“**Regular Record Date**” has the following meaning with respect to an Interest Payment Date: (A) if such Interest Payment Date occurs on January 15, the immediately preceding January 1; (B) if such Interest Payment Date occurs on April 15, the immediately preceding April 1; (C) if such Interest Payment Date occurs on July 15, the immediately preceding July 1; and (D) if such Interest Payment Date occurs on October 15, the immediately preceding October 1.

“**Repurchase Upon Fundamental Change**” means the repurchase of any Note by the Company pursuant to **Section 4.02**.

“**Required Holders**” means, as of any date of determination, (A) with respect to any series of Notes, Holders holding more than 50% of the aggregate principal amount of the Notes of such series outstanding as of such date of determination, considered as one class, excluding any Notes held by the Company or any of its Affiliates, and (B) with respect to the Notes of all series, Holders holding more than 50% of the aggregate principal amount of all Notes outstanding as of such date of determination, considered as one class, excluding any Notes held by the Company or any of its Affiliates.

“**Responsible Officer**” means (A) any officer within the corporate trust administration of the Trustee or the Collateral Agent (or any successor group) or any other officer of the Trustee or the Collateral Agent customarily performing functions similar to those performed by any of such officers; and (B) with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his or her knowledge of, and familiarity with, the particular subject and, in each case, who will have direct responsibility for the administration of this Indenture.

“**Restricted Note Legend**” means a legend substantially in the form set forth in **Exhibit B-1-A** (in the case of a Note that is not an Affiliate Note) or **Exhibit B-1-B** (in the case of an Affiliate Note).

“**Restricted Stock Legend**” means, with respect to any Conversion Share, a legend substantially to the effect that the offer and sale of such Conversion Share have not been registered under the Securities Act and that such Conversion Share cannot be sold or otherwise transferred except pursuant to a transaction that is registered under the Securities Act or that is exempt from, or not subject to, the registration requirements of the Securities Act.

“**Rule 144**” means Rule 144 under the Securities Act (or any successor rule thereto), as the same may be amended from time to time.

“**Rule 144A**” means Rule 144A under the Securities Act (or any successor rule thereto), as the same may be amended from time to time.

“**Scheduled Trading Day**” means any day that is scheduled to be a Trading Day on the principal 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 traded. If the Common Stock is not

"SEC" means the U.S. Securities and Exchange Commission.

"Secured Parties" has the meaning specified in the Security Agreement.

"Securities Act" means the U.S. Securities Act of 1933, as amended.

"Security" means any Note or Conversion Share.

"Security Agreement" means that certain Security Agreement, dated as of the date hereof, by and among the Company, the Subsidiary Guarantors party thereto from time to time, and the Collateral Agent, as amended, restated, amended and restated, supplemented, modified or replaced, in whole or in part, from time to time, in accordance with its terms.

"Significant Subsidiary" means, with respect to any Person, any Subsidiary of such Person that constitutes, or any group of Subsidiaries of such Person that, in the aggregate, would constitute, a "significant subsidiary" (as defined in Rule 1-02(w) of Regulation S-X under the Exchange Act) of such Person.

"Similar Business" means any business (A) the majority of whose revenues are derived from business or activities conducted by the Company and its Subsidiaries on the Issue Date; and (B) that is a natural outgrowth or reasonable extension, development, expansion of any business or activities conducted by the Company and its Subsidiaries on the Issue Date or any business similar, reasonably related, incidental, complementary or ancillary to any of the foregoing, including research and product development.

"Special Interest" means any interest that accrues on any Note pursuant to **Section 7.03**.

"St. James Indebtedness" means the credit facilities governed by the St. James Loan Agreements.

"St. James Loan Agreements" means (a) that certain Non-Recourse Loan and Securities Pledge Agreement, dated as of February 23, 2024, by and among the Company and The St. James Bank & Trust Company Ltd and (b) that certain Non-Recourse Loan and Securities Pledge Agreement, dated as of February 23, 2024, by and among the Company and The St. James Bank & Trust Company Ltd, each as in effect on the Issue Date.

"Specified Dollar Amount" means, with respect to the conversion of a Note to which Combination Settlement applies, the maximum cash amount per \$1,000 principal amount of such Note deliverable upon such conversion (excluding cash in lieu of any fractional share of Common Stock).

"Stock Price" has the following meaning for any Make-Whole Fundamental Change: (A) if the holders of Common Stock receive only cash in consideration for their shares of Common Stock in such Make-Whole Fundamental Change and such Make-Whole Fundamental Change is

pursuant to **clause (B)** of the definition of “Fundamental Change,” then the Stock Price is the amount of cash paid per share of Common Stock in such Make-Whole Fundamental Change; and (B) in all other cases, the Stock Price is the average of the Last Reported Sale Prices per share of Common Stock for the five (5) consecutive Trading Days ending on, and including, the Trading

- 28 -

Day immediately before the Make-Whole Fundamental Change Effective Date of such Make-Whole Fundamental Change.

“**Subsidiary**” means, with respect to any Person, (A) any corporation, association or other business entity (other than a partnership or limited liability company) of which more than fifty percent (50%) of the total (i) economic entitlements or (ii) voting power of the Capital Stock entitled (without regard to the occurrence of any contingency, but after giving effect to any voting agreement or stockholders’ agreement that effectively transfers voting power) to vote in the election of directors, managers or trustees, as applicable, of such corporation, association or other business entity, is owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person; and (B) any partnership or limited liability company where (i) more than fifty percent (50%) of the capital accounts, distribution rights, equity and voting interests, or of the general and limited partnership interests, as applicable, of such partnership or limited liability company are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person, whether in the form of membership, general, special or limited partnership or limited liability company interests or otherwise; or (ii) such Person or any one or more of the other Subsidiaries of such Person is a controlling general partner of, or otherwise controls, such partnership or limited liability company. Unless otherwise indicated or the context requires otherwise, references to a “Subsidiary” or “Subsidiaries” shall mean a Subsidiary (or the Subsidiaries) of the Company.

“**Subsidiary Guarantor**” means, collectively, each Subsidiary of the Company that is not an Excluded Subsidiary and that executes this Indenture as a Subsidiary Guarantor on the Issue Date and each other Subsidiary of the Company that is not an Excluded Subsidiary that incurs or is required to incur, pursuant to the terms of this Indenture, a Guarantee by executing a supplemental indenture pursuant to **Section 3.19**, **Section 6.02** or **Section 12.03**; *provided* that upon the release or discharge of such Subsidiary from its Guarantee in accordance with the terms of this Indenture, such Subsidiary automatically ceases to be a Subsidiary Guarantor.

“**substantially concurrent**” means, with respect to two or more events, (i) the occurrence of such events within 30 days of one another or (ii) if a binding commitment to effect such second event is in effect at the date of occurrence of the first event, within 45 days of the first event. For the sake of clarity, where a transaction is required to be effected using net proceeds of a “substantially concurrent” issuance or incurrence, the issuance or incurrence must be the first of the two events to occur.

“**Swap Agreement**” means any agreement with respect to any swap, forward, spot, future, credit default or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or

of economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; *provided* that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Company or its Subsidiaries shall be a Swap Agreement.

“**Trading Day**” means any day on which (A) trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock

- 29 -

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 traded; and (B) there is no Market Disruption Event. If the Common Stock is not so listed or traded, then “Trading Day” means a Business Day.

“**Transfer-Restricted Security**” means any Security that constitutes a “restricted security” (as defined in Rule 144); *provided, however*, that such Security will cease to be a Transfer-Restricted Security upon the earliest to occur of the following events:

(A) such Security is sold or otherwise transferred to a Person (other than the Company or an Affiliate of the Company) pursuant to a registration statement that was effective under the Securities Act at the time of such sale or transfer;

(B) such Security is sold or otherwise transferred to a Person (other than the Company or an Affiliate of the Company) pursuant to an available exemption (including Rule 144) from the registration and prospectus-delivery requirements of, or in a transaction not subject to, the Securities Act and, immediately after such sale or transfer, such Security ceases to constitute a “restricted security” (as defined in Rule 144); and

(C) such Security is eligible for resale, by a Person that is not an Affiliate of the Company and that has not been an Affiliate of the Company during the immediately preceding three (3) months, pursuant to Rule 144 without any limitations thereunder as to volume, manner of sale, availability of current public information or notice (and, if such Security is an Affiliate Note, a Conversion Share issued upon conversion of an Affiliate Note or a share of Common Stock issued in respect of a Make-Whole Premium on an Affiliate Note due in connection with any Make-Whole Premium Event, the Company has received such certificates or other documentation or evidence, if any, as the Company, may reasonably require to determine that the Holder or beneficial owner of such Affiliate Note, Conversion Share or share of Common Stock, as applicable, is not, and has not been during the immediately preceding three (3) months, an Affiliate of the Company).

The Initial Notes (other than any Affiliate Notes) and any Common Stock issued upon conversion of any Initial Notes (other than any Affiliate Notes) or in respect of a Make-Whole Premium on any Initial Notes (other than Affiliate Notes) due in connection with any Make-Whole Premium Event shall not be Transfer-Restricted Securities. The Trustee is under no obligation to determine whether any Security is a Transfer-Restricted Security and may conclusively rely on an

Officer's Certificate with respect thereto.

“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.

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

“**Trustee**” means the Person named as such in the first paragraph of this Indenture until a successor replaces it in accordance with the provisions of this Indenture and, thereafter, means such successor.

“**UCC**” means the Uniform Commercial Code as in effect from time to time in the State of New York; *provided, however*, that, at any time, if by reason of mandatory provisions of law, any or all of the perfection or priority of the Collateral Agent’s security interest in any item or portion of the Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term “**UCC**” shall mean the Uniform Commercial Code as in effect, at such time, in such other jurisdiction for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions relating to such provisions.

“**Voting Stock**” of any Person as of any date means the class or classes of Capital Stock of such Person that are at the time entitled to vote in the election of the Board of Directors of such Person.

“**VWAP Market Disruption Event**” means, with respect to any date, (A) the failure by the principal 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, the principal other market on which the Common Stock is then traded, to open for trading during its regular trading session on such date; or (B) the occurrence or existence, for more than one half hour period in the aggregate, of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock, and such suspension or limitation occurs or exists at any time before 1:00 p.m., New York City time, on such date.

“**VWAP Trading Day**” means a day on which (A) there is no VWAP Market Disruption Event; and (B) trading in the Common Stock generally occurs on the principal 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 traded. If the Common Stock is not so listed or traded, then “**VWAP Trading Day**” means a Business Day.

“**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, including payment at final maturity, in respect of the Indebtedness, 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**” of a Person means any Subsidiary of such Person all of the outstanding Capital Stock or other ownership interests of which (other than directors’ qualifying shares) are owned by such Person or by one or more Wholly-Owned Subsidiaries of such Person.

Section 1.02. OTHER DEFINITIONS.

Term	Defined in Section
“Action”	11.01(H)
“Additional Shares”	5.07(A)
“After-Acquired Collateral”	3.20(A)
“AHYDO Amount”	3.01(C)
“Attribution Parties”	2.20
“Beneficial Ownership Limitation”	2.20
“Blocker Notice”	4.04(B)(i)
“Common Stock Change Event”	5.09(A)
“Common Stock Equivalents”	2.20
“Conversion Agent”	2.06(A)
“Conversion Consideration”	5.03(B)
“Default Interest”	2.05(B)
“Defaulted Amount”	2.05(B)
“Event of Default”	7.01(A)
“Expiration Date”	5.05(A)(v)
“Expiration Time”	5.05(A)(v)
“Fundamental Change Notice”	4.02(E)
“Fundamental Change Repurchase Right”	4.02(A)
“Guarantor Business Combination Event”	12.04(A)
“Initial Notes”	2.03(A)
“Make-Whole Premium Consideration”	4.04(B)(i)
“notice of conversion”	5.02(A)(iii)
“Paying Agent”	2.06(A)
“Pre-Funded Warrant”	2.20
“Redemption Notice”	4.03(E)
“Reference Property”	5.09(A)
“Reference Property Unit”	5.09(A)
“Register”	2.06(B)
“Registrar”	2.06(A)
“Reporting Event of Default”	7.03(A)
“series”	2.03(A)
“Specified Courts”	13.07
“Spin-Off”	5.05(A)(iii)(2)
“Spin-Off Valuation Period”	5.05(A)(iii)(2)
“Stated Interest”	2.05(A)
“Successor Entity”	6.01(A)(i)
“Successor Person”	5.09(A)
“Tender/Exchange Offer Valuation Period”	5.05(A)(v)

Section 1.03. RULES OF CONSTRUCTION.

For purposes of this Indenture:

- 32 -

- (A) “or” is not exclusive;
- (B) “including” means “including without limitation”;
- (C) “will” expresses a command;
- (D) the “average” of a set of numerical values refers to the arithmetic average of such numerical values;
- (E) a merger involving, or a transfer of assets by, a limited liability company, limited partnership or trust will be deemed to include any division of or by, or an allocation of assets to a series of, such limited liability company, limited partnership or trust, or any unwinding of any such division or allocation;
- (F) words in the singular include the plural and in the plural include the singular, unless the context requires otherwise;
- (G) “herein,” “hereof” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision of this Indenture, unless the context requires otherwise;
- (H) references to currency mean the lawful currency of the United States of America, unless the context requires otherwise;
- (I) the exhibits, schedules and other attachments to this Indenture are deemed to form part of this Indenture;
- (J) the term “**interest**,” when used with respect to a Note, includes any Default Interest, Additional Interest and Special Interest, unless the context requires otherwise; and
- (K) references herein to any notice, direction, request or other communication to be delivered or provided to the Trustee, the Collateral Agent or any Note Agent shall mean a notice, direction, request or other communication that is provided in writing and delivered in connection with this Indenture.

Article 2. THE NOTES

Section 2.01. FORM, DATING AND DENOMINATIONS.

The Notes and the Trustee’s certificate of authentication will be substantially in the form set forth in **Exhibit A**. The Notes will bear the legends required by **Section 2.09** and may bear

notations, legends or endorsements required by law, stock exchange rule or usage or the Depository. Each Note will be dated as of the date of its authentication.

Except to the extent otherwise provided in a Company Order delivered to the Trustee in connection with the issuance and authentication thereof, the Notes will be issued initially in the form of one or more Global Notes; *provided, however*, that each Affiliate Note will be issued initially in the form of one or more Physical Notes. Global Notes may be exchanged for Physical Notes, and Physical Notes may be exchanged for Global Notes, only as provided in **Section 2.10**.

- 33 -

The Notes will be issuable only in registered form without interest coupons and only in Authorized Denominations.

Each certificate representing a Note will bear a unique registration number that is not affixed to any other certificate representing another outstanding Note.

The terms contained in the Notes constitute part of this Indenture, and, to the extent applicable, the Company, the Trustee and the Collateral Agent, by their execution and delivery of this Indenture, agree to such terms and to be bound thereby; *provided, however*, that, to the extent that any provision of any Note conflicts with the provisions of this Indenture, the provisions of this Indenture will control for purposes of this Indenture and such Note.

Section 2.02. EXECUTION, AUTHENTICATION AND DELIVERY.

(A) *Due Execution by the Company.* At least one (1) duly authorized Officer will sign the Notes on behalf of the Company by manual, electronic or facsimile signature. A Note's validity will not be affected by the failure of any Officer whose signature is on any Note to hold, at the time such Note is authenticated, the same or any other office at the Company.

(B) *Authentication by the Trustee and Delivery.*

(i) No Note will be valid until it is authenticated by the Trustee. A Note will be deemed to be duly authenticated only when an authorized signatory of the Trustee (or a duly appointed authenticating agent) manually or electronically signs the certificate of authentication of such Note.

(ii) The Trustee will cause an authorized signatory of the Trustee (or a duly appointed authenticating agent) to manually or electronically sign the certificate of authentication of a Note only if (1) the Company delivers such Note to the Trustee; (2) such Note is executed by the Company in accordance with **Section 2.02(A)**; and (3) the Company delivers a Company Order to the Trustee that (a) requests the Trustee to authenticate such Note; and (b) sets forth the name of the Holder of such Note and the date as of which such Note is to be authenticated. If such Company Order also requests the Trustee to deliver such Note to any Holder or to the Depository (or the Trustee as its custodian), then the Trustee will promptly deliver such Note in accordance with such Company Order.

(iii) The Trustee may appoint an authenticating agent acceptable to the Company to authenticate Notes. A duly appointed authenticating agent may authenticate Notes whenever the Trustee may do so under this Indenture, and a Note authenticated as provided in this Indenture by such an agent will be deemed, for purposes of this Indenture, to be authenticated by the Trustee. Each duly appointed authenticating agent will have the same rights to deal with the Company as the Trustee would have if it were performing the duties that the authentication agent was validly appointed to undertake.

Section 2.03. INITIAL NOTES AND ADDITIONAL NOTES.

(A) *Initial Notes.* The maximum aggregate principal amount of Notes authorized to be

issued under this Indenture is two hundred seventy four million two hundred forty five thousand dollars (\$274,245,000) (the “**Maximum Principal Amount**”). On the Issue Date, there will be originally issued (i) eighty two million two hundred and seventy seven thousand dollars (\$82,277,000) aggregate principal amount of Series 1 Notes and (ii) one hundred ninety one million nine hundred sixty eight thousand dollars (\$191,968,000) aggregate principal amount of Series 2 Notes (each of the Series 1 Notes and the Series 2 Notes, a “**series**”), in each case subject to the provisions of this Indenture (including **Section 2.02**). Each series of Notes shall rank equally in right of payment and security with each other series of Notes. Notes issued pursuant to this **Section 2.03(A)**, and any Notes issued in exchange therefor or in substitution thereof, are referred to in this Indenture as the “**Initial Notes**.”

(B) *Additional Notes*. Without the consent of any Holder, the Company may, subject to the provisions of this Indenture (including **Section 2.02** and **Section 3.09**), originally issue Additional Notes of Series 2 Notes with the same terms as the Initial Notes of Series 2 Notes (except, to the extent applicable, with respect to the date as of which interest begins to accrue on such Additional Notes and the first Interest Payment Date and the Last Original Issue Date of such Additional Notes), which Additional Notes will, subject to the foregoing, be considered to be part of the same series of, and rank equally and ratably with all other, Series 2 Notes issued under this Indenture; *provided, however*, that the aggregate principal amount of Additional Notes at any time outstanding, together with the aggregate principal amount of all other Notes then outstanding, shall not exceed the Maximum Principal Amount; *provided, further*, that if any such Additional Notes (and any Notes that are resold after such Notes have been purchased or otherwise acquired by the Company or its Subsidiaries) are not fungible with other Series 2 Notes issued under this Indenture for purposes of federal income tax or federal securities laws or, if applicable, the Depository Procedures, then such Additional Notes or resold Notes will be identified by a separate CUSIP number from the Series 2 Notes or, in the case of a Physical Note, by no CUSIP number.

Section 2.04. METHOD OF PAYMENT.

(A) *Global Notes*. The Company will pay, or cause the Paying Agent to pay, the principal (whether due upon maturity on the Maturity Date, Redemption on a Redemption Date or repurchase on a Fundamental Change Repurchase Date or otherwise) of, the repurchase price due pursuant to **Section 3.12**, interest on, and any cash Conversion Consideration or Make-Whole Premium for, any Global Note to the Depository by wire transfer of immediately available funds no later than the time the same is due as provided in this Indenture.

(B) *Physical Notes*. The Company will pay, or cause the Paying Agent to pay, the principal (whether due upon maturity on the Maturity Date, Redemption on a Redemption Date or repurchase on a Fundamental Change Repurchase Date or otherwise) of, the repurchase price due pursuant to **Section 3.12**, interest on, and any cash Conversion Consideration or Make-Whole Premium for, any Physical Note no later than the time the same is due as provided in this Indenture as follows: (i) if the principal amount of such Physical Note is at least five million dollars (\$5,000,000) (or such lower amount as the Company may choose in its sole and absolute discretion) and the Holder of such Physical Note entitled to such payment has delivered to the Company, with a copy to the Paying Agent, no later than the time set forth in the immediately following sentence, a written request that the Company make such payment by wire transfer to an account of such Holder within the United States, by wire transfer of immediately available funds

to such account of the Holder specified in such notice; and (ii) in all other cases, by check from the Company mailed to the address of the Holder of such Physical Note entitled to such payment as set forth in the Register. To be timely, such written request must be so delivered no later than the Close of Business on the following date: (x) with respect to the payment of any interest due on an Interest Payment Date, the immediately preceding Regular Record Date; (y) with respect to any cash Conversion Consideration, on Business Day prior to the relevant Conversion Date; and (z) with respect to any other payment, the date that is fifteen (15) calendar days immediately before the date such payment is due.

Section 2.05. ACCRUAL OF INTEREST; DEFAULTED AMOUNTS; WHEN PAYMENT DATE IS NOT A BUSINESS DAY.

(A) *Accrual of Interest.* Each Note will accrue interest at a rate per annum equal to (i) with respect to the Series 1 Notes, 9.0%; and (ii) with respect to the Series 2 Notes 11.5% (such rate with respect to the applicable series of Notes, the “**Stated Interest**”), plus any Additional Interest and Special Interest that may accrue on any such series of Notes pursuant to **Sections 3.03** and **7.03**, respectively. Stated Interest on each Note will (i) accrue from, and including, the most recent date to which Stated Interest has been paid or duly provided for (or, if no Stated Interest has theretofore been paid or duly provided for, the date set forth in the certificate representing such Note as the date from, and including, which Stated Interest will begin to accrue in such circumstance) to, but excluding, the date of payment of such Stated Interest; and (ii) be, subject to **Sections 4.02(D)**, **4.03(D)** and **5.02(D)** (but without duplication of any payment of interest), payable quarterly in arrears on each Interest Payment Date, beginning on the first Interest Payment Date set forth in the certificate representing such Note, to the Holder of such Note as of the Close of Business on the immediately preceding Regular Record Date. Stated Interest, and, if applicable, Additional Interest and Special Interest, on the Notes will be computed on the basis of a 360-day year comprised of twelve 30-day months. The Company will not pay in cash accrued interest on any Notes when such Notes are converted, except under the circumstances described under **Section 5.02(D)**.

(B) *Defaulted Amounts.* If the Company fails to pay any amount (a “**Defaulted Amount**”) payable on a Note on or before the due date therefor as provided in this Indenture, then, regardless of whether such failure constitutes an Event of Default, (i) such Defaulted Amount will forthwith cease to be payable to the Holder of such Note otherwise entitled to such payment; (ii) to the extent lawful, interest (“**Default Interest**”) will accrue on such Defaulted Amount at a rate per annum equal to the rate per annum at which Stated Interest accrues, plus 2.00%, from, and including, such due date to, but excluding, the date of payment of such Defaulted Amount and Default Interest; (iii) such Defaulted Amount and Default Interest will be paid in any lawful manner, including on a payment date selected by the Company to the Holder of such Note as of the Close of Business on a special record date selected by the Company, *provided* that such special record date must be no more than fifteen (15), nor less than ten (10), calendar days before such payment date; and (iv) at least fifteen (15) calendar days before such special record date, the Company will send notice to the Trustee and the Holders that states such special record date, such

payment date and the amount of such Defaulted Amount and Default Interest to be paid on such payment date.

(C) *Delay of Payment when Payment Date is Not a Business Day.* If the due date for a

- 36 -

payment on a Note as provided in this Indenture is not a Business Day, then, notwithstanding anything to the contrary in this Indenture or the Notes, such payment may be made on the immediately following Business Day and no interest will accrue on such payment as a result of the related delay. Solely for purposes of the immediately preceding sentence, a day on which the applicable place of payment is authorized or required by law or executive order to close or be closed will be deemed not to be a “Business Day.”

Section 2.06. REGISTRAR, PAYING AGENT AND CONVERSION AGENT.

(A) *Generally.* The Company will maintain (i) an office or agency in the continental United States where Notes may be presented for registration of transfer or for exchange (the “**Registrar**”); (ii) an office or agency in the continental United States where Notes may be presented for payment (the “**Paying Agent**”); and (iii) an office or agency in the continental United States where Notes may be presented for conversion (the “**Conversion Agent**”). If the Company fails to maintain a Registrar, Paying Agent or Conversion Agent, then the Trustee will act as such and will be entitled to receive compensation therefor in accordance with this Indenture and any other agreement between the Trustee and the Company. For the avoidance of doubt, the Company or any of its Subsidiaries may act as Registrar, Paying Agent and/or Conversion Agent without prior notice to the Holders. Notwithstanding anything to the contrary in this **Section 2.06(A)**, each of the Registrar, Paying Agent and Conversion Agent with respect to any Global Note must at all times be a Person that is eligible to act in that capacity under the Depository Procedures.

(B) *Duties of the Registrar.* The Registrar will keep a record (the “**Register**”) of the names and addresses of the Holders, the Notes held by each Holder and the transfer, exchange, repurchase, Redemption and conversion of Notes. Absent manifest error, the entries in the Register will be conclusive and the Company and the Trustee shall treat each Person whose name is recorded as a Holder in the Register as a Holder for all purposes. The Register will be in written form or in any form capable of being converted into written form reasonably promptly.

(C) *Co-Agents; Company’s Right to Appoint Successor Registrars, Paying Agents and Conversion Agents.* The Company may appoint one or more co-Registrars, co-Paying Agents and co-Conversion Agents, each of whom will be deemed to be a Registrar, Paying Agent or Conversion Agent, as applicable, under this Indenture. Subject to **Section 2.06(A)**, the Company may change any Registrar, Paying Agent or Conversion Agent (including appointing itself or any of its Subsidiaries to act in such capacity) without notice to any Holder. The Company will notify the Trustee (and, upon request, any Holder) of the name and address of each Note Agent, if any, not a party to this Indenture and will enter into an appropriate agency agreement with each such Note Agent, which agreement will implement the provisions of this Indenture that relate to such Note Agent.

(D) *Initial Appointments.* The Company appoints the Trustee as the initial Paying Agent, the initial Registrar and the initial Conversion Agent.

Section 2.07. PAYING AGENT AND CONVERSION AGENT TO HOLD PROPERTY IN TRUST.

The Company will require each Paying Agent or Conversion Agent that is not the Trustee to agree in writing that such Note Agent will (A) hold in trust for the benefit of the Secured Parties

- 37 -

all money and other property held by such Note Agent for payment or delivery due on the Notes; and (B) notify the Trustee of any default by the Company in making any such payment or delivery. The Company, at any time, may, and the Trustee, while any Default continues, may, require a Paying Agent or Conversion Agent to pay or deliver, as applicable, all money and other property held by it to the Trustee, after which payment or delivery, as applicable, such Note Agent (if not the Company or any of its Subsidiaries) will have no further liability for such money or property. If the Company or any of its Subsidiaries acts as Paying Agent or Conversion Agent, then (A) it will segregate and hold in a separate trust fund for the benefit of the Secured Parties all money and other property held by it as Paying Agent or Conversion Agent; and (B) references in this Indenture or the Notes to the Paying Agent or Conversion Agent holding cash or other property, or to the delivery of cash or other property to the Paying Agent or Conversion Agent, in each case for payment or delivery to any Holders or the Trustee or with respect to the Notes, will be deemed to refer to cash or other property so segregated and held separately, or to the segregation and separate holding of such cash or other property, respectively. Upon the occurrence of any event pursuant to **clause (viii) or (ix) of Section 7.01(A)** with respect to the Company (or with respect to any Subsidiary of the Company acting as Paying Agent or Conversion Agent), the Trustee will serve as the Paying Agent or Conversion Agent, as applicable, for the Notes.

Section 2.08. HOLDER LISTS.

If the Trustee is not the Registrar, then the Company will furnish to the Trustee, no later than seven (7) Business Days before each Interest Payment Date, and at such other times as the Trustee may request, a list, in such form and as of such date or time as the Trustee may reasonably require, of the names and addresses of the Holders of any applicable series.

Section 2.09. LEGENDS.

(A) *Global Note Legend.* Each Global Note will bear the Global Note Legend (or any similar legend, not inconsistent with this Indenture, required by the Depository for such Global Note).

(B) *Non-Affiliate Legend.* Each Note will bear the Non-Affiliate Legend.

(C) *Restricted Note Legend.* Subject to the other provisions of this Indenture,

(i) each Note that is a Transfer-Restricted Security will bear the Restricted

Note Legend; and

(ii) if a Note is issued in exchange for, in substitution of, or to effect a partial conversion of, another Note (such other Note being referred to as the “old Note” for purposes of this **Section 2.09(C)(ii)**), including pursuant to **Section 2.10(B), 2.10(C), 2.11** or **2.12**, then such Note will bear the Restricted Note Legend if such old Note bore the Restricted Note Legend at the time of such exchange or substitution, or on the related Conversion Date with respect to such conversion, as applicable; *provided, however*, that such Note need not bear the Restricted Note Legend if such Note does not constitute a Transfer-Restricted Security immediately after such exchange or substitution, or as of such Conversion Date, as applicable.

For the avoidance of doubt, the Initial Notes (other than any Affiliate Notes) shall not bear the Restricted Note Legend.

(D) *Other Legends.* A Note may bear any other legend or text, not inconsistent with this Indenture, as may be required by applicable law or by any securities exchange or automated quotation system on which such Note is traded or quoted.

(E) *Acknowledgment and Agreement by the Holders.* A Holder's acceptance of any Note bearing any legend required by this **Section 2.09** will constitute such Holder's acknowledgment of, and agreement to comply with, the restrictions set forth in such legend.

(F) *Restricted Stock Legend.*

(i) Each Conversion Share will bear the Restricted Stock Legend if the Note upon the conversion of which such Conversion Share was issued was (or would have been had it not been converted) a Transfer-Restricted Security at the time such Conversion Share was issued; *provided, however*, that such Conversion Share need not bear the Restricted Stock Legend if the Company determines, in its reasonable discretion, that such Conversion Share need not bear the Restricted Stock Legend.

(ii) Notwithstanding anything to the contrary in this **Section 2.09(F)**, a Conversion Share need not bear a Restricted Stock Legend if such Conversion Share is issued in an uncertificated form that does not permit affixing legends thereto, *provided* the Company takes measures (including the assignment thereto of a "restricted" CUSIP number) that it reasonably deems appropriate to enforce the transfer restrictions referred to in the Restricted Stock Legend.

Section 2.10. TRANSFERS AND EXCHANGES; CERTAIN TRANSFER RESTRICTIONS.

(A) *Provisions Applicable to All Transfers and Exchanges.*

(i) *Generally.* Subject to and in accordance with this **Section 2.10**, Physical Notes and beneficial interests in Global Notes may be transferred or exchanged from time to time and the Registrar will record each such transfer or exchange in the Register.

(ii) *Transferred and Exchanged Notes Remain Valid Obligations of the Company.* Each Note issued upon transfer or exchange of any other Note (such other Note being referred to as the "old Note" for purposes of this **Section 2.10(A)(ii)**) or portion thereof in accordance with this Indenture will be the valid obligation of the Company, evidencing the same indebtedness, and entitled to the same benefits under this Indenture, as such old Note or portion thereof, as applicable.

(iii) *No Services Charge; Transfer Taxes.* The Company, the Subsidiary Guarantors, the Trustee and the Note Agents will not impose any service charge on any Holder for any transfer, exchange or conversion of Notes, but the Company, the Subsidiary Guarantors, the Trustee, the Registrar and the Conversion Agent may require payment of a sum sufficient to cover any transfer tax or similar governmental charge that may be imposed in connection with any transfer, exchange or conversion of Notes, other than

exchanges pursuant to **Section 2.11, 2.16** or **8.05** not involving any transfer.

(iv) *Transfers and Exchanges Must Be in Authorized Denominations.* Notwithstanding anything to the contrary in this Indenture or the Notes, a Note may not be transferred or exchanged in part unless the portion to be so transferred or exchanged is in an Authorized Denomination.

(v) *Trustee's Disclaimer.* The Trustee and the Note Agents will have no obligation or duty to monitor, determine or inquire as to compliance with any transfer restrictions imposed under this Indenture or applicable law with respect to any Security, other than to require the delivery of such certificates or other documentation or evidence as expressly required by this Indenture and to examine the same to determine substantial compliance as to form with the requirements of this Indenture.

(vi) *Legends.* Each Note issued upon transfer of, or in exchange for, another Note will bear each legend, if any, required by **Section 2.09**.

(vii) *Settlement of Transfers and Exchanges.* Upon satisfaction of the requirements of this Indenture to effect a transfer or exchange of any Note, the Company will cause such transfer or exchange to be effected as soon as reasonably practicable but in no event later than the Business Day after the date of such satisfaction.

(viii) *Interpretation.* For the avoidance of doubt, and subject to the terms of this Indenture, as used in this **Section 2.10**, an "exchange" of a Global Note or a Physical Note includes (x) an exchange effected for the sole purpose of removing any Restricted Note Legend affixed to such Global Note or Physical Note; and (y) if such Global Note or Physical Note is identified by a "restricted" CUSIP number, an exchange effected for the sole purpose of causing such Global Note or Physical Note to be identified by an "unrestricted" CUSIP number.

(ix) Neither the Trustee nor any Note Agent will have any responsibility for any action taken or not taken by the Depositary.

(B) *Transfers and Exchanges of Global Notes.*

(i) *Certain Restrictions.* Subject to the immediately following sentence, no Global Note may be transferred or exchanged in whole except (x) by the Depositary to a nominee of the Depositary; (y) by a nominee of the Depositary to the Depositary or to another nominee of the Depositary; or (z) by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary. No Global Note (or any portion thereof) may be transferred to, or exchanged for, a Physical Note; *provided, however*, that a Global Note will be exchanged, pursuant to customary procedures, for one or more Physical Notes if:

(1) (x) the Depository notifies the Company or the Trustee that the Depository is unwilling or unable to continue as depository for such Global Note or (y) the Depository ceases to be a “clearing agency” registered under Section 17A of the Exchange Act and, in each case, the Company fails to appoint a successor Depository within ninety

- 40 -

(90) days of such notice or cessation;

(2) an Event of Default has occurred and is continuing and the Company, the Trustee or the Registrar has received a written request from the Depository, or from a holder of a beneficial interest in such Global Note, to exchange such Global Note or beneficial interest, as applicable, for one or more Physical Notes; or

(3) the Company, in its sole discretion, permits the exchange of any beneficial interest in such Global Note for one or more Physical Notes at the request of the owner of such beneficial interest.

(ii) *Effecting Transfers and Exchanges.* Upon satisfaction of the requirements of this Indenture to effect a transfer or exchange of any Global Note (or any portion thereof):

(1) the Trustee will reflect any resulting decrease of the principal amount of such Global Note by notation on the “Schedule of Exchanges of Interests in the Global Note” forming part of such Global Note (and, if such notation results in such Global Note having a principal amount of zero, then the Company may (but is not required to) instruct the Trustee to cancel such Global Note pursuant to **Section 2.14**);

(2) if required to effect such transfer or exchange, then the Trustee will reflect any resulting increase of the principal amount of any other Global Note by notation on the “Schedule of Exchanges of Interests in the Global Note” forming part of such other Global Note;

(3) if required to effect such transfer or exchange, then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, a new Global Note of the same series bearing each legend, if any, required by **Section 2.09**; and

(4) if such Global Note (or such portion thereof), or any beneficial interest therein, is to be exchanged for one or more Physical Notes, then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, one or more Physical Notes of the same series that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount of such Global Note to be so exchanged; (y) are registered in such name(s) as the Depository specifies (or as otherwise determined pursuant to customary procedures); and (z) bear each legend, if any, required by **Section 2.09**.

(iii) *Compliance with Depositary Procedures.* Each transfer or exchange of a beneficial interest in any Global Note will be made in accordance with the Depositary Procedures.

(C) *Transfers and Exchanges of Physical Notes.*

(i) *Requirements for Transfers and Exchanges.* Subject to and in accordance with this **Section 2.10**, a Holder of a Physical Note may (x) transfer such Physical Note (or

- 41 -

any portion thereof in an Authorized Denomination) to one or more other Person(s); (y) exchange such Physical Note (or any portion thereof in an Authorized Denomination) for one or more other Physical Notes of the same series in Authorized Denominations having an aggregate principal amount equal to the aggregate principal amount of the Physical Note (or portion thereof) to be so exchanged; and (z) if then permitted by the Depositary Procedures, and provided such Physical Note is not an Affiliate Note, transfer such Physical Note (or any portion thereof in an Authorized Denomination) in exchange for a beneficial interest in one or more Global Notes of the same series; *provided, however*, that, to effect any such transfer or exchange, such Holder must:

(1) surrender such Physical Note to be transferred or exchanged to the office of the Registrar, together with any endorsements or transfer instruments reasonably required by the Company, the Trustee or the Registrar; and

(2) deliver such certificates, documentation or evidence as may be required pursuant to **Section 2.10(D)**.

(ii) *Effecting Transfers and Exchanges.* Upon the satisfaction of the requirements of this Indenture to effect a transfer or exchange of any Physical Note (such Physical Note being referred to as the “old Physical Note” for purposes of this **Section 2.10(C)(ii)**) of a Holder (or any portion of such old Physical Note in an Authorized Denomination):

(1) such old Physical Note will be promptly cancelled pursuant to **Section 2.14**;

(2) if such old Physical Note is to be so transferred or exchanged only in part, then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, one or more Physical Notes of the same series that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount of such old Physical Note not to be so transferred or exchanged; (y) are registered in the name of such Holder; and (z) bear each legend, if any, required by **Section 2.09**;

(3) in the case of a transfer:

(a) to the Depositary or a nominee thereof that will hold its interest in such old Physical Note (or such portion thereof) to be so transferred in the form of one or more Global Notes, the Trustee will reflect an increase of the principal amount of one or more existing Global Notes of such series by notation on the "Schedule of Exchanges of Interests in the Global Note" forming part of such Global Note(s), which increase(s) are in Authorized Denominations and aggregate to the principal amount to be so transferred, and which Global Note(s) bear each legend, if any, required by **Section 2.09**; *provided, however*, that if such transfer cannot be so effected by notation on one or more existing Global Notes of such series (whether because no Global Notes bearing each legend, if any, required by **Section 2.09** then exist, because any such increase will result in any Global

Note of such series having an aggregate principal amount exceeding the maximum aggregate principal amount permitted by the Depository or otherwise), then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, one or more Global Notes of the same series that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount that is to be so transferred but that is not effected by notation as provided above; and (y) bear each legend, if any, required by **Section 2.09**; and

(b) to a transferee that will hold its interest in such old Physical Note (or such portion thereof) to be so transferred in the form of one or more Physical Notes, the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, one or more Physical Notes of the same series that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount to be so transferred; (y) are registered in the name of such transferee; and (z) bear each legend, if any, required by **Section 2.09**; and

(4) in the case of an exchange, the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, one or more Physical Notes of the same series that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount to be so exchanged; (y) are registered in the name of the Person to whom such old Physical Note was registered; and (z) bear each legend, if any, required by **Section 2.09**.

(D) *Requirement to Deliver Documentation and Other Evidence.* If a Holder of any Note that is identified by a “restricted” CUSIP number or that bears a Restricted Note Legend or is a Transfer-Restricted Security requests to:

- (i) cause such Note to be identified by an “unrestricted” CUSIP number;
- (ii) remove such Restricted Note Legend; or
- (iii) register the transfer of such Note to the name of another Person,

then the Company, the Trustee and the Registrar may refuse to effect such identification, removal or transfer, as applicable, unless there is delivered to the Company, the Trustee and the Registrar such certificates or other documentation or evidence as the Company, the Trustee and the Registrar may reasonably require to determine that such identification, removal or transfer, as applicable, complies with the Securities Act and other applicable securities laws; *provided, however*, that, no such certificates, documentation or evidence (other than, in the case of the following clause (v), a written request in the form contemplated by **Section 2.10(E)**) need be so delivered (v) on or after the date that is six (6) months after the Last Original Issue Date of such Note if the requirements of Rule 144(c) and (i) are then satisfied with respect to the Company; (w) in connection with any transfer of a beneficial interest in a Global Note pursuant to Rule 144A; (x) in connection with any transfer of such Note to the Company or one of its Subsidiaries; (y) in

Securities Act; or (z) on or after the one (1) year anniversary of the Issue Date unless the Company determines, in its reasonable discretion, that such Note is not eligible to be offered, sold or otherwise transferred pursuant to Rule 144 or otherwise without any requirements as to volume, manner of sale, availability of current public information or notice.

(E) *Certain De-Legending Procedures.* If a Holder of any Note or share of Common Stock issued upon conversion of any Note, or an owner of a beneficial interest in any Global Note, or in a global certificate representing any share of Common Stock issued upon conversion of any Note, transfers such Note or share in compliance with Rule 144 and delivers to the Company a written request, certifying that it is not, and has not been at any time during the preceding three (3) months, an Affiliate of the Company, to reissue such Note or share without a Restricted Note Legend or Restricted Stock Legend, as applicable, then the Company will cause the same to occur (and, if applicable, cause such Note or share to thereafter be represented by an “unrestricted” CUSIP or ISIN number in the facilities of the related depository), and will use its commercially reasonable efforts to cause such occurrence within two (2) Trading Days of such request.

(F) *Transfers of Notes Subject to Redemption, Repurchase or Conversion.* Notwithstanding anything to the contrary in this Indenture or the Notes, the Company, the Subsidiary Guarantors, the Trustee and the Registrar will not be required to register the transfer of or exchange any Note that (i) has been surrendered for conversion, except to the extent that any portion of such Note is not subject to conversion; (ii) is subject to a Fundamental Change Repurchase Notice validly delivered, and not withdrawn, pursuant to **Section 4.02(F)**, except to the extent that any portion of such Note is not subject to such notice or the Company fails to pay the applicable Fundamental Change Repurchase Price when due; or (iii) has been selected for Redemption pursuant to a Redemption Notice, except to the extent that any portion of such Note is not subject to Redemption or the Company fails to pay the applicable Redemption Price when due.

Section 2.11. EXCHANGE AND CANCELLATION OF NOTES TO BE CONVERTED OR TO BE REPURCHASED PURSUANT TO AN ASSET SALE OFFER, A REPURCHASE UPON FUNDAMENTAL CHANGE OR REDEMPTION.

(A) *Partial Conversions of Physical Notes and Partial Repurchases of Physical Notes Pursuant to an Asset Sale Offer, Repurchase Upon Fundamental Change or Redemption.* If only a portion of a Physical Note of a Holder is to be converted pursuant to **Article 5** or repurchased pursuant to an Asset Sale Offer, a Repurchase Upon Fundamental Change or Redemption, then, as soon as reasonably practicable after such Physical Note is surrendered for such conversion, Redemption or repurchase, as applicable, the Company will cause such Physical Note to be exchanged, pursuant and subject to **Section 2.10(C)**, for (i) one or more Physical Notes of the same series that are in Authorized Denominations and have an aggregate principal amount equal to the principal amount of such Physical Note that is not to be so converted or repurchased, as applicable, and deliver such Physical Note(s) to such Holder; and (ii) a Physical Note of the same series having a principal amount equal to the principal amount to be so converted or repurchased, as applicable,

which Physical Note will be converted or repurchased, as applicable, pursuant to the terms of this Indenture; *provided, however*, that the Physical Note referred to in this **clause (ii)** need not be issued at any time after which such principal amount subject to such conversion, Redemption or repurchase, as applicable, is deemed to cease to be outstanding pursuant to **Section 2.17**.

- 44 -

(B) *Cancellation of Notes that Are Converted and Notes that Are Repurchased Pursuant to an Asset Sale Offer, a Repurchase Upon Fundamental Change or Redemption.*

(i) *Physical Notes.* If a Physical Note (or any portion thereof that has not theretofore been exchanged pursuant to **Section 2.11(A)**) of a Holder is to be converted pursuant to **Article 5** or repurchased pursuant to an Asset Sale Offer, a Repurchase Upon Fundamental Change or Redemption, then, promptly after the later of the time such Physical Note (or such portion) is deemed to cease to be outstanding pursuant to **Section 2.17** and the time such Physical Note is surrendered for such conversion, Redemption or repurchase, as applicable, (1) such Physical Note will be cancelled pursuant to **Section 2.14**; and (2) in the case of a partial conversion, Redemption or repurchase, as applicable, the Company will issue, execute and deliver to such Holder, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, one or more Physical Notes of the same series that (x) are in Authorized Denominations and have an aggregate principal amount equal to the principal amount of such Physical Note that is not to be so converted or repurchased, as applicable; (y) are registered in the name of such Holder; and (z) bear each legend, if any, required by **Section 2.09**.

(ii) *Global Notes.* If a Global Note (or any portion thereof) is to be converted pursuant to **Article 5** or repurchased pursuant to an Asset Sale Offer, a Repurchase Upon Fundamental Change or Redemption, then, promptly after the time such Note (or such portion) is deemed to cease to be outstanding pursuant to **Section 2.17**, the Trustee will reflect a decrease of the principal amount of such Global Note in an amount equal to the principal amount of such Global Note to be so converted or repurchased, as applicable, by notation on the "Schedule of Exchanges of Interests in the Global Note" forming part of such Global Note (and, if the principal amount of such Global Note is zero following such notation, cancel such Global Note pursuant to **Section 2.14**).

Section 2.12. REPLACEMENT NOTES.

If a Holder of any Note claims that such Note has been mutilated, lost, destroyed or wrongfully taken, then the Company will issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, a replacement Note of the same series upon surrender to the Trustee of such mutilated Note, or upon delivery to the Trustee of evidence of such loss, destruction or wrongful taking reasonably satisfactory to the Trustee and the Company. In the case of a lost, destroyed or wrongfully taken Note, the Company and the Trustee may require the Holder thereof to provide such security or indemnity that is reasonably satisfactory to the Company, the Trustee and the Collateral Agent to protect the Company, the Trustee and the Collateral Agent from any loss that any of them may suffer if such Note is replaced.

Every replacement Note issued pursuant to this **Section 2.12** will be an additional obligation of the Company and will be entitled to all of the benefits of this Indenture equally and ratably with all other Notes of the same series issued under this Indenture.

Section 2.13. REGISTERED HOLDERS; CERTAIN RIGHTS WITH RESPECT TO GLOBAL NOTES.

Only the Holder of a Note will have rights under this Indenture as the owner of such Note. Without limiting the generality of the foregoing, but subject to **Section 8.07**, Depository

- 45 -

Participants will have no rights as such under this Indenture with respect to any Global Note held on their behalf by the Depository or its nominee, or by the Trustee as its custodian, and the Company, the Subsidiary Guarantors, the Trustee, the Collateral Agent and the Note Agents, and their respective agents, may treat the Depository as the absolute owner of such Global Note for all purposes whatsoever; *provided, however*, that (A) the Holder of any Global Note may grant proxies and otherwise authorize any Person, including Depository Participants and Persons that hold interests in Notes through Depository Participants, to take any action that such Holder is entitled to take with respect to such Global Note under this Indenture or the Notes; and (B) the Company, the Subsidiary Guarantors, the Collateral Agent and the Trustee, and their respective agents, may give effect to any written certification, proxy or other authorization furnished by the Depository. Neither the Trustee nor any other Note Agent will have any responsibility or liability for any aspects of the records maintained by, or any other actions or omissions of, the Depository or any of the Depository Participants or Indirect Participants.

Section 2.14. CANCELLATION.

Without limiting the generality of **Section 3.07**, the Company may at any time deliver Notes to the Trustee for cancellation. The Registrar, the Paying Agent and the Conversion Agent will forward to the Trustee each Note duly surrendered to them for transfer, exchange, payment or conversion. The Trustee will promptly cancel all Notes so surrendered to it in accordance with its customary procedures. Without limiting the generality of **Section 2.03(B)**, the Company may not originally issue new Notes to replace Notes that it has paid or that have been cancelled upon transfer, exchange, payment or conversion. For the avoidance of doubt, the cancellation of Notes shall be effectuated in accordance with the Trustee's customary procedures.

Section 2.15. NOTES HELD BY THE COMPANY OR ITS AFFILIATES.

Without limiting the generality of **Section 2.17** and **Section 3.07**, in determining whether the Holders of the required aggregate principal amount of Notes have concurred in any direction, waiver, consent or other action under this Indenture, Notes (if any) owned by the Company or any of its Affiliates will be deemed not to be outstanding; *provided, however*, that, for purposes of determining whether the Trustee or the Collateral Agent is protected in relying on any such direction, waiver, consent or other action, only Notes that a Responsible Officer of the Trustee or the Collateral Agent, as applicable, actually knows are so owned will be so disregarded.

Section 2.16. TEMPORARY NOTES.

Until definitive Notes are ready for delivery, the Company may issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, temporary Notes. Temporary Notes will be substantially in the form of definitive Notes but may have variations that the Company considers appropriate for temporary Notes. The Company will promptly prepare, issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, definitive Notes in exchange for temporary Notes. Until so exchanged, each temporary Note will in all respects be entitled to the same benefits under this Indenture as definitive Notes.

Section 2.17. OUTSTANDING NOTES.

(A) *Generally.* The Notes that are outstanding at any time will be deemed to be those Notes that, at such time, have been duly executed and authenticated, excluding those Notes (or portions thereof) that have theretofore been (i) cancelled by the Trustee or delivered to the Trustee for cancellation in accordance with **Section 2.14**; (ii) assigned a principal amount of zero by notation on the “Schedule of Exchanges of Interests in the Global Note” forming part of any a Global Note representing such Note; (iii) paid in full (including upon conversion) in accordance with this Indenture; or (iv) deemed to cease to be outstanding to the extent provided in, and subject to, **clause (B), (C) or (D)** of this **Section 2.17**. Notwithstanding anything herein to the contrary, with respect to any requirement for the Trustee or any Note Agent to record any transfer or exchange through a notation on the “Schedule of Exchanges of Interests in the Global Note”, such notation shall be deemed made for all purposes without any further action upon the Trustee or the Registrar updating the Register to reflect any applicable increase or decrease in the applicable Global Note.

(B) *Replaced Notes.* If a Note is replaced pursuant to **Section 2.12**, then such Note will cease to be outstanding at the time of its replacement, unless the Trustee and the Company receive proof reasonably satisfactory to them that such Note is held by a “*bona fide* purchaser” under applicable law.

(C) *Maturing Notes and Notes Called for Redemption or Subject to Repurchase.* If, on a Redemption Date, a Fundamental Change Repurchase Date, a repurchase date under **Section 3.12** or the Maturity Date, the Paying Agent holds money sufficient to pay the aggregate Redemption Price, Fundamental Change Repurchase Price, required repurchase price or principal amount, respectively, together, in each case, with the aggregate interest and any applicable Make-Whole Premium, in each case due on such date, then (unless there occurs a Default in the payment of any such amount) (i) the Notes (or portions thereof) to be redeemed or repurchased, or that mature, on such date will be deemed, as of such date, to cease to be outstanding, except to the extent provided in **Section 4.02(D), 4.03(D) or 5.02(D)**; and (ii) the rights of the Holders of such Notes (or such portions thereof), as such, will terminate with respect to such Notes (or such portions thereof), other than the right to receive the Redemption Price, Fundamental Change Repurchase Price, required repurchase price or principal amount, as applicable, of, and accrued and unpaid interest and any applicable Make-Whole Premium on, such Notes (or such portions thereof), in each case as provided in this Indenture.

(D) *Notes to Be Converted.* At the Close of Business on the Conversion Date for any Note (or any portion thereof) to be converted, such Note (or such portion) will (unless there occurs a Default in the delivery of the Conversion Consideration, any applicable Make-Whole Premium or interest due, pursuant to **Section 5.03(B) or Section 5.02(D)**, upon such conversion) be deemed to cease to be outstanding, except to the extent provided in **Section 5.02(D) or Section 5.08**.

(E) *Cessation of Accrual of Interest.* Except as provided in **Section 4.02(D), 4.03(D) or 5.02(D)**, interest will cease to accrue on each Note from, and including, the date that such Note is deemed, pursuant to this **Section 2.17**, to cease to be outstanding, unless there occurs a default in the payment or delivery of any cash or other property due on such Note.

Section 2.18. REPURCHASES BY THE COMPANY.

Without limiting the generality of **Section 2.14**, the Company may, from time to time, repurchase Notes in open market purchases or in negotiated transactions or otherwise, whether through private or public tender or exchange offers, cash-settled swaps, other cash-settled derivatives or private open market repurchases not involving a tender offer with one or more Holders without the consent of or delivering prior notice to the Holders.

Section 2.19. CUSIP AND ISIN NUMBERS.

The Company may use one or more CUSIP or ISIN numbers to identify any of the Notes of any series, and, if so, the Company and the Trustee will use such CUSIP or ISIN number(s) in notices to Holders; *provided, however*, that (i) the Trustee makes no representation as to the correctness or accuracy of any such CUSIP or ISIN number; and (ii) the effectiveness of any such notice will not be affected by any defect in, or omission of, any such CUSIP or ISIN number. The Company will promptly notify the Trustee of any change in the CUSIP or ISIN number(s) identifying any Notes.

Section 2.20. BENEFICIAL OWNERSHIP LIMITATION.

Subject to the final sentence of this **Section 2.20**, the Company shall not effect any conversion of the Notes pursuant to a Physical Settlement or a Combination Settlement or settle any Make-Whole Premium Consideration pursuant to a Physical Settlement, and a Holder shall not have the right to convert any portion of the Notes pursuant to **Article 5**, to the extent that after giving effect to such issuance upon such conversion or settlement, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the Holder's Affiliates (such Persons, "**Attribution Parties**")), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon such conversion or settlement with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (A) conversion of the remaining, unconverted portion of the Notes beneficially owned by the Holder or any of its Affiliates or Attribution Parties, including the settlement of any applicable Make-Whole Premium Consideration thereon, and (B) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other securities of the Company or its Subsidiaries which would entitle the holder thereof to acquire at any time shares of Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock (such securities, "**Common Stock Equivalents**")) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this **Section 2.20**, beneficial

ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in

- 48 -

accordance therewith. To avoid doubt, the calculation of the Beneficial Ownership Limitation shall take into account the concurrent exercise or conversion, as applicable, of the unexercised or unconverted portion of any other securities of the Company (including, without limitation, any other Common Stock Equivalents) beneficially owned by the Holder or any of its Affiliates and Attribution Parties, as applicable. To the extent that the limitation contained in this **Section 2.20** applies, the determination of whether the Notes are convertible (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of the Notes are convertible shall be in the sole discretion of the Holder, and the submission of a notice of conversion shall be deemed to be the Holder's determination of whether the Notes are convertible (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of the Notes are convertible, in each case subject to the Beneficial Ownership Limitation, and neither the Company nor the Trustee shall have no obligation to verify or confirm the accuracy of such determination (including any determination as to group status pursuant to the next sentence). In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this **Section 2.20**, in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (i) the Company's most recent periodic or annual report filed with the SEC, as the case may be, (ii) a more recent public announcement by the Company or (iii) a more recent written notice by the Company or its transfer agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within one (1) Trading Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to any settlement in the form of Common Stock by Physical Settlement or Combined Settlement and the conversion or exercise of securities of the Company, including the Notes, by the Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "**Beneficial Ownership Limitation**" shall be 9.9% of the number of shares of the Common Stock outstanding immediately after giving effect to such Physical Settlement or Combination Settlement, as the case may be. A Holder, upon notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this **Section 2.20**, *provided* that the Beneficial Ownership Limitation in no event is lower than 9.9% or exceeds 19.9% of the number of shares of the Common Stock outstanding immediately after giving effect to such Physical Settlement or Combination Settlement, as the case may be, and the provisions of this **Section 2.20** shall continue to apply. Any increase in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Company. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this **Section 2.20** to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make

changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of the Notes. Solely for the purpose of this **Section 2.20**, in the case of Global Notes, “Holder” shall mean a person that holds a beneficial interest in the Notes of the applicable series and not The Depository Trust Company or its nominee. Notwithstanding anything in this **Section 2.20** to the contrary, to the extent that the receipt of shares of Common Stock for any reason pursuant to the terms of this Indenture (whether upon conversion or otherwise) is or would be limited due to the application of the Beneficial Ownership Limitation, the Company may, in its discretion, (x) effect such

- 49 -

conversion or settlement by issuing to the applicable Holder pre-funded warrants in the form attached as **Exhibit D**

to this Indenture (each, a “**Pre-Funded Warrant**”) exercisable for such number of shares of Common Stock the receipt of which would otherwise be limited due to the application of the Beneficial Ownership Limitation; *provided* that, to the extent that a Holder is an Affiliate of the Company, the Company and the Board of Directors shall take all actions necessary to ensure that any issuance of such pre-funded warrants pursuant to this **Section 2.20** is exempt from the application of Section 16 of the Exchange Act pursuant to Rule 16b-3 thereunder (to the extent such rule is applicable) or (y) notwithstanding any Conversion Settlement Method or Make-Whole Premium Settlement Method previously elected by the Company, settle the conversion or settlement obligation in respect of any shares of Common Stock the receipt of which would otherwise be limited due to the application of the Beneficial Ownership Limitation by Cash Settlement.

Article 3. COVENANTS

Section 3.01. PAYMENT ON NOTES.

(A) *Generally.* The Company will pay or cause to be paid the Fundamental Change Repurchase Price, any repurchase price required by **Section 3.12**, the Redemption Price and, without duplication, all the principal of, any applicable premium (including the Make-Whole Premium), interest on, and other amounts due with respect to, the Notes on the dates and in the manner set forth in this Indenture.

(B) *Deposit of Funds.* Before 11:00 A.M., New York City time, on each Redemption Date, Fundamental Change Repurchase Date or Interest Payment Date, and on the Maturity Date or any other date on which any cash amount is due on the Notes, the Company will deposit, or will cause there to be deposited, with the Paying Agent cash, in funds immediately available on such date, sufficient to pay the cash amount due on the applicable Notes on such date. The Paying Agent will return to the Company, as soon as practicable, any money not required for such purpose.

(C) *AHYDO Amount.* If any series of Notes would be treated as “applicable high yield discount obligations” (as defined in Section 163(i) of the Code), as determined by the Company

as of any interest payment Date after the 11th anniversary of the issue date (as defined in U.S. Treasury Regulations Section 1.1273-2(a)(2)) of such series of Notes, the Company shall pay, without premium or penalty, that portion of each Note in such series outstanding on such Interest Payment Date equal to such Note's share of the AHYDO Amount on such date. The term "**AHYDO Amount**" means, as of any Interest Payment Date and with respect to a series of Notes, an amount equal to the difference between the amount by which (i) the excess of (A) the sum of all interest accrued or paid with respect to such Notes as of such Interest Payment Date (including all original issue discount) over (B) the sum of all cash interest payments made (or to be made) with respect to such Notes on or prior to such Interest Payment Date (including, for the avoidance of doubt, any payment made pursuant to this paragraph with respect to a prior Interest Payment Date), exceeds (ii) the product of (A) the original issue price (as defined in Section 1273(b) of the Code) of such Notes and (B) the yield to maturity (within the meaning of Section 163(i)(2)(B) of

the Code) of such Notes, all such items to be computed so as to yield the smallest amount, the timely payment of which hereunder shall cause the Notes not to be “applicable high yield discount obligations” within the meaning of Section 163(i)(1) of the Code (or any successor provision of similar import).

Section 3.02. EXCHANGE ACT REPORTS; RULE 144A INFORMATION.

(A) *Generally.* The Company will send to the Trustee copies of all reports that the Company is required to file with the SEC pursuant to Section 13(a) or 15(d) of the Exchange Act within fifteen (15) calendar days after the date that the Company is required to file the same (after giving effect to all applicable grace periods under the Exchange Act); *provided, however*, that the Company need not send to the Trustee any material for which the Company has received, or is seeking in good faith and has not been denied, confidential treatment by the SEC. Any report that the Company files with the SEC through the EDGAR system (or any successor thereto) will be deemed to be sent to the Trustee at the time such report is so filed via the EDGAR system (or such successor), it being agreed that the Trustee shall not be responsible for determining whether such filing has been made or for the timeliness or their content. Upon the request of any Holder, the Trustee will provide to such Holder a copy of any report that the Company has sent the Trustee pursuant to this **Section 3.02(A)**, other than a report that is deemed to be sent to the Trustee pursuant to the preceding sentence.

(B) *Trustee’s Disclaimer.* The Trustee need not determine whether the Company has filed any material via the EDGAR system (or such successor). The sending or filing of reports pursuant to **Section 3.02(A)** will not be deemed to constitute actual or constructive notice to the Trustee of any information contained, or determinable from information contained, therein, including the Company’s compliance with any of its covenants under this Indenture (as to which the Trustee is entitled to rely exclusively on an Officer’s Certificate). The Trustee will have no obligation whatsoever to monitor or confirm, on a continuing basis or otherwise, the Company’s compliance with its covenants under this Indenture or with respect to any reports or other documents filed with the SEC via the EDGAR system (or any successor thereto) or any other website, or to participate in any conference calls.

(C) *Rule 144A Information.* If the Company is not subject to Section 13 or 15(d) of the Exchange Act at any time when any Notes or shares of Common Stock issuable upon conversion of the Notes are outstanding and constitute “restricted securities” (as defined in Rule 144), then the Company (or its successor) will promptly provide, to the Trustee and, upon written request, to any Holder, beneficial owner or prospective purchaser of such Notes or shares, 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 pursuant to Rule 144A.

Section 3.03. FINANCIAL REPORTING INFORMATION.

(A) For so long as any Notes are outstanding, the Company shall deliver to the Trustee, for prompt further distribution by the Trustee to each Holder, a copy of all of the information and reports referred to below:

(i) within fifteen (15) days after the time period specified in the SEC’s

is required to file a Form 10-K under the Exchange Act, if applicable), annual reports of the Reporting Entity (as defined below) for such fiscal year containing the information that would have been required to be contained in an annual report on Form 10-K (or any successor or comparable form) if the Reporting Entity had been a reporting company under the Exchange Act, except to the extent permitted to be excluded by the SEC;

(ii) within fifteen (15) days after the time period specified in the SEC's rules and regulations for non-accelerated filers (or such earlier date on which the Company is required to file a Form 10-Q under the Exchange Act, if applicable), quarterly reports of the Reporting Entity for such fiscal quarter containing the information that would have been required to be contained in a quarterly report on Form 10-Q (or any successor or comparable form) if the Reporting Entity had been a reporting company under the Exchange Act, except to the extent permitted to be excluded by the SEC; and

(iii) within fifteen (15) days after the time period specified in the SEC's rules and regulations for filing or furnishing current reports on Form 8-K (or such earlier date on which the Company is required to file or furnish a Form 8-K under the Exchange Act, if applicable), current reports of the Reporting Entity containing substantially all of the information that would be required to be filed or furnished in a current report on Form 8-K under the Exchange Act on the Issue Date pursuant to Sections 1, 2 and 4, Items 5.01, 5.02 (a), (b) and (c) and Item 9.01(a) and (b) (only to the extent relating to any of the foregoing) of Form 8-K if the Reporting Entity had been a reporting company under the Exchange Act.

In addition to providing such information to the Trustee, the Company shall make available to the Holders, bona fide, prospective investors in the Notes (which prospective investors may be limited to "qualified institutional buyers" within the meaning of Rule 144A of the Securities Act that certify their status as such to the satisfaction of the Company) and securities analysts (solely to the extent providing analysis of an investment in the Notes) the information required to be provided pursuant to the foregoing **clauses (i), (ii) and (iii)**, by posting such information to its website (or the website of any of the Company's parent companies, including the Reporting Entity) or on IntraLinks or any comparable online data system or website.

Notwithstanding the foregoing, (A) if neither the Company nor another Reporting Entity is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, neither the Company nor another Reporting Entity will be required to deliver any information, certificates or reports that would otherwise be required by (i) Section 302 or Section 404 of the Sarbanes-Oxley Act of 2002, or related Items 307 or 308 of Regulation S-K or (ii) Item 10(e) of Regulation S-K promulgated by the SEC with respect to any non-generally accepted accounting principles financial measures contained therein, (B) such reports will not be required to contain financial information required by Rule 3-09, Rule 3-10 or Rule 3-16 of Regulation S-X or include any exhibits or certifications required by Form 10-K, Form 10-Q or Form 8-K (or any successor or comparable forms) or related rules under Regulation S-K.

(B) The financial statements, information and other documents required to be provided as described in this **Section 3.03** may be those of (i) the Company or (ii) any direct or indirect parent of the Company (any such entity, a “**Reporting Entity**”), so long as in the case of **clause**

- 52 -

(ii) such direct or indirect parent of the Company shall not conduct, transact or otherwise engage, or commit to conduct, transact or otherwise engage, in any material business or operations other than its direct or indirect ownership of all of the Capital Stock in, and its management of, the Company; *provided* that, if the financial information so delivered relates to such direct or indirect parent of the Company, the same is accompanied by a reasonably detailed description of the quantitative differences between the information relating to such parent, on the one hand, and the information relating to the Company and its Subsidiaries on a standalone basis, on the other hand.

(C) In addition, the Company will make such information available to prospective investors upon request. The Company has agreed that, for so long as any Notes remain outstanding during any period when neither it nor another Reporting Entity is subject to Section 13 or 15(d) of the Exchange Act, or otherwise permitted to furnish the SEC with certain information pursuant to Rule 12g3-2(b) of the Exchange Act, it will furnish to the Holders of the Notes and to prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

(D) Notwithstanding the foregoing, the Company will be deemed to have delivered such reports and information referred to in this **Section 3.03** to the Holders, prospective investors, securities analysts and the Trustee for all purposes of this Indenture if the Company or another Reporting Entity has filed such reports with the SEC via the EDGAR filing system (or any successor system) and such reports are publicly available. In addition, the requirements of this **Section 3.03** shall be deemed satisfied and the Company will be deemed to have delivered such reports and information referred to this **Section 3.03** to the Trustee and the Holders, prospective investors and securities analysts for all purposes of this Indenture by the posting of reports and information that would be required to be provided on the Company’s website (or that of any of the Company’s parent companies, including the Reporting Entity). The Trustee shall have no obligation to monitor whether the Company posts such reports, information and documents on the Company’s website (or that of any of the Company’s parent companies, including the Reporting Entity) or the SEC’s EDGAR service, or collect any such information from the Company’s (or any of the Company’s parent companies) website or the SEC’s EDGAR service.

(E) The Company will hold quarterly conference calls, beginning with the first full fiscal quarter ending after the Issue Date, for all Holders of the Notes, prospective investors, market makers affiliated with any Initial Purchaser of the Notes and securities analysts to discuss such financial information no later than ten (10) Business Days after the distribution of such information required by **clauses (i) or (ii) of Section 3.03(A)** and, prior to the date of each such conference call, will announce the time and date of such conference call and either include all information necessary to access the call or inform Holders of the Notes, prospective investors, market makers affiliated with any Initial Purchaser of the Notes and securities analysts how they can obtain such information, including, without limitation, the applicable account or login information. If

information, including, without limitation, the applicable password or login information (if applicable). For the avoidance of doubt, the holding of the Company's regular quarterly earnings call in accordance with past practice shall satisfy its obligations under this **Section 3.03(E)**.

Delivery of reports, information and documents to the Trustee pursuant to this **Section 3.03** is for informational purposes only and the Trustee's receipt thereof 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

- 53 -

is entitled to rely conclusively on the Officer's Certificates). The Trustee is under no duty to examine such reports, information or documents to ensure compliance with the provision of this Indenture or to ascertain the correctness or otherwise of the information or the statements contained therein.

Section 3.04. ADDITIONAL INTEREST.

(A) *Accrual of Additional Interest.* If, on any day occurring on or after the Last Original Issue Date of any Note,

(i) the Company has not satisfied the reporting conditions (including, for the avoidance of doubt, the requirement for current Form 10 information) set forth in Rule 144(c) and (i)(2) under the Securities Act; or

(ii) such Note is not otherwise Freely Tradable,

then Additional Interest will accrue on such Note for each day during such period on which such failure is continuing or such Note is not Freely Tradable. s

(B) *Amount and Payment of Additional Interest.* Any Additional Interest that accrues on a Note pursuant to **Section 3.04(A)** will be payable on the same dates and in the same manner as the Stated Interest on such Note and will accrue at a rate per annum equal to one quarter of one percent (0.25%) of the principal amount thereof for the first one hundred and eighty (180) days on which Additional Interest accrues and, thereafter, at a rate per annum equal to one half of one percent (0.50%) of the principal amount thereof; *provided, however,* that in no event will Additional Interest, together with any Special Interest, accrue on any day on a Note at a combined rate per annum that exceeds one half of one percent (0.50%). For the avoidance of doubt, any Additional Interest that accrues on a Note will be in addition to the Stated Interest that accrues on such Note and, subject to the proviso of the immediately preceding sentence, in addition to any Special Interest that accrues on such Note.

(C) *Notice of Accrual of Additional Interest; Trustee's Disclaimer.* The Company will send notice to the Holder of each Note, and to the Trustee, of the commencement and termination of any period in which Additional Interest accrues on such Note. In addition, if Additional Interest accrues on any Note, then, no later than five (5) Business Days before each date on which such Additional Interest is to be paid, the Company will deliver an Officer's Certificate to the Trustee

and the Paying Agent stating (i) that the Company is obligated to pay Additional Interest on such Note on such date of payment; and (ii) the amount of such Additional Interest that is payable on such date of payment. Neither the Trustee nor the Paying Agent will have a duty to determine whether any Additional Interest is payable or the amount thereof.

(D) *Exclusive Remedy.* The accrual of Additional Interest will be the exclusive remedy available to Holders for the failure of their Notes to become Freely Tradable.

Section 3.05. COMPLIANCE AND DEFAULT CERTIFICATES.

(A) *Quarterly Compliance Certificate.* Within forty-five (45) days after September 30, 2024 and each fiscal quarter of the Company ending thereafter, the Company will deliver an

Officer's Certificate to the Trustee (i) stating that the signatory thereto has supervised a review of the activities of the Company and its Subsidiaries during such fiscal quarter with a view towards determining whether any Default or Event of Default has occurred; and (ii) stating whether, to such signatory's knowledge, a Default or Event of Default has occurred or is continuing (and, if so, describing all such Defaults or Events of Default and what action the Company is taking or proposes to take with respect thereto).

(B) *Monthly Compliance Certificate.* Within fifteen (15) days following the end of each calendar month, commencing with the first month ended after issuance of the Notes, the Company will deliver an Officer's Certificate to the Trustee stating that the signatory thereto has supervised a review of the Liquidity of the Company during such calendar month with a view towards determining whether the Company's Liquidity was at all times during such calendar month in compliance with **Section 3.16**; stating whether the Company's Liquidity was less than the Minimum Liquidity Amount at the end of, or for more than 5 days of, such calendar month; and setting forth a calculation of the Company's Liquidity as of the last day of such calendar month.

(C) *Default Certificate.* If a Default or Event of Default occurs, then the Company will, promptly and in any event within fifteen (15) days after its first occurrence, deliver an Officer's Certificate to the Trustee describing the same and what action the Company is taking or proposes to take with respect thereto.

Section 3.06. STAY, EXTENSION AND USURY LAWS.

To the extent that it may lawfully do so, each of the Company and each Subsidiary Guarantor (A) agrees that it will not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law (wherever or whenever enacted or in force) that may affect the covenants or the performance of this Indenture; and (B) expressly waives all benefits or advantages of any such law and agrees that it will not, by resort to any such law, hinder, delay or impede the execution of any power granted to the Trustee or the Collateral Agent by this Indenture, but will suffer and permit the execution of every such power as though no such law has been enacted.

Section 3.07. ACQUISITION OF NOTES BY THE COMPANY AND ITS AFFILIATES.

Without limiting the generality of **Section 2.17**, Notes that the Company or any of its Subsidiaries have purchased or otherwise acquired will be promptly delivered to the Trustee for cancellation. The Company will use commercially reasonable efforts to prevent any of its controlled Affiliates from acquiring any Note (or any beneficial interest therein).

Section 3.08. CORPORATE EXISTENCE.

Subject to **Article 6**, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence and the corporate existence of each of its Subsidiaries; *provided, however*, that the Company shall not be required to preserve any such corporate existence of any of its Subsidiaries if, in the judgment of the Company, the preservation thereof is no longer desirable in the conduct of the business of the Company and its Subsidiaries, taken as a whole, and all material assets of any such Subsidiaries have been assigned to the Company or another Subsidiary (that is, to the extent such Subsidiaries' Note Debt is not

a Note Party), and that the loss thereof is not adverse in any material respect to the Holders.

Section 3.09. LIMITATION ON INCURRENCE OF INDEBTEDNESS.

(A) The Company will not, and will not permit any of its Subsidiaries to, directly or indirectly, create, incur, issue, assume, enter into a guarantee of or otherwise become directly or indirectly liable, contingently or otherwise, with respect to (collectively, “**incur**”) any Indebtedness, and the Company will not issue any Disqualified Stock and will not permit any of its Subsidiaries to issue any shares of Disqualified Stock or Preferred Stock.

(B) Notwithstanding anything to the contrary therein, **Section 3.09(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) (a) Indebtedness of the Company under the Existing Convertible Notes outstanding on the Issue Date, and any Permitted Refinancing Indebtedness in respect thereof, and (b) the incurrence by the Note Parties of the Notes and the related Guarantees in an amount not to exceed the Maximum Principal Amount at any time outstanding;

(ii) the incurrence by the Company or any Subsidiary of purchase money Indebtedness to finance the acquisition of personal property, including Capital Lease Obligations, synthetic lease obligations or mortgage financings and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and Permitted Refinancing Indebtedness to refinance such Indebtedness; *provided, however*, that (x) the aggregate principal amount of Indebtedness permitted by this **clause (ii)** shall not exceed, at any one time outstanding, \$16,500,000 and (y) if secured, such Liens shall attach only to the assets acquired with such Indebtedness and shall not extend to any other property or assets of the Company and any of its Subsidiaries;

(iii) 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 to the extent specifically excluded from the definition of Investment or otherwise constituting a Permitted Investment, *provided, however*, that any such Indebtedness owed by the Company or a Subsidiary Guarantor to a Non-Guarantor Subsidiary is subordinated in right of payment of the Obligations of the Company or such Subsidiary Guarantor under the Notes or the applicable Guarantee, and *provided, further*, that (x) any subsequent issuance or transfer of Capital Stock that results in any such Indebtedness being held by a Person other than the Company or a Subsidiary and (y) any sale or other transfer of any such Indebtedness to a Person that is not the Company or a Subsidiary, will be deemed, in each case, to constitute an incurrence of such Indebtedness by the Company or such Subsidiary, as the case may be, that was not permitted by this **clause (iii)**;

(iv) the issuance by any of the Company's Subsidiaries to the Company or any Subsidiary Guarantor of shares of Preferred Stock; *provided, however*, that (x) any subsequent issuance or transfer of Capital Stock that results in any such Preferred Stock being held by a Person other than the Company or a Subsidiary Guarantor and (y) any sale

- 56 -

or other transfer of any such Preferred Stock to a Person that is not the Company or a Subsidiary Guarantor, will be deemed, in each case, to constitute an issuance of such Preferred Stock by such Subsidiary that was not permitted by this **clause (iv)**;

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

(vi) the incurrence by the Company (and the guaranty by any Subsidiary Guarantors) of First Lien Indebtedness in an aggregate principal amount not to exceed \$110,000,000 at any time outstanding (together with any Permitted Refinancing Indebtedness in respect thereof);

(vii) the incurrence by the Company and the Subsidiary Guarantors of Indebtedness under the Permitted ABL Facility in an aggregate principal amount not to exceed \$110,000,000 at any time outstanding;

(viii) the incurrence by the Company of the St. James Indebtedness in an aggregate principal amount not to exceed \$55,000,000 at any time outstanding;

(ix) Unsecured Indebtedness in respect of Permitted Junior Indebtedness in an aggregate principal amount not to exceed the difference between (a) \$275,000,000 minus (b) the aggregate principal amount of (1) Existing Convertible Notes then outstanding plus (2) any Additional Notes issued after the date of this Indenture (and, in each case, any Permitted Refinancing Indebtedness with respect thereto);

(x) 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;

(xi) 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;

(xii) Indebtedness (other than for borrowed money) owed to any Person providing property, casualty, liability or other insurance to the Company or any of its Subsidiaries, 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;

(xiii) Obligations in respect of governmental grants, financial aid, tax incentives, subsidies, tax holidays and other similar governmental benefits or incentives, and guarantees or restrictions related thereto;

(xiv) 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

- 57 -

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 to landlords, utilities and/or vendors in the ordinary course of business, or other Indebtedness with respect to reimbursement-type obligations regarding workers' compensation claims;

(xv) Indebtedness representing deferred compensation or similar obligation to employees of the Company or any of its 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 and services in the ordinary course of business;

(xvii) Indebtedness incurred in connection with judgments, decrees, attachments or awards that do not constitute an Event of Default under **Section 7.01(A)(x)**;

(xviii) Indebtedness in the form of reimbursements owed to officers, directors, consultants and employees of the Company or any of its Subsidiaries in the ordinary course of business;

(xix) Indebtedness or issuance of Disqualified Stock of the Company and the incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock of any Subsidiary in an aggregate outstanding principal amount or liquidation preference that, when aggregated with the outstanding principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred or issued, as applicable, pursuant to this **clause (xix)**, together with any Permitted Refinancing Indebtedness in respect thereof, does not exceed (as of the date such Indebtedness, Disqualified Stock or Preferred Stock is issued, incurred or otherwise obtained) \$550,000 in the aggregate;

(xx) Swap Agreements not entered into for speculative purposes;

(xxi) (a) Indebtedness of the Luminar China Subsidiary in respect of the Permitted China Facility in an aggregate principal amount not to exceed \$82,500,000 at any time outstanding, *less* any Net Proceeds applied to the repayment the Permitted China Facility in accordance with (i) of the definition of "**Net Proceeds**" and (b) Indebtedness of the

Company constituting a guaranty of or other credit support for the Permitted China Facility that, is unsecured and is subordinated in right of payment to the Notes on terms and pursuant to documentation acceptable to the Required Holders;

(xxii) Indebtedness of a Person existing at the time such Person was acquired by the Company or became its Subsidiary or assets were acquired from such Person; *provided* that (w) such Indebtedness was not incurred in connection with, or in contemplation of, such Person becoming a Subsidiary or the acquisition of such assets, (x) neither the Company nor any of its Subsidiaries other than the Person (and its Subsidiaries) or assets acquired has any liability or obligation with respect to such Indebtedness, (y) the aggregate principal amount at any time outstanding of Indebtedness under this **clause (xxii)** shall not exceed \$27,500,000 at any time outstanding, and any Permitted Refinancing Indebtedness

in respect thereof and (z) such Person shall become a Note Party and shall grant a Lien (which may be junior to any existing Lien securing such assumed Indebtedness) to secure the Notes;

(xxiii) Indebtedness arising from agreements of the Company or any of its Subsidiaries providing for indemnification, adjustment of purchase price, earn-out, deferred payment, deferred purchase price, royalty, milestone or similar obligations, in each case incurred or assumed with the acquisition or 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, in an aggregate amount not to exceed \$11,000,000 at any time outstanding;

(xxiv) Indebtedness incurred by the Company or any of its Subsidiaries consisting of (a) the financing of insurance premiums in the ordinary course of business or (b) take-or-pay obligations contained in supply agreements in the ordinary course of business;

(xxv) Indebtedness incurred by the Company or any of its Subsidiaries in the ordinary course of business arising from treasury, payment processing services, cash pooling, depository, over-draft and cash management services;

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

(xxvii) Indebtedness not to exceed \$1,100,000 at any time outstanding in the form of (a) guarantees of loans and advances to officers, directors and employees and (b) reimbursements owed to officers, directors and employees of the Company or any of its Subsidiaries;

(xxviii) performance guarantees by the Company or any Subsidiary with respect to the performance of any obligation of any other Subsidiary; and

(xxix) other Indebtedness in an aggregate amount not to exceed \$1,100,000 at any time outstanding.

(C) For purposes of determining compliance with this **Section 3.09**, 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 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 or Disqualified Stock (based on circumstances existing on the date of reclassification), in any manner that complies with this covenant. The accrual of interest, the accrual of dividends, 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 or an incurrence of Disqualified Stock.

for purposes of this covenant.

(D) 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 3.09**, the maximum amount of Indebtedness that the Company may incur pursuant to this **Section 3.09** 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.

Section 3.10. LIMITATION ON LIENS

The Company shall not, nor will it permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or suffer to exist any Lien to secure Indebtedness on any property or asset of, whether now owned or hereafter acquired, the Company or any of its Subsidiaries, except for Permitted Liens.

Section 3.11. LIMITATION ON RESTRICTED PAYMENTS.

- (A) The Company will not, and the Company will not permit any of its Subsidiaries to:
- (i) declare or pay any dividend or make any payment or distribution (a) on account of the Company's or any of its Subsidiaries' Capital Stock (including any payment made in connection with any merger or consolidation involving the Company or any of its Subsidiaries) or (b) to the direct or indirect holders of the Company's or any of its Subsidiaries' Capital Stock in their capacity as holders, other than (x) dividends or distributions by the Company payable solely in Capital Stock (other than Disqualified Stock) of the Company or (y) dividends or distributions by the Company or any of its Subsidiaries to the Company or another Subsidiary (and in the case of any dividend or distribution payable on or in respect of any class or series of securities issued by a Subsidiary other than a Wholly-Owned Subsidiary, the Company or such Subsidiary receives at least its pro rata share of such dividend or distribution in accordance with its Capital Stock in such class or series of securities);

(ii) purchase, redeem, defease or otherwise acquire or retire for value (including any payment made in connection with any merger or consolidation involving the Company or any of its Subsidiaries) any Capital Stock of the Company or any Subsidiary held by Persons other than the Company or any Subsidiary;

- 60 -

(iii) purchase, repay, prepay, repurchase, redeem, defease, acquire or retire for value any Indebtedness of the Company and its Subsidiaries junior in right of payment or lien priority to the Notes or the Existing Convertible Notes (and any Permitted Refinancing Indebtedness in respect thereof), except in each case any payment of principal at the stated maturity thereof; or

(iv) make any Investment other than a Permitted Investment,

(all such payments and other actions set forth in **clauses (i) through (iv)** above being collectively referred to as “**Restricted Payments**”).

(B) Notwithstanding anything to the contrary contain herein, the provisions of this **Section 3.11** will not prohibit:

(i) the payment of any dividend or distribution or consummation of any redemption within sixty (60) days after the date of declaration thereof or the giving of a redemption notice related thereto, if at the date of declaration or notice such payment would have complied with any other provision of this **Section 3.11**;

(ii) cashless repurchases of Capital Stock deemed to occur upon the exercise of stock options, warrants or other securities convertible into or exercisable or exchangeable for Capital Stock if such Capital Stock represents a portion of the exercise, conversion or exchange price thereof;

(iii) any purchase, repurchase, redemption, defeasance or other acquisition or retirement for value of the Indebtedness of the Company or any Subsidiary junior to the Notes upon a Fundamental Change or Asset Sale or analogous construct contained in the instrument pursuant to which such Indebtedness or Disqualified Stock was issued pursuant to a provision no more favorable, including purchase price, to the holders thereof than the provisions set forth under **Section 3.12** and **Section 4.02**, as applicable, but only if the Company or such Subsidiary has first complied with its obligations under **Section 3.12** and **Section 4.02**, as applicable;

(iv) each Subsidiary may make Restricted Payments to the Company or another Subsidiary which is the immediate parent of the Subsidiary making such Restricted Payment;

(v) repurchases of Capital Stock deemed to occur (a) upon the exercise or conversion of stock options, warrants, convertible notes or similar rights to acquire Capital Stock to the extent that such Capital Stock represents all or a portion of the exercise,

exchange or conversion price of those stock options, warrants, convertible notes or similar rights, or (b) upon the withholding of a portion of Capital Stock granted or awarded to a current or former director, officer, employee, manager or director of the Company or any of its Subsidiaries (or consultant or advisor or any spouses, former spouses, successors, executors, administrators, heirs, legatees or distributees of any of the foregoing) solely to the extent necessary to pay for the taxes payable by such Person upon such grant or award (or upon the vesting thereof);

- 61 -

(vi) a Restricted Payment to pay for the repurchase, retirement or other acquisition for value of Capital Stock of the Company (a) held by any future, present or former employee, director, officer or consultant of the Company or any other Subsidiary upon such Person's death, disability, retirement or termination of employment and (b) pursuant to and accordance with any management equity plan or stock option plan or any other management or employee benefit plan or other agreement or arrangement; *provided, however*, that the aggregate Restricted Payments made under this **clause (vi)(b)** do not exceed \$2,750,000 in any calendar year;

(vii) the making of any Restricted Payment using, 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, Capital Stock (other than Disqualified Stock) of the Company to the extent such proceeds are not otherwise applied to the making of Restricted Payments pursuant to this **Section 3.11**;

(viii) any non Wholly-Owned Subsidiary may make Restricted Payments (which may be in cash) to its shareholders, members or partners generally, so long as the Company or the Subsidiary which owns the Capital Stock in the Subsidiary making such Restricted Payment receives at least its pro rata share thereof (based upon its relative holding of the Capital Stock in the Subsidiary making such Restricted Payment and taking into account the relative preferences, if any, of the various classes of Capital Stock of such Subsidiary);

(ix) the payment of cash in lieu of the issuance of fractional shares of Capital Stock in connection with any dividend or split of, or upon exercise, conversion or exchange of warrants, options or other securities exercisable or convertible into, or exchangeable for Capital Stock of the Company or in connection with the issuance of any dividend otherwise permitted to be made under this **Section 3.11**;

(x) (a) any conversion of the Notes to Capital Stock of the Company in accordance with this Indenture, and (b) the payment (either in cash or by converting such cash amount into additional Capital Stock of the Company) of any Make-Whole Premium, or any other amount that may become due in connection with any conversion of the Notes; *provided* that any such cash payment shall be subject to no Default or Event of Default and pro forma compliance with **Section 3.16** after giving effect to such cash payment;

(xi) the repurchase, redemption, defeasance or other acquisition or retirement for value of the Existing Convertible Notes in exchange for, or with the net proceeds from a substantially concurrent incurrence of Permitted Refinancing Indebtedness or of Series 2 Notes issued after the date of this Indenture, in each case, as permitted under **Section 3.09**;

(xii) payments or distributions to dissenting stockholders pursuant to applicable law, pursuant to or in connection with a consolidation, amalgamation, merger or transfer of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, that complies with **Section 6.01**; *provided* that as a result of such consolidation, amalgamation, merger or transfer of assets, the Company shall comply with **Section 4.02**; and

(xiii) other Restricted Payments in an amount not to exceed \$2,750,000 in the aggregate.

(C) For purposes of determining compliance with this **Section 3.11**, if any Restricted Payment (or portion thereof) would be permitted pursuant to one or more provisions described above, the Company may divide and classify such Restricted Payment in any manner that complies with this covenant and may later divide and classify any such Restricted Payment so long as the 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.

(D) Notwithstanding the foregoing or anything else contained in this Indenture, no Disposition of Material Intellectual Property to a Person other than a Note Party shall be permitted other than a Disposition constituting a Permitted IP License.

Section 3.12. LIMITATION ON ASSET SALES.

(A) The Company will not, and will not permit any of its Subsidiaries to, consummate, directly or indirectly, 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, (ii) no Event of Default set forth in **Section 7.01(A)(i)**, **Section 7.01(A)(ii)**, **Section 7.01(A)(iii)**, **Section 7.01(A)(iv)**, **Section 7.01(A)(viii)** or **Section 7.01(A)(ix)** shall have occurred and be continuing at the time of the consummation of such Asset Sale or would be caused thereby and (iii) at least 75% of the consideration received from such Asset Sale 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 the amount of:

(i) any notes or other obligations or other securities or assets received by the Company or such Subsidiary from such transferee that are converted by the Company or such Subsidiary into cash within 180 days of the receipt thereof (to the extent of the cash received); and

(ii) Indebtedness of any Subsidiary that is no longer a Subsidiary as a result of such Asset Sale, to the extent that the Company and each other Subsidiary are released from any guarantee of payment of such Indebtedness in connection with the Asset Sale;

shall be deemed to be Cash Equivalents for the purposes of this **Section 3.12(A)**.

Notwithstanding the foregoing or anything else contained in this Indenture, no Disposition of Material Intellectual Property to a Person other than a Note Party shall be permitted other than a Disposition constituting a Permitted IP License.

(B) Within 365 days after the Company's or any Subsidiary's receipt of the Net Proceeds of any Asset Sale, the Company or such Subsidiary may apply, at its option:

(i) all or a portion of the Net Proceeds from such Asset Sale, to repay (x) to the extent such Net Proceeds constitute proceeds from the sale of collateral from priority liens

securing the Permitted ABL Facility or the Permitted China Facility, obligations under the Permitted ABL Facility or the Permitted China Facility, as applicable; or (y) to the extent such Net Proceeds are from a Disposition of assets of a Non-Guarantor Subsidiary or are subject to Liens permitted hereunder that are senior in priority to the Notes, any Indebtedness of such Non-Guarantor Subsidiary or so secured; or

(ii) up to 40% of the Net Proceeds from such Asset Sale, to make a Permitted Investment in any one or more businesses (*provided* that if such investment is in the form of the acquisition of Capital Stock of a Person, such acquisition results in such Person becoming a Subsidiary Guarantor of the Company), assets, research and product development, property or capital expenditures, in each case (a) used or useful in the business or activities conducted by the Company and its Subsidiaries as of the Issue Date or a Similar Business or (b) that replace the properties and assets that are the subject of such Asset Sale or to reimburse the cost of any of the foregoing incurred on or after the date on which the Asset Sale giving rise to such Net Proceeds was contractually committed; *provided*, that any such Investment, assets, property or capital expenditures, to the extent acquired with Net Proceeds of an Asset Sale of Collateral, shall be pledged as Collateral (including any assets held by a Person acquired using such Net Proceeds).

In the case of **clause (ii)** above, a binding commitment shall be treated as a permitted application of such Net Proceeds from the date of such commitment until the 18-month anniversary of the date of the receipt of such Net Proceeds; *provided* that in the event such binding commitment is later canceled or terminated for any reason before such Net Proceeds are so applied, then such Net Proceeds shall constitute Excess Proceeds (subject to the second succeeding paragraph) unless the Company or such Subsidiary enters into another binding commitment (a “**Second Commitment**”) within six (6) months of such cancellation or termination of the prior binding commitment; *provided, further*, that the Company or such Subsidiary may only enter into a Second Commitment under the foregoing provision one time with respect to each Asset Sale and to the extent such Second Commitment is later cancelled or terminated for any reason before such Net Proceeds are applied or are not applied within 180 days of such Second Commitment, then such Net Proceeds shall constitute Excess Proceeds (subject to the second succeeding paragraph).

Subject to the preceding paragraph, pending the final application of any such Net Proceeds, the Company or such Subsidiary may temporarily reduce Indebtedness under the Permitted ABL Facility, if any, or otherwise invest such Net Proceeds in any manner not prohibited by this Indenture.

Any Net Proceeds from any Asset Sale that are not applied (x) as provided and within the time period set forth in the first sentence of this **Section 3.12(B)** or (y) to purchase, prepay or redeem First Lien Indebtedness in accordance with the First Lien Indenture as a result of the holders under the First Lien Indenture declining to receive such corresponding prepayment under **Section 3.12** of the First Lien Indenture, will be deemed to constitute “**Excess Proceeds**”.

Notwithstanding anything to the contrary set forth herein, to the extent that repatriation to the United States of any or all of the Net Proceeds of any Asset Sale by a Foreign Subsidiary (x) is prohibited or delayed by applicable local law or (y) would result in material adverse tax consequences as determined by the Company in its sole discretion, the portion of such Net

- 64 -

Proceeds so affected will not be required to be applied in compliance with this **Section 3.12**; *provided* that clause (x) of this paragraph of **clause (B)** shall apply to such amounts for so long, but only for so long, as the applicable local law will not permit repatriation to the United States (the Company hereby agreeing to use commercially reasonable efforts to cause the applicable Foreign Subsidiary to take all actions reasonably required by the applicable local law, applicable organizational impediments or other impediment to permit such repatriation), and if such repatriation of any of such affected Net Proceeds is permitted under the applicable local law and is not subject to clause (y) of this paragraph of **clause (B)**, then such Net Proceeds will be applied (net of additional taxes that would be payable or reserved against as a result of repatriating such amounts) in compliance with this **Section 3.12**. The time periods set forth in this **Section 3.12** shall not start until such time as the applicable Net Proceeds may be repatriated (whether or not such repatriation actually occurs).

The Company may satisfy the foregoing obligations with respect to any Asset Sale by making an Asset Sale Offer at any time prior to the expiration of the 365-day reinvestment period.

(C) Within ten (10) Business Days of the aggregate amount of Excess Proceeds exceeding \$3,850,000, the Company will make an offer (each, an “**Asset Sale Offer**”) to all Holders of Notes, to purchase, prepay or redeem the maximum principal amount of Notes that may be purchased out of Excess Proceeds after taking into account in the calculation of such amount all accrued and unpaid interest on the Notes and the amount of all fees and expenses, including premiums, incurred in connection with such purchase, prepayment or redemption (the “**Offer Amount**”). The offer price in any Asset Sale Offer will be an amount in cash equal to 100% of the principal amount so purchased, prepaid or redeemed, *plus* accrued and unpaid interest on such principal amount to the date of purchase, unless such date of purchase 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 any accrued and unpaid interest that would have accrued on such Notes to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that such Notes remained outstanding through such Interest Payment Date, if such date of purchase is before such Interest Payment Date), to Holders of record as of such Regular Record Date on or, at the Company’s election, before such Interest Payment Date, and the offer price in such Asset Sale Offer shall be an amount in cash equal to 100% of the aggregate principal amount purchased, prepaid or redeemed. If 100% of 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 any such Asset Sale Offer, the amount of Excess Proceeds shall be reset at zero.

(D) To the extent applicable, the Company will comply with all federal and state securities laws in connection with an Asset Sale Offer (including complying with Rules 13e-4 and 14e-1 under the Exchange Act) so as to permit effecting such Asset Sale Offer in the manner set forth in this Indenture. To the extent that the provisions of any applicable federal or state securities laws conflict with the provisions of this **Section 3.12**, the Company will comply with the applicable securities laws and will not be deemed to have breached its obligations under this **Section 3.12** by virtue of such compliance.

- 65 -

Section 3.13. TRANSACTIONS WITH AFFILIATES.

(A) The Company will not, and will not permit any of its Subsidiaries to, directly or indirectly, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction or series of transactions, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Company or any of its Subsidiaries (each, an “**Affiliate Transaction**”) involving aggregate payments or consideration in excess of \$110,000, unless:

(i) such Affiliate Transaction is in the ordinary course of business and is on terms that are not materially less favorable to the Company or the relevant Subsidiary, taken as a whole, than those that could have been obtained in a comparable arm’s-length transaction by the Company or such Subsidiary with a Person that is not an Affiliate of the Company or any of its Subsidiaries; and

(ii) the Company delivers to the Trustee, with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate payments or consideration in excess of \$275,000, a resolution of the Board of Directors accompanied by an Officer’s Certificate certifying that such Affiliate Transaction complies with this **Section 3.13** and that such Affiliate Transaction has been approved by a majority of the disinterested members of the Board of Directors (or by the audit committee or any committee of the Board of Directors consisting of disinterested members of the Board of Directors) (a director shall be disinterested if he or she has no interest in such Affiliate Transaction other than through the Company and its Subsidiaries).

(B) The following items will be deemed not to be Affiliate Transactions and, therefore, will not be subject to the provisions of this **Section 3.13**:

(i) the Notes and the Guarantees;

(ii) any consulting or employment agreement or compensation plan, stock option or stock ownership plan or reasonable and customary officer or director indemnification arrangement entered into by the Company or any of its Subsidiaries in the ordinary course of business for the benefit of directors, officers, employees and consultants of the Company or its Subsidiaries and payments and transactions pursuant thereto;

(iii) transactions between or among the Company and/or the Subsidiary Guarantors (or an entity that becomes a Subsidiary Guarantor as a result of such transaction) and/or the Company's Wholly-Owned Subsidiaries;

(iv) payment of reasonable fees or other reasonable compensation to, provision of customary benefits or indemnification agreements to and reimbursement of expenses of directors, officers and employees of the Company or any of its Subsidiaries;

(v) Restricted Payments that do not violate the provisions of **Section 3.11** of this Indenture;

(vi) transactions pursuant to agreements or arrangements as in effect on the Issue

Date, or any amendment, modification, or supplement thereto or replacement thereof (so long as such agreement or arrangement, as so amended, modified or supplemented or replaced, taken as a whole, is not materially more disadvantageous, to the Holders than such agreement or arrangement as in effect on the Issue Date, as determined in good faith by the Company);

(vii) purchases or sales of goods or services with customers, suppliers, sales agents or sellers of goods and services in the ordinary course of business on terms that are no less favorable to the Company or the relevant Subsidiary than those that would have been obtained at the time in a comparable transaction by the Company or such Subsidiary with a Person that is not an Affiliate of the Company;

(viii) if such Affiliate Transaction is with an Affiliate in its capacity as a minority holder of Indebtedness of the Company or any Subsidiary, a transaction in which such Affiliate is treated no more favorably than the other non-Affiliated holders of Indebtedness of the Company or such Subsidiary;

(ix) transactions in the ordinary course of business between the Company or a Subsidiary with any joint venture; *provided* that all the outstanding ownership interests of such joint venture are owned only by the Company, its Subsidiaries and Persons that are not Affiliates of the Company (other than by virtue of such joint venture arrangement);

(x) any Investment of the Company or any of its Subsidiaries existing on the Issue Date and listed on **Schedule 1.01**, and any extension, modification or renewal of such existing Investments, to the extent not involving any additional Investment other than as the result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities, in each case, pursuant to the terms of such Investments as in effect on the Issue Date;

(xi) the formation and maintenance of any consolidated group or subgroup for tax, accounting or cash pooling or management purposes in the ordinary course of business or transactions undertaken in good faith for the purpose of improving the consolidated tax efficiency of the Company or any of their Subsidiaries and not for the purpose of circumventing any provision of this Indenture;

(xii) to the extent permitted under this Indenture, any merger, consolidation or reorganization of the Company with an Affiliate of the Company solely for the purpose of (A) forming or collapsing a holding company structure or (B) reincorporating the Company in a new jurisdiction;

(xiii) entering into one or more agreements that provide registration or information rights to the security holders of the Company or any Subsidiary or any direct or indirect parent of the Company or amending such agreement with security holders of the Company or any Subsidiary or any direct or any indirect parent of the Company;

(xiv) transactions contemplated by, or in connection with, any customary transition services agreement entered into in connection with any Disposition which is

(xv) customary fees, indemnities and reimbursements as may be paid to non-officer directors of the Company and its Subsidiaries;

(xvi) the issuance, sale or transfer of Capital Stock (other than Disqualified Stock) of the Company, and any contribution to the capital of the Company;

(xvii) advances to employees of the Company or any of its Subsidiaries made in the ordinary course of business, in a manner that is consistent with past practice; and

(xviii) transactions between the Company or any Subsidiary and any Person, a director of which is also a director of the Company (*provided* that such director is not otherwise Affiliated with the Company and is not a Permitted Party); *provided, however*, that such common director abstains from voting as a director of the Company on any matter involving such other Person.

Section 3.14. BURDENSOME AGREEMENTS.

Except as provided herein or in any other Notes Document, the Company shall not, nor shall it permit any of its Subsidiaries to, enter into or cause or permit to exist any agreement restricting the ability of (x) any Subsidiary that is not a Note Party to pay dividends or other distributions to the Company or any Note Party, (y) any Subsidiary that is not a Note Party to make cash loans or advances to the Company or any Note Party or (z) any Note Party to create, permit or grant a Lien on any of its properties or assets to secure the Obligations under the Notes, except for (A) restrictions imposed by applicable federal, state or local law and those in the Notes Documents; (B) any organizational documents of a Note Party as in effect as of the date hereof; and (C) any agreement or restriction or condition that applies to any Person that becomes a Subsidiary, or the assets or property of such Person, pursuant to a Permitted Investment so long as such agreement or restriction is in effect at the time of such Permitted Investment, it was not entered into in contemplation of such Permitted Investment and does not extend to any assets, properties or businesses other than those acquired pursuant to such Permitted Investment.

Section 3.15. MODIFICATION OF TERMS OF OTHER INDEBTEDNESS

The Company shall not, nor shall the Company permit any Subsidiary to, amend, modify or change in any manner materially adverse to the interests of the Holders, in the good-faith judgement of the Board of Directors, any term or condition of the St. James Indebtedness or, following the entry into any such facility, the Permitted China Facility or any Permitted ABL Facility; *provided* that, any amendment, modification or change that adds a liquidity covenant or other financial covenant to such Indebtedness shall be deemed to be materially adverse to the interests of the Holders.

Section 3.16. MINIMUM LIQUIDITY.

The Company will not permit Liquidity to be less than \$31,500,000 (the “**Minimum**

Liquidity Amount") on the last Business Day of any calendar month, or for more than 5 days during, any calendar month, commencing with the first calendar month ended after the issuance of the Notes.

- 68 -

Section 3.17. [RESERVED].

Section 3.18. FURTHER INSTRUMENTS AND ACTS.

Upon request of the Trustee, the Note Parties shall execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

Section 3.19. ADDITIONAL SUBSIDIARY GUARANTORS

(A) On and after the date hereof, the Company will cause each of the Company's Subsidiaries that is not an Excluded Subsidiary to promptly (but in any event within forty five (45) calendar days of (x) such Subsidiary that was previously deemed an Excluded Subsidiary ceasing to be an Excluded Subsidiary, or (y) the acquisition or formation of a Subsidiary which is not an Excluded Subsidiary):

(i) execute and deliver a supplemental indenture to this Indenture, pursuant to which such Subsidiary will agree to be a Subsidiary Guarantor under this Indenture and be bound by the terms of this Indenture applicable to Subsidiary Guarantors, including, but not limited to, **Article 12**; *provided* that such Subsidiary Guarantor shall deliver to the Trustee and the Collateral Agent an Opinion of Counsel to the effect that: (A) such Guarantee has been duly executed and authorized by such Subsidiary Guarantor; and (B) such Guarantee and joinders to any applicable Collateral Documents pursuant to **Section 3.19(B)** constitute a valid, binding and enforceable obligation of such Subsidiary Guarantor, except insofar as enforcement thereof may be limited by bankruptcy, insolvency or similar laws (including, without limitation, all laws relating to fraudulent transfers) and except insofar as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is sought in equity or at law) and other exceptions; and

(ii) waive and not in any manner whatsoever claim or take the benefit or advantage of, any rights of reimbursement, indemnity or subrogation or any other rights against the Company or any other Subsidiary as a result of any payment by such Subsidiary under its Guarantee.

(B) In addition, the Company shall cause each Subsidiary Guarantor to become a party to the applicable Collateral Documents and take such actions required thereby to grant to the Collateral Agent, for the benefit of itself, the Trustee and the Holders, a perfected security interest in any Collateral held by such Subsidiary Guarantor, subject to Permitted Liens, including, if required by the Intercreditor Agreement, executing and delivering a joinder to the Intercreditor Agreement.

Section 3.20. FURTHER ASSURANCES.

(A) Promptly following (and in any event, within the applicable time periods specified by any Collateral Document) any Note Party's acquisition of any assets or property (other than Excluded Assets (as defined in the Security Agreement)) after the date hereof, which in each case constitutes Collateral ("**After-Acquired Collateral**"), such Note Party shall execute and deliver such security instruments and financing statements as shall be reasonably necessary to vest in the

- 69 -

Collateral Agent a perfected second-priority security interest in such After-Acquired Collateral and to have such After-Acquired Collateral added to the Collateral, in each case to the extent required by and subject to the limitations under this Indenture, the Intercreditor Agreement and the Collateral Documents, and thereupon all provisions of this Indenture relating to the Collateral shall be deemed to relate to such After-Acquired Collateral to the same extent and with the same force and effect.

(B) The Company shall, and shall cause each Subsidiary Guarantor to, at its own cost and expense, execute any and all further Collateral Documents, financing statements, agreements and instruments and take all further action that may be required under applicable law, or that the Collateral Agent may reasonably request (including without limitation, the delivery of Officer's Certificates and Opinions of Counsel), in order to grant, preserve, protect and perfect the validity and priority of the security interests and Liens created or intended to be created by the Collateral Documents, in each case, subject to the limitations set forth in this Indenture and the Collateral Documents. The Company shall, and shall cause each Subsidiary Guarantor to, take all actions necessary to ensure the recordation of appropriate evidence of the Liens and security interests granted hereunder and/or under the Collateral Documents in the Company's or such Subsidiary Guarantor's Intellectual Property (i) with the United States Patent and Trademark Office and the United States Copyright Office, as applicable, and (ii) as promptly as practicable (and in no event later than ninety (90) days) following, as applicable (x) the Issue Date, with respect to the Company's or such Subsidiary Guarantor's Intellectual Property that is registered in any Material Foreign Jurisdiction as of the Issue Date, (y) the date on which the Company or any Subsidiary Guarantor shall register any Intellectual Property in any Material Foreign Jurisdiction after the Issue Date and (z) with respect to the Company's or such Subsidiary Guarantor's Intellectual Property that has been registered in any Immaterial Foreign Jurisdiction as of the Issue Date, the date on which such Immaterial Foreign Jurisdiction shall become or is deemed to be a Material Foreign Jurisdiction in accordance with the terms hereof, in each case, with the applicable filing office of any Material Foreign Jurisdictions, shall file financing statements in the appropriate jurisdictions and take such other actions as appropriate to record and perfect the Liens and security interests granted under the Collateral Documents, in each case subject to the limitations on required perfection actions set out in this Indenture and the Collateral Documents. In addition, from time to time, the Company shall, and shall cause each Subsidiary Guarantor, to reasonably promptly secure the obligations under this Indenture, the Notes, the Guarantees and the Collateral Documents by pledging or creating, or causing to be pledged or created, perfected security interests in and Liens on the Collateral, in each case, to the extent required under this Indenture and/or the Collateral Documents subject to no Liens other than Permitted Liens. Such security interests and

Collateral Documents subject to no Liens other than Permitted Liens. Such security interests and Liens will be created under the Collateral Documents and other security agreements and other instruments and documents.

Notwithstanding anything in this Indenture or the Collateral Documents to the contrary, none of the Note Parties shall be required to (i) take any actions to perfect a security interest in letters of credit or letter of credit rights other than the filing of a UCC-1 financing statement; or (ii) perfect any security interest in (x) any real property (whether fee owned or leasehold) that is not a Material Real Property; or (y) any motor vehicles, airplanes, vessels and other assets subject to certificates of title; or (iii) except as required by the Security Agreement, obtain any landlord waivers, bailee letters or waivers or the like.

It is understood and agreed that prior to the Discharge of First Lien Obligations (as defined in the Intercreditor Agreement) to the extent the First Lien Collateral Agent (as defined in the Intercreditor Agreement) is satisfied with or agrees to any deliveries of or other arrangements with respect to any Collateral or the terms or provisions of this Indenture applicable to the Permitted ABL Facility or the Permitted China Facility, the Trustee, the Collateral Agent and the Holders, as the case may be, shall automatically be deemed to be satisfied with and accept such arrangements and shall execute any documentation, if applicable, in connection therewith. So long as the Intercreditor Agreement is in effect, (A) a Note Party may satisfy its obligations to (1) deliver or make arrangements with respect to any Collateral to the Collateral Agent or (2) perfect or maintain the perfection of the Collateral Agent's Lien in possessory Collateral in any jurisdiction by delivering to, or making arrangements with respect to such Collateral satisfactory to (x) prior to the Discharge of First Lien Obligations (as defined in the Intercreditor Agreement), the First Lien Collateral Agent (as defined in the Intercreditor Agreement) or its agent, designee or bailee, and (y) after the Discharge of First Lien Obligations (as defined in the Intercreditor Agreement), the Collateral Agent, in each case in accordance with the terms of the Intercreditor Agreement and (B) prior to the Discharge of First Lien Obligations (as defined in the Intercreditor Agreement), if the First Lien Collateral Agent (as defined in the Intercreditor Agreement) or the "Required Holders" (as defined in the First Lien Indenture), as applicable, grant any extension of time pursuant to a provision in documentation governing the First Lien Indebtedness that is substantially similar to that in this Indenture or the other Collateral Documents or exercises its discretion under the documentation governing the First Lien Indebtedness to determine that any Subsidiary of the Borrower shall be an Excluded Subsidiary or that any property shall be an "Excluded Asset" (as defined in the Security Agreement), the Trustee, the Collateral Agent and the Required Holders, as the case may be, shall automatically be deemed to accept such determination hereunder and shall execute any documentation, if applicable, in connection therewith.

Section 3.21. PAYMENT FOR CONSENT.

Neither the Company nor any Affiliate of the Company shall, directly or indirectly, pay or cause to be paid or provide or cause to be provided any fee, cash or otherwise, opportunity, benefit or other consideration, to any Holder for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of this Indenture or the Notes or any other Notes Documents unless such consideration is offered to be paid or provided to all Holders that so consent, waive or agree to amend such consent, waiver or amendment, on the same terms and in the same time frame related thereto.

Article 4. REPURCHASE AND REDEMPTION

Section 4.01. NO SINKING FUND.

No sinking fund is required to be provided for the Notes.

Section 4.02. RIGHT OF HOLDERS TO REQUIRE THE COMPANY TO REPURCHASE NOTES UPON A FUNDAMENTAL CHANGE.

(A) *Right of Holders to Require the Company to Repurchase Notes Upon a Fundamental Change.* Subject to the other terms of this **Section 4.02**, if a Fundamental Change

require the Company to repurchase such Holder’s Notes (or any portion thereof in an Authorized Denomination) on the Fundamental Change Repurchase Date for such Fundamental Change for a cash purchase price equal to the Fundamental Change Repurchase Price.

(B) *Repurchase Prohibited in Certain Circumstances.* If the principal amount of the Notes has been accelerated and such acceleration has not been rescinded on or before the Fundamental Change Repurchase Date for a Repurchase Upon Fundamental Change (including as a result of the payment of the related Fundamental Change Repurchase Price, and any related interest pursuant to the proviso to **Section 4.02(D)**, on such Fundamental Change Repurchase Date), then (i) the Company may not repurchase any Notes pursuant to this **Section 4.02**; and (ii) the Company will cause any Notes theretofore surrendered for such Repurchase Upon Fundamental Change to be returned to the Holders thereof (or, if applicable with respect to Global Notes, cancel any instructions for book-entry transfer to the Company, the Trustee or the Paying Agent of the applicable beneficial interest in such Notes in accordance with the Depository Procedures).

(C) *Fundamental Change Repurchase Date.* The Fundamental Change Repurchase Date for any Fundamental Change will be a Business Day of the Company’s choosing that is no more than thirty-five (35), nor less than twenty (20), Business Days after the date the Company sends the related Fundamental Change Notice pursuant to **Section 4.02(E)**.

(D) *Fundamental Change Repurchase Price.* The Fundamental Change Repurchase Price for any Note to be repurchased upon a Repurchase Upon Fundamental Change following a Fundamental Change is an amount in cash equal to the principal amount of such Note plus accrued and unpaid interest on such Note to, but excluding, the Fundamental Change Repurchase Date for such Fundamental Change; *provided, however*, that if such Fundamental Change Repurchase Date is after a Regular Record Date and on or before the next Interest Payment Date, then (i) the Holder of such Note at the Close of Business on such Regular Record Date will be entitled, notwithstanding such Repurchase Upon Fundamental Change, to receive, on or, at the Company’s election, before such Interest Payment Date, the unpaid interest that would have accrued on such Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that such Note remained outstanding through such Interest Payment Date, if such Fundamental Change Repurchase Date is before such Interest Payment Date); and (ii) the Fundamental Change Repurchase Price will not include accrued and unpaid interest on such Note to, but excluding, such Fundamental Change Repurchase Date. For the avoidance of doubt, if an Interest Payment Date is not a Business Day within the meaning of **Section 2.05(C)** and such Fundamental Change Repurchase Date occurs on the Business Day immediately after such Interest Payment Date, then (x) accrued and unpaid interest on Notes to, but excluding, such Interest Payment Date will be paid, in accordance with **Section 2.05(C)**, on the next Business Day to Holders as of the Close of Business on the immediately preceding Regular Record Date; and (y) the Fundamental Change Repurchase Price will include interest on Notes to be repurchased from, and including, such Interest Payment Date.

(E) *Fundamental Change Notice*. On or before the twentieth (20th) calendar day after the effective date of a Fundamental Change, the Company will send to each Holder, the Trustee, the Conversion Agent and the Paying Agent a notice of such Fundamental Change (a “**Fundamental Change Notice**”).

- 72 -

Such Fundamental Change Notice must state:

- (i) briefly, the events causing such Fundamental Change;
- (ii) the effective date of such Fundamental Change;
- (iii) the procedures that a Holder must follow to require the Company to repurchase its Notes pursuant to this **Section 4.02**, including the deadline for exercising the Fundamental Change Repurchase Right and the procedures for submitting and withdrawing a Fundamental Change Repurchase Notice;
- (iv) the Fundamental Change Repurchase Date for such Fundamental Change;
- (v) the Fundamental Change Repurchase Price per \$1,000 principal amount of Notes for such Fundamental Change (and, if such Fundamental Change Repurchase Date is after a Regular Record Date and on or before the next Interest Payment Date, the amount, manner and timing of the interest payment payable pursuant to the proviso to **Section 4.02(D)**);
- (vi) the name and address of the Paying Agent and the Conversion Agent;
- (vii) the Conversion Rate in effect on the date of such Fundamental Change Notice, the amount of the applicable Make-Whole Premium for conversions with a Conversion Date of the Business Day immediately before the Fundamental Change Repurchase Date, the Make-Whole Premium Settlement Method for conversions with a Conversion Date through and including the Business Day immediately before the Fundamental Change Repurchase Date and a description and quantification of any adjustments to the Conversion Rate that may result from such Fundamental Change (including pursuant to **Section 5.07**);
- (viii) that Notes for which a Fundamental Change Repurchase Notice has been duly tendered and not duly withdrawn must be delivered to the Paying Agent for the Holder thereof to be entitled to receive the Fundamental Change Repurchase Price;
- (ix) that Notes (or any portion thereof) that are subject to a Fundamental Change Repurchase Notice that has been duly tendered may be converted only if such Fundamental Change Repurchase Notice is withdrawn in accordance with this Indenture; and
- (x) the CUSIP and ISIN numbers, if any, of the Notes.

Neither the failure to deliver a Fundamental Change Notice nor any defect in a

Neither the failure to deliver a Fundamental Change Notice nor any defect in a Fundamental Change Notice will limit the Fundamental Change Repurchase Right of any Holder or otherwise affect the validity of any proceedings relating to any Repurchase Upon Fundamental Change.

(F) *Procedures to Exercise the Fundamental Change Repurchase Right.*

(i) *Delivery of Fundamental Change Repurchase Notice and Notes to Be*

- 73 -

Repurchased. To exercise its Fundamental Change Repurchase Right for a Note following a Fundamental Change, the Holder thereof must deliver to the Paying Agent:

(1) before the Close of Business on the Business Day immediately before the related Fundamental Change Repurchase Date (or such later time as may be required by law), a duly completed, written Fundamental Change Repurchase Notice with respect to such Note; and

(2) such Note, duly endorsed for transfer (if such Note is a Physical Note) or by book-entry transfer (if such Note is a Global Note).

The Paying Agent will promptly deliver to the Company a copy of each Fundamental Change Repurchase Notice that it receives.

(ii) *Contents of Fundamental Change Repurchase Notices.* Each Fundamental Change Repurchase Notice with respect to a Note must state:

(1) if such Note is a Physical Note, the certificate number of such Note;

(2) the principal amount of such Note to be repurchased, which must be an Authorized Denomination; and

(3) that such Holder is exercising its Fundamental Change Repurchase Right with respect to such principal amount of such Note;

provided, however, that if such Note is a Global Note, then such Fundamental Change Repurchase Notice must comply with the Depository Procedures (and any such Fundamental Change Repurchase Notice delivered in compliance with the Depository Procedures will be deemed to satisfy the requirements of this **Section 4.02(F)**).

(iii) *Withdrawal of Fundamental Change Repurchase Notice.* A Holder that has delivered a Fundamental Change Repurchase Notice with respect to a Note may withdraw such Fundamental Change Repurchase Notice by delivering a written notice of withdrawal to the Paying Agent at any time before the Close of Business on the Business Day immediately before the related Fundamental Change Repurchase Date. Such withdrawal notice must state:

- (1) if such Note is a Physical Note, the certificate number of such Note;
- (2) the principal amount of such Note to be withdrawn, which must be an Authorized Denomination; and
- (3) the principal amount of such Note, if any, that remains subject to such Fundamental Change Repurchase Notice, which must be an Authorized Denomination;

provided, however, that if such Note is a Global Note, then such withdrawal notice must comply with the Depository Procedures (and any such withdrawal notice delivered in

compliance with the Depository Procedures will be deemed to satisfy the requirements of this **Section 4.02(F)**).

Upon receipt of any such withdrawal notice with respect to a Note (or any portion thereof), the Paying Agent will (x) promptly deliver a copy of such withdrawal notice to the Company; and (y) if such Note is surrendered to the Paying Agent, cause such Note (or such portion thereof in accordance with **Section 2.11**, treating such Note as having been then surrendered for partial repurchase in the amount set forth in such withdrawal notice as remaining subject to repurchase) to be returned to the Holder thereof (or, if applicable with respect to any Global Note, cancel any instructions for book-entry transfer to the Company, the Trustee or the Paying Agent of the applicable beneficial interest in such Note in accordance with the Depository Procedures).

(G) *Payment of the Fundamental Change Repurchase Price.* Without limiting the Company's obligation to deposit the Fundamental Change Repurchase Price within the time proscribed by **Section 3.01(B)**, the Company will cause the Fundamental Change Repurchase Price for a Note (or portion thereof) to be repurchased pursuant to a Repurchase Upon Fundamental Change to be paid to the Holder thereof on or before the later of (i) the applicable Fundamental Change Repurchase Date; and (ii) the date (x) such Note is delivered to the Paying Agent (in the case of a Physical Note) or (y) the Depository Procedures relating to the repurchase, and the delivery to the Paying Agent, of such Holder's beneficial interest in such Note to be repurchased are complied with (in the case of a Global Note). For the avoidance of doubt, interest payable pursuant to the proviso to **Section 4.02(D)** on any Note to be repurchased pursuant to a Repurchase Upon Fundamental Change must be paid pursuant to such proviso regardless of whether such Note is delivered or such Depository Procedures are complied with pursuant to the first sentence of this **Section 4.02(G)**.

(H) *Third Party May Conduct Repurchase Offer In Lieu of the Company.* Notwithstanding anything to the contrary in this **Section 4.02**, the Company will be deemed to satisfy its obligations under this **Section 4.02** if (i) one or more third parties conduct any Repurchase Upon Fundamental Change and related offer to repurchase Notes otherwise required by this **Section 4.02** in a manner that would have satisfied the requirements of this **Section 4.02** if conducted directly by the Company; and (ii) an owner of a beneficial interest in any Note repurchased by such third party or parties will not receive a lesser amount (as a result of withholding or other similar taxes) than such owner would have received had the Company repurchased such Note.

(I) *No Requirement to Conduct an Offer to Repurchase Notes if the Fundamental Change Results in the Notes Becoming Convertible into an Amount of Cash Exceeding the Fundamental Change Repurchase Price.* Notwithstanding anything to the contrary in this **Section 4.02**, the Company will not be required to send a Fundamental Change Notice pursuant to **Section 4.02(E)**, or offer to repurchase or repurchase any Notes pursuant to this **Section 4.02**, in connection with a Fundamental Change occurring pursuant to **clause (B)(ii)** (or pursuant to **clause (A)** that also constitutes a Fundamental Change occurring pursuant to **clause (B)(ii)**) of the definition thereof, if (i) such Fundamental Change constitutes a Common Stock Change Event whose Reference Property consists entirely of cash in U.S. dollars; (ii) immediately after such Fundamental Change, the Notes become convertible, pursuant to **Section 5.09(A)** and, if

applicable, **Section 5.07**, into consideration that consists solely of U.S. dollars in an amount per \$1,000 aggregate principal amount of Notes that equals or exceeds the Fundamental Change Repurchase Price per \$1,000 aggregate principal amount of Notes (calculated assuming that the same includes accrued and unpaid interest to, but excluding, the latest possible Fundamental Change Repurchase Date for such Fundamental Change); and (iii) the Company provides notice of such Fundamental Change to the Holders, the Trustee and the Conversion Agent no later than the Business Day after the effective date of such Fundamental Change and includes, in such notice, a statement that the Company is relying on this **Section 4.02(I)**.

(J) *Compliance with Applicable Securities Laws.* To the extent applicable, the Company will comply, in all material respects, with all federal and state securities laws in connection with a Repurchase Upon Fundamental Change (including complying with Rules 13e-4 and 14e-1 under the Exchange Act and filing any required Schedule TO, to the extent applicable) so as to permit effecting such Repurchase Upon Fundamental Change in the manner set forth in this Indenture; *provided, however*, that, to the extent that the Company's obligations pursuant to this **Section 4.02** conflict with any law or regulation that is applicable to the Company and enacted after the Issue Date, the Company's compliance with such law or regulation will not be considered to be a Default of such obligations.

(K) *Repurchase in Part.* Subject to the terms of this **Section 4.02**, Notes may be repurchased pursuant to a Repurchase Upon Fundamental Change in part, but only in Authorized Denominations. Provisions of this **Section 4.02** applying to the repurchase of a Note in whole will equally apply to the repurchase of a permitted portion of a Note.

Section 4.03. RIGHT OF THE COMPANY TO REDEEM THE NOTES.

(A) *Right to Redeem the Notes.* Subject to the terms of this **Section 4.03**, the Company has the right, at its election, to redeem all, or any portion in an Authorized Denomination, of the Notes of any series, at any time, and from time to time, on a Redemption Date on or before the 40th Scheduled Trading Day immediately before the Maturity Date, for a cash purchase price equal to the Redemption Price, but only if (1) the Last Reported Sale Price per share of Common Stock exceeds one hundred and thirty percent (130%) of the Conversion Price for such series on (x) each of at least twenty (20) Trading Days (whether or not consecutive) during the thirty (30) consecutive Trading Days ending on, and including, the Trading Day immediately before the Redemption Notice Date for such Redemption; and (y) the Trading Day immediately before such Redemption Notice Date; and (2) the Liquidity Conditions have been satisfied; *provided, however*, that if the Company elects to redeem fewer than all of the outstanding Notes of a series, the Company must elect to redeem a minimum of \$1,000,000 aggregate principal amount of Notes of such series and shall be in pro forma compliance with **Section 3.16** before and after giving effect to such partial redemption.

(B) *Redemption Prohibited in Certain Circumstances.* If the principal amount of the Notes has been accelerated and such acceleration has not been rescinded on or before the

Redemption Date (including as a result of the payment of the related Redemption Price, and any related interest pursuant to the proviso to **Section 4.03(D)**, on such Redemption Date), then (i) the Company may not call for Redemption or otherwise redeem any Notes pursuant to this **Section 4.03**; and (ii) the Company will cause any Notes theretofore surrendered for such

- 76 -

Redemption to be returned to the Holders thereof (or, if applicable with respect to Global Notes, cancel any instructions for book-entry transfer to the Company, the Trustee or the Paying Agent of the applicable beneficial interests in such Notes in accordance with the Depository Procedures).

(C) *Redemption Date.* The Redemption Date for any Redemption will be a Business Day of the Company's choosing that is no more than sixty-five (65), nor less than forty-five (45), Scheduled Trading Days after the Redemption Notice Date for such Redemption; *provided, however,* that if, in accordance with **Section 5.03(A)(i)(4)**, the Company has elected to settle all conversions of Notes with a Conversion Date that occurs on or after such Redemption Notice Date and on or before the Business Day immediately before the Redemption Date by Physical Settlement, then the Company may instead elect to choose a Redemption Date that is a Business Day no more than sixty (60), nor less than thirty (30), calendar days after such Redemption Notice Date.

(D) *Redemption Price; Make-Whole Premium.* The Redemption Price for any Note called for Redemption is (i) an amount in cash equal to the principal amount of such Note plus accrued and unpaid interest on such Note to, but excluding, the Redemption Date for such Redemption, *plus* (ii) the applicable Make-Whole Premium in respect of such Note or the applicable portion thereof called for Redemption; *provided, however,* that if such Redemption Date is after a Regular Record Date and on or before the next Interest Payment Date, then (i) the Holder of such Note at the Close of Business on such Regular Record Date will be entitled, notwithstanding such Redemption, to receive, on or, at the Company's election, before such Interest Payment Date, the unpaid interest that would have accrued on such Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that such Note remained outstanding through such Interest Payment Date, if such Redemption Date is before such Interest Payment Date); and (ii) subject to and in accordance with the definition of "Make-Whole Premium," the Redemption Price will not include accrued and unpaid interest on such Note to, but excluding, such Redemption Date. For the avoidance of doubt, if an Interest Payment Date is not a Business Day within the meaning of **Section 2.05(C)** and such Redemption Date occurs on the Business Day immediately after such Interest Payment Date, then (x) accrued and unpaid interest on Notes to, but excluding, such Interest Payment Date will be paid, in accordance with **Section 2.05(C)**, on the next Business Day to Holders as of the Close of Business on the immediately preceding Regular Record Date; and (y) the Redemption Price will include interest on Notes to be redeemed from, and including, such Interest Payment Date. In connection with the Redemption of any Note, the Company shall pay or deliver the applicable Make-Whole Premium due to the Holder of such Note by, at the Company's election, Cash Settlement or Physical Settlement in accordance with **Section 4.04**. For the avoidance of doubt, the Company shall be responsible for calculating the Redemption Price and the Trustee may rely conclusively on such calculation without inquiry or investigation.

(E) *Redemption Notice.* To call any Notes for Redemption, the Company must send to each Holder of such Notes, the Trustee, the Conversion Agent and the Paying Agent a written notice of such Redemption (a “**Redemption Notice**”).

Such Redemption Notice must state:

- (i) that such Notes have been called for Redemption, briefly describing the

- 77 -

Company’s Redemption right under this Indenture;

- (ii) the Redemption Date for such Redemption;
- (iii) the applicable Redemption Price per \$1,000 principal amount of Notes for such Redemption (and, if the Redemption Date is after a Regular Record Date and on or before the next Interest Payment Date, the amount, manner and timing of the interest payment payable pursuant to the proviso to **Section 4.03(D)**), including any applicable Make-Whole Premium;
- (iv) the Make-Whole Premium Settlement Method that will apply to the Make-Whole Premium due in respect of the Notes called for Redemption or converted;
- (v) the name and address of the Paying Agent and the Conversion Agent;
- (vi) that Notes called for Redemption may be converted at any time before the Close of Business on the Business Day immediately before the Redemption Date (or, if the Company fails to pay the Redemption Price due on such Redemption Date in full, at any time until such time as the Company pays such Redemption Price in full);
- (vii) the Conversion Rate in effect on the Redemption Notice Date for such Redemption and a description and quantification of any adjustments to the Conversion Rate that may result from such Redemption (including pursuant to **Section 5.07**);
- (viii) the Conversion Settlement Method that will apply to all conversions of Notes with a Conversion Date that occurs on or after such Redemption Notice Date and on or before the Business Day immediately preceding such Redemption Date; and
- (ix) the CUSIP and ISIN numbers, if any, of the Notes.

On or before the Redemption Notice Date, the Company will send a copy of such Redemption Notice to the Trustee and the Paying Agent.

Such Redemption Notice may, at the Company’s discretion, be given prior to the completion of a transaction (including an Asset Sale, an incurrence of Indebtedness, a Fundamental Change or other transaction) and be subject to the satisfaction (or waiver by the Company) of one or more conditions precedent including but not limited to completion of a related transaction. If

or more conditions precedent, including, but not limited to, completion of a related transaction. If such Redemption is so subject to satisfaction of one or more conditions precedent, such Redemption Notice shall describe each such condition, and if applicable, shall state that, in the Company's discretion, the applicable Redemption Date may be delayed until such time (including more than 60 days after the date the Redemption Notice was mailed or delivered, including by electronic transmission) as any or all such conditions shall be satisfied (or waived by the Company), or such Redemption may not occur and such Redemption Notice may be rescinded in the event that any or all such conditions shall not have been satisfied (or waived by the Company) by such Redemption Date, or by such Redemption Date as so delayed, *provided* that the Redemption Date may not be so delayed by more than 60 days. In addition, the Company may provide in such Redemption Notice that payment of the Redemption Price and performance of the Company's obligations with respect to such Redemption may be performed by another Person. If

any such condition precedent has not been satisfied (or waived by the Company), the Company shall provide written notice to the Trustee, the Paying Agent and the Holders no later than the close of business on the third (3rd) Business Day prior to the applicable Redemption Date (or such other date as may be required pursuant to the applicable procedures of the Depository). To the extent any such condition precedent is satisfied prior to the Redemption Date, the Company shall promptly provide written notice to the Trustee, the Paying Agent and the Holders of the completion of the conditions precedent. Upon the Company providing such written notice to the Trustee and the Paying Agent and mailing or causing to be mailed by first-class mail or delivering electronically in accordance with the Depository's procedures if held by the Depository, such written notice to the Holders, the Redemption Notice shall be rescinded or delayed, and the Redemption of the Notes shall be rescinded or delayed, in each case, as provided in such Redemption Notice.

(F) *Selection and Conversion of Notes to Be Redeemed in Part.*

(i) If fewer than all Notes then outstanding are called for Redemption, then the Notes to be redeemed will be selected as follows: (1) in the case of Global Notes, in accordance with the Depository Procedures; and (2) in the case of Physical Notes, pro rata, by lot or by such other method the Trustee considers fair and appropriate.

(ii) If only a portion of a Note is subject to Redemption and such Note is converted in part, then the converted portion of such Note will be deemed to be from the portion of such Note that was subject to Redemption.

(G) *Payment of the Redemption Price.* Without limiting the Company's obligation to deposit the cash amount of the Redemption Price by the time proscribed by **Section 3.01(B)**, the Company will cause the Redemption Price for a Note (or portion thereof) subject to Redemption to be paid to the Holder thereof on or before the applicable Redemption Date. For the avoidance of doubt, interest payable pursuant to the proviso to **Section 4.03(D)** on any Note (or portion thereof) subject to Redemption must be paid pursuant to such proviso.

Section 4.04. MAKE-WHOLE PREMIUM.

(A) *Make-Whole Premium Settlement Method.* Upon the occurrence of any Make-Whole Premium Event, the Company will settle the Make-Whole Premium due in respect of such Note or the portion thereof subject to such Make-Whole Premium Event by Cash Settlement or Physical Settlement, at the Company's election, in accordance with this **Section 4.04(A)**.

(i) *The Company's Right to Elect Make-Whole Premium Settlement Method.* The Company will have the right to elect the Make-Whole Premium Settlement Method with respect to any Make-Whole Premium Event for any series of Notes; *provided, however, that:*

(1) the Company shall initially be deemed to have elected Physical Settlement as the Make-Whole Premium Settlement Method;

(2) the Make-Whole Premium Settlement Method that will apply to all conversions of Notes with a Conversion Date that occurs on or after October 15, 2020, will

be settled using the same Make-Whole Premium Settlement Method, and the Company will send notice of such Make-Whole Premium Settlement Method to Holders, the Trustee and the Conversion Agent no later than five (5) Business Days prior to the Close of Business on October 15, 2029;

(3) if the Company elects a Make-Whole Premium Settlement Method that will apply with respect to the conversion of any Note whose Conversion Date occurs before October 15, 2029, then the Company will send notice of such Make-Whole Premium Settlement Method to the Holder of such Note, with a copy to the Trustee and the Conversion Agent no later than the Open of Business on the Business Day immediately after such Conversion Date;

(4) if any Notes are called for Redemption, then (a) the Company will specify in the related Redemption Notice sent pursuant to **Section 4.03(E)** the Make-Whole Premium Settlement Method that will apply with respect to the Make-Whole Premium portion of the Redemption Price for the Notes called for Redemption and (b) if such Redemption Date occurs on or after October 15, 2029, then such Make-Whole Premium Settlement Method must be the same Make-Whole Premium Settlement Method that, pursuant to **clause (2)** above, applies to all conversions of Notes with a Conversion Date that occurs on or after October 15, 2029;

(5) subject to **Section 4.04(B)(i)** below, the Company will use the same Make-Whole Premium Settlement Method for payment of the Make-Whole Premium due in respect of Notes of any given series upon any Make-Whole Premium Event;

provided, further, that, for the avoidance of doubt, the Company may elect to settle the Make-Whole Premium Consideration in connection with the conversion of Notes of any series by a Make-Whole Premium Settlement Method that is different from (x) the Conversion Settlement Method by which the Company may elect to settle the Conversion Consideration in respect of such Notes and (y) the Make-Whole Premium Settlement Method by which the Company may elect to settle the Make-Whole Premium Consideration due in respect of any other series of Notes.

(B) Make-Whole Premium Consideration.

(i) *Generally.* Subject to **Section 4.04(B)(ii)** and **4.04(B)(iii)**, the type and amount of consideration (the “**Make-Whole Premium Consideration**”) due in respect of the Make-Whole Premium for any Note or applicable portion thereof subject to any Make-Whole Premium Event will be as follows:

(1) if Physical Settlement applies to such Make-Whole Premium, a number of shares of Common Stock equal to lesser of (x) the Maximum Make-Whole Premium Shares in respect of each \$1,000 of Notes and (y) (i) the Make-Whole Premium *divided by* (ii) the average of the Daily VWAPs for the five (5) consecutive VWAP

...determined by (a) the average of the Daily VWAPs for the five (5) consecutive V WAP Trading Days ending on, and including, the Trading Day immediately preceding (a) in connection with a conversion of the Notes, the delivery of the related notice of conversion, and (b) in connection with a payment of the Redemption Price, the delivery of the Redemption Notice; and

- 80 -

(2) if Cash Settlement applies to such Make-Whole Premium, cash in an amount equal to the Make-Whole Premium;

provided that, if the Company has elected Physical Settlement as the Make-Whole Premium Settlement Method for any Make-Whole Premium Event, a Holder may, by notice (a “**Blocker Notice**”) to the Company (which Blocker Notice may be provided by electronic means in accordance with the Depository Procedures) either contemporaneously with the notice of conversion or at least five (5) Business Days prior to the applicable Redemption Date, as applicable, elect to receive the applicable Make-Whole Premium using Cash Settlement to the extent such Holder notifies the Company that the receipt by such Holder of the Make-Whole Premium by Physical Settlement would reasonably be expected to result in such Holder not being in compliance with the Beneficial Ownership Limitation; *provided* that, in the event of any delivery of a Blocker Notice by a Holder, in lieu of such Cash Settlement, the Company may elect, in its sole discretion, to deliver Pre-Funded Warrants to the Holder exercisable for the amount of shares of Common Stock that would have been deliverable to the Holder upon Physical Settlement of the applicable Make-Whole Premium if no such Blocker Notice had been delivered.

(ii) *Cash in Lieu of Fractional Shares.* If Physical Settlement applies to the Make-Whole Premium Consideration and the number of shares of Common Stock deliverable pursuant to **Section 4.04(B)(i)** upon such settlement is not a whole number, then such number will be rounded down to the nearest whole number and the Company will deliver, in addition to the other consideration due upon such settlement, cash in lieu of the related fractional share in an amount equal to the product of (1) such fraction and (2) the Daily VWAP on the applicable Make-Whole Premium Effective Date (or, if such Make-Whole Premium Effective Date is not a VWAP Trading Day, the immediately preceding VWAP Trading Day).

(iii) *Conversion of Multiple Notes by a Single Holder; Redemption of Multiple Notes of a Single Holder.* If a Holder converts more than one (1) Note on a single Conversion Date, then the Make-Whole Premium Consideration due in respect of such Notes being converted will (in the case of any Global Note, to the extent permitted by, and practicable under, the Depository Procedures) be computed based on the total principal amount of Notes converted on such Conversion Date by such Holder. If more than one (1) Note of a Holder is called for Redemption on a single Redemption Date, then the Make-Whole Premium Consideration due in respect of such Notes called for Redemption will (in the case of any Global Note, to the extent permitted by, and practicable under, the Depository Procedures) be computed based on the total principal amount of such Holder’s Notes called for Redemption on such Redemption Date.

(iv) *Notice of Calculation of Make-Whole Premium Consideration.* If Cash Settlement applies to the Make-Whole Premium Consideration, then the Company will determine the Make-Whole Premium Consideration due upon the Notes subject to the applicable Make-Whole Premium Event promptly following the Trading Day immediately preceding delivery of the applicable notice of conversion or Redemption Notice, as applicable and will promptly thereafter send notice to the Trustee and the Conversion Agent of the same and the calculation thereof in reasonable detail. Neither the Trustee nor

- 81 -

the Conversion Agent nor the Paying Agent will have any duty to make any such determination.

(C) *Delivery of the Make-Whole Premium Consideration.* The Company will pay or deliver, as applicable, the Make-Whole Premium Consideration due upon any Make-Whole Premium Event to the Holder on the Business Day immediately after the Make-Whole Premium Effective Date with respect thereto; *provided, however*, that if Physical Settlement applies to the Make-Whole Premium Consideration in connection with any Make-Whole Premium Event with a Make-Whole Premium Effective Date that is after the Regular Record Date immediately before the Maturity Date, then, solely for purposes of such conversion, (x) the Company will pay or deliver, as applicable, the Make-Whole Premium Consideration due in connection with such conversion on the Maturity Date (or, if the Maturity Date is not a Business Day, the next Business Day); and (y) the Make-Whole Premium Effective Date will instead be deemed to be the Scheduled Trading Day immediately before the Maturity Date.

(D) *Holder of Record of Shares Issued as Make-Whole Premium Consideration.* The Person in whose name any share of Common Stock is issuable upon Physical Settlement of any Make-Whole Premium Consideration in connection with any Make-Whole Premium Event will be deemed to become the holder of record of such share as of the Close of Business on the Make-Whole Premium Effective Date with respect thereto.

(E) *Taxes and Duties.* If a Holder converts a Note, or a Note is called for Redemption, the Company will pay any documentary, stamp or similar issue or transfer tax or duty due on the issue or delivery of any shares of Common Stock upon Physical Settlement of any Make-Whole Premium Consideration in connection with such Make-Whole Premium Event; *provided, however*, that if any tax or duty is due because the Holder of such Note requested such shares to be registered in a name other than such Holder's name, then such Holder will pay such tax or duty and, until having received a sum sufficient to pay such tax or duty, the Conversion Agent may refuse to deliver any such shares to be issued in a name other than that of such Holder.

Article 5. CONVERSION

Section 5.01. RIGHT TO CONVERT.

(A) *Generally.* Subject to the provisions of this **Article 5**, each Holder may, at its option, convert such Holder's Notes into Conversion Consideration.

(B) *Conversions in Part.* Subject to the terms of this Indenture, Notes may be converted in part, but only in Authorized Denominations. Provisions of this **Article 5** applying to the conversion of a Note in whole will equally apply to conversions of a permitted portion of a Note.

(C) *When Notes May Be Converted.*

(i) *Generally.* Subject to **Section 5.01(C)(ii)**, a Holder may convert its Notes at any time from, and including, the Issue Date until the Close of Business on the Scheduled Trading Day immediately before the Maturity Date.

(ii) *Limitations and Closed Periods.* Notwithstanding anything to the contrary

in this Indenture or the Notes:

(1) Notes may be surrendered for conversion only after the Open of Business and before the Close of Business on a day that is a Business Day;

(2) in no event may any Note be converted after the Close of Business on the Scheduled Trading Day immediately before the Maturity Date;

(3) if the Company calls any Note for Redemption pursuant to **Section 4.03**, then the Holder of such Note may not convert such Note after the Close of Business on the Business Day immediately before the applicable Redemption Date, except to the extent the Company fails to pay the Redemption Price for such Note in accordance with this Indenture; and

(4) if a Fundamental Change Repurchase Notice is validly delivered pursuant to **Section 4.02(F)** with respect to any Note, then such Note may not be converted, except to the extent (a) such Note is not subject to such notice; (b) such notice is withdrawn in accordance with **Section 4.02(F)**; or (c) the Company fails to pay the Fundamental Change Repurchase Price for such Note in accordance with this Indenture.

Section 5.02. CONVERSION PROCEDURES.

(A) *Generally.*

(i) *Global Notes.* To convert a beneficial interest in a Global Note that is convertible pursuant to **Section 5.01(C)**, the owner of such beneficial interest must (1) comply with the Depositary Procedures for converting such beneficial interest (at which time such conversion will become irrevocable); and (2) pay any amounts due pursuant to **Section 5.02(D)** or **Section 5.02(E)**.

(ii) *Physical Notes.* To convert all or a portion of a Physical Note that is convertible pursuant to **Section 5.01(C)**, the Holder of such Note must (1) complete, manually sign and deliver to the Conversion Agent the conversion notice attached to such Physical Note or a facsimile of such conversion notice; (2) deliver such Physical Note to the Conversion Agent (at which time such conversion will become irrevocable); (3) furnish any endorsements and transfer documents that the Company or the Conversion Agent may require; and (4) pay any amounts due pursuant to **Section 5.02(D)** or **Section 5.02(E)**.

(iii) *Notice of Conversion.* Compliance with the Depositary Procedures for converting beneficial interests in a Global Note or delivery of a conversion notice with respect to a Physical Note shall be referred to as a “**notice of conversion.**”

(B) *Effect of Converting a Note.* At the Close of Business on the Conversion Date for a Note (or any portion thereof) to be converted, such Note (or such portion) will (unless there occurs a Default in the delivery of the Conversion Consideration, Make-Whole Premium Consideration, or interest due, pursuant to **Section 5.03(B)** or **5.02(D)**, upon such conversion) be deemed to cease to be outstanding (and, for the avoidance of doubt, no Person will be deemed to be a Holder of such Note (or such portion thereof) as of the Close of Business on such Conversion Date), except

to the extent provided in **Section 5.02(D)**.

(C) *Holder of Record of Conversion Shares.* The Person in whose name any share of Common Stock is issuable upon conversion of any Note will be deemed to become the holder of record of such share as of the Close of Business on (i) the Conversion Date for such conversion, in the case of Physical Settlement; or (ii) the last VWAP Trading Day of the Observation Period for such conversion, in the case of Combination Settlement.

(D) *Interest Payable Upon Conversion in Certain Circumstances.* If the Conversion Date of a Note is after a Regular Record Date and before the next Interest Payment Date, then (i) subject to the applicable Depositary Procedures in the case of Global Notes, the Holder of such Note at the Close of Business on such Regular Record Date will be entitled, notwithstanding such conversion (and, for the avoidance of doubt, notwithstanding anything set forth in the proviso to this sentence), to receive, on or, at the Company's election, before such Interest Payment Date, the unpaid interest that would have accrued on such Note to, but excluding, such Interest Payment Date (assuming, solely for these purposes, that such Note remained outstanding through such Interest Payment Date); and (ii) solely with respect to a conversion of a Note in connection with a Make-Whole Fundamental Change, to the extent such Holder is entitled to receive such unpaid interest, the Holder surrendering such Note for conversion must deliver to the Conversion Agent, at the time of such surrender, an amount of cash equal to the amount of such interest referred to in **clause (i)** above; *provided, however*, that the Holder surrendering such Note for conversion need not deliver such cash (v) if the Company has specified a Redemption Date that is after such Regular Record Date and on or before the Business Day immediately after such Interest Payment Date; (w) if such Conversion Date occurs after the Regular Record Date immediately before the Maturity Date; (x) if the Company has specified a Fundamental Change Repurchase Date or a repurchase date pursuant to **Section 3.12** that is after such Regular Record Date and on or before the Business Day immediately after such Interest Payment Date; or (y) to the extent of any overdue interest or interest that has accrued on any overdue interest. For the avoidance of doubt, as a result of, and without limiting the generality of, the foregoing, if a Note is converted with a Conversion Date that is after the Regular Record Date immediately before the Maturity Date, any Redemption Date, a repurchase date pursuant to **Section 3.12** and any Fundamental Change Repurchase Date in the circumstances described in **Section 5.02(D)**, then the Company will pay, as provided above, the interest that would have accrued on such Note to, but excluding, the Maturity Date, Redemption Date, required repurchase date or Fundamental Change Repurchase Date. For the avoidance of doubt, if the Conversion Date of a Note to be converted is on an Interest Payment Date, then the Holder of such Note at the Close of Business on the Regular Record Date immediately before such Interest Payment Date will be entitled to receive, on such Interest Payment Date, the unpaid interest that has accrued on such Note to, but excluding, such Interest Payment Date, and such Note, when surrendered for conversion, need not be accompanied by any cash amount pursuant to the first sentence of this **Section 5.02(D)**.

(E) *Taxes and Duties.* If a Holder converts a Note, the Company will pay any documentary, stamp or similar issue or transfer tax or duty due on the issue or delivery of any

shares of Common Stock upon such conversion; *provided, however*, that if any tax or duty is due because such Holder requested such shares to be registered in a name other than such Holder's name, then such Holder will pay such tax or duty and, until having received a sum sufficient to pay such tax or duty, the Conversion Agent may refuse to deliver any such shares to be issued in

- 84 -

a name other than that of such Holder.

(F) *Conversion Agent to Notify Company of Conversions.* If any Note is submitted for conversion to the Conversion Agent or the Conversion Agent receives any notice of conversion with respect to a Note, then the Conversion Agent will promptly (and, in any event, no later than the Business Day following the date the Conversion Agent receives such Note or notice) notify the Company and the Trustee of such occurrence, together with any other information reasonably requested by the Company, and will provide such further information reasonably requested by the Company and available to the Conversion Agent in order for the Company to determine the Conversion Date for such Note.

Section 5.03. SETTLEMENT UPON CONVERSION.

(A) *Conversion Settlement Method.* Upon the conversion of any Note, the Company will settle such conversion by paying or delivering, as applicable and as provided in this **Article 5**, the applicable Conversion Consideration by Cash Settlement, Physical Settlement or Combination Settlement, at the Company's election, in accordance with this **Section 5.03(A)**.

(i) *The Company's Right to Elect Conversion Settlement Method.* The Company will have the right to elect the Conversion Settlement Method applicable to any conversion of a Note of any series; *provided, however*, that:

(1) the Company shall initially be deemed to have elected Physical Settlement as the Conversion Settlement Method for all series of Notes;

(2) subject to **clause (4)** below, all conversions of Notes with a Conversion Date that occurs on or after October 15, 2029, will be settled using the same Conversion Settlement Method, and the Company will send notice of such Conversion Settlement Method to the Holders, the Trustee and the Conversion Agent no later than five (5) Business Days prior to the Close of Business on October 15, 2029;

(3) subject to **clause (4)** below, if the Company elects to change the Conversion Settlement Method noted in **clause (1)** above with respect to the conversion of Notes of any series whose Conversion Date occurs before October 15, 2029, then the Company must send notice of such new Conversion Settlement Method to the Holders, the Trustee and the Conversion Agent, and such changed Conversion Settlement Method shall apply to all conversions of Notes of the applicable series with a Conversion Date that occurs on or after the date that is five (5) Business Days after the date such notice is sent;

(4) if any Notes are called for Redemption, then (a) the Company will

specify, in the related Redemption Notice sent pursuant to **Section 4.03(E)**, the Conversion Settlement Method that will apply to conversions of the Notes of each respective series called for Redemption with a Conversion Date that occurs on or after the related Redemption Notice Date and on or before the Business Day immediately prior to the related Redemption Date; and (b) if such Redemption Date occurs on or after October 15, 2029, then such Conversion Settlement Method must be the same Conversion Settlement Method that, pursuant to **clause (2)** above, applies to all conversions of Notes with a Conversion Date that occurs on or after October 15, 2029;

- 85 -

(5) the Company will use the same Conversion Settlement Method for all conversions of Notes of the same series with the same Conversion Date (and, for the avoidance of doubt, the Company will not be obligated to use the same Conversion Settlement Method with respect to conversions of Notes of different series or with different Conversion Dates, except as provided in **clause (1), (2) or (4)** above);

(6) if the Company timely elects Combination Settlement with respect to the conversion of any Notes of any series, but does not timely notify the Holders of such Notes, the Trustee and the Conversion Agent of the applicable Specified Dollar Amount, then the Specified Dollar Amount for such conversion will be deemed to be \$1,000 per \$1,000 principal amount of Notes (and, for the avoidance of doubt, the failure to timely send such notification will not constitute a Default or Event of Default); and

(7) the Conversion Settlement Method will be subject to **Section 4.03(C)**.

(ii) *The Company's Right to Irrevocably Fix or Eliminate Conversion Settlement Methods.* The Company will have the right, exercisable at its election by sending notice of such exercise to the Holders of the applicable series of Notes (with a copy to the Trustee and the Conversion Agent), to (1) irrevocably fix the Conversion Settlement Method that will apply to all conversions of Notes of such series with a Conversion Date that occurs on or after five (5) Business Days after the date such notice is sent to Holders; or (2) irrevocably eliminate any one or more (but not all) Conversion Settlement Methods (including eliminating Combination Settlement with a particular Specified Dollar Amount or range of Specified Dollar Amounts) with respect to all conversions of Notes of such series with a Conversion Date that occurs on or after five (5) Business Days after the date such notice is sent to Holders of such series, *provided*, in each case, that (w) the Conversion Settlement Method so elected pursuant to **clause (1)** above, or the Conversion Settlement Method(s) remaining after any elimination pursuant to **clause (3)** above, as applicable, must be a Conversion Settlement Method or Conversion Settlement Method(s), as applicable, that the Company is then permitted to elect (for the avoidance of doubt, including pursuant to, and subject to, the other provisions of this **Section 5.03(A)**); (x) no such irrevocable election or Default Settlement Method change will affect any Conversion Settlement Method theretofore elected (or deemed to be elected) with respect to any Note pursuant to this Indenture (including pursuant to **Section 8.01(G)** or this **Section 5.03(A)**); (v) upon any such irrevocable election pursuant to **clause (1)** above, the Default Settlement

Method for the applicable series of Notes will automatically be deemed to be set to the Conversion Settlement Method so fixed; and (z) upon any such irrevocable election pursuant to **clause (3)** above, the Company will, if needed, simultaneously change the Default Settlement Method for the applicable series of Notes to a Conversion Settlement Method that is consistent with such irrevocable election. Such notice, if sent, must set forth the applicable Conversion Settlement Method(s) so elected or eliminated, as applicable, and the Default Settlement Method applicable immediately after such election and expressly state that the election is irrevocable and applicable to all conversions of Notes of the applicable series with a Conversion Date that occurs on or after five (5) Business Days after the date such notice is sent to Holders of such series. 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 8.01(G)** (it being understood, however, that the Company may nonetheless choose to execute such an amendment at its option).

(iii) *Requirement to Publicly Disclose the Fixed or Default Settlement Method.*

If the Company changes the Default Settlement Method of any series of Notes pursuant to **clause (x)** of the proviso to the definition of such term or irrevocably fixes the Conversion Settlement Method(s) of any series of Notes pursuant **Section 5.03(A)(ii)**, then the Company will either post the Default Settlement Method or fixed Conversion Settlement Method(s), as applicable, for such series of Notes on its website or disclose the same in a Current Report on Form 8-K (or any successor form) that is filed with or furnished to the SEC.

(B) *Conversion Consideration.*

(i) *Generally.* Subject to **Sections 5.03(B)(iii)**, **5.03(B)(iv)** and **5.09(A)(iv)(2)**, the type and amount of consideration (the “**Conversion Consideration**”) due in respect of each \$1,000 principal amount of a Note to be converted will be as follows:

(1) if Physical Settlement applies to such conversion, a number of shares of Common Stock equal to the Conversion Rate in effect on the Conversion Date for such conversion;

(2) if Cash Settlement applies to such conversion, cash in an amount equal to the sum of the Daily Conversion Values for each VWAP Trading Day in the Observation Period for such conversion; or

(3) if Combination Settlement applies to such conversion, consideration consisting of (a) a number of shares of Common Stock equal to the sum of the Daily Share Amounts for each VWAP Trading Day in the Observation Period for such conversion; and (b) an amount of cash equal to the sum of the Daily Cash Amounts for each VWAP Trading Day in such Observation Period.

(ii) *Make-Whole Premium upon Conversion.* In connection with the conversion of any Notes (except any conversion in connection with a Make-Whole Fundamental Change), in addition to settling the Conversion Consideration as set forth above under **Section 5.03(B)(i)**, the Company shall pay or deliver to the converting Holder, in respect of each \$1,000 principal amount of Notes being converted, a Make-Whole Premium in accordance with **Section 4.04**.

(iii) *Cash in Lieu of Fractional Shares.* If Physical Settlement or Combination Settlement applies to the conversion of any Note and the number of shares of Common Stock deliverable pursuant to **Section 5.03(B)(i)** upon such conversion is not a whole number, then such number will be rounded down to the nearest whole number and the Company will deliver, in addition to the other consideration due upon such conversion, cash in lieu of the related fractional share in an amount equal to the product of (1) such fraction and (2) (x) the Daily VWAP on the Conversion Date for such conversion (or, if such Conversion Date is not a VWAP Trading Day, the immediately preceding VWAP Trading Day) in the case of Physical Settlement, or (y) the Daily VWAP on the last VWAP

Trading Day of the Observation Period for such conversion, in the case of Combination Settlement.

(iv) *Conversion of Multiple Notes by a Single Holder.* If a Holder converts more than one (1) Note on a single Conversion Date, then the Conversion Consideration due in respect of such conversion will (in the case of any Global Note, to the extent permitted by, and practicable under, the Depository Procedures) be computed based on the total principal amount of Notes converted on such Conversion Date by such Holder.

(v) *Notice of Calculation of Conversion Consideration.* If Cash Settlement or Combination Settlement applies to the conversion of any Note, then the Company will determine the Conversion Consideration due thereupon promptly following the last VWAP Trading Day of the applicable Observation Period and will promptly thereafter send notice to the Trustee and the Conversion Agent of the same and the calculation thereof in reasonable detail. Neither the Trustee nor the Conversion Agent nor the Paying Agent will have any duty to make any such determination.

(C) *Delivery of the Conversion Consideration.* Except as set forth in **Sections 5.05(D)** and **5.09**, the Company will pay or deliver, as applicable, the Conversion Consideration due upon the conversion of any Note to the Holder as follows: (i) if Cash Settlement or Combination Settlement applies to such conversion, on the Business Day immediately after the last VWAP Trading Day of the Observation Period for such conversion; and (ii) if Physical Settlement applies to such conversion, on the Business Day immediately after the Conversion Date for such conversion; *provided, however*, that if Physical Settlement applies to the conversion of any Note with a Conversion Date that is after the Regular Record Date immediately before the Maturity Date, then, solely for purposes of such conversion, (x) the Company will pay or deliver, as applicable, the Conversion Consideration due upon such conversion on the Maturity Date (or, if the Maturity Date is not a Business Day, the next Business Day); and (y) the Conversion Date will instead be deemed to be the Scheduled Trading Day immediately before the Maturity Date.

(D) *Deemed Payment of Principal and Interest; Settlement of Accrued Interest Notwithstanding Conversion.* If a Holder converts a Note, then the Company will not adjust the Conversion Rate to account for any accrued and unpaid interest on such Note, and, except as provided in **Section 5.02(D)**, the Company's delivery of the Conversion Consideration and Make-Whole Premium Consideration due in respect of such conversion will be deemed to fully satisfy and discharge the Company's obligation to pay the principal of, and accrued and unpaid interest, if any, on, such Note to, but excluding the Conversion Date. As a result, except as provided in **Section 5.02(D)**, any accrued and unpaid interest on a converted Note will be deemed to be paid in full rather than cancelled, extinguished or forfeited. In addition, subject to **Section 5.02(D)**, if the Conversion Consideration or Make-Whole Premium Consideration for a Note consists of both cash and shares of Common Stock, then accrued and unpaid interest that is deemed to be paid therewith will be deemed to be paid first out of such cash.

Section 5.04. RESERVE AND STATUS OF COMMON STOCK ISSUED UPON CONVERSION.

(A) *Stock Reserve.* At all times when any Notes are outstanding, the Company will reserve (out of its authorized and not outstanding but unissued shares of Common Stock that are not reserved for other purposes) a number of shares of Common Stock sufficient to permit the

- 88 -

conversion of all then-outstanding Notes, assuming (x) Physical Settlement will apply to such conversion and any related Make-Whole Premium; and (y) the Conversion Rate is increased by the maximum amount pursuant to which the Conversion Rate may be increased pursuant to **Section 5.07**. To the extent the Company delivers shares of Common Stock held in its treasury in settlement of the conversion of any Notes, each reference in this Indenture or the Notes to the issuance of shares of Common Stock in connection therewith will be deemed to include such delivery, *mutatis mutandis*.

(B) *Status of Conversion Shares; Listing.* Each Conversion Share, if any, delivered upon conversion of any Note will be a newly issued or treasury share (except that any Conversion Share delivered by a designated financial institution pursuant to **Section 5.08** need not be a newly issued or treasury share) and will be duly authorized, validly issued, fully paid, non-assessable, free from preemptive rights and free of any lien or adverse claim (except to the extent of any lien or adverse claim created by the action or inaction of the Holder of such Note or the Person to whom such Conversion Share will be delivered). If the Common Stock is then listed on any securities exchange, or quoted on any inter-dealer quotation system, then the Company will use commercially reasonable efforts to cause each Conversion Share, when delivered upon conversion of any Note, to be admitted for listing on such exchange or quotation on such system.

Section 5.05. ADJUSTMENTS TO THE CONVERSION RATE.

(A) *Events Requiring an Adjustment to the Conversion Rate.* The Conversion Rate applicable to each series of Notes will be adjusted from time to time as follows:

(i) *Stock Dividends, Splits and Combinations.* If the Company issues solely shares of Common Stock as a dividend or distribution on all or substantially all shares of the Common Stock, or if the Company effects a stock split or a stock combination of the Common Stock (in each case excluding an issuance solely pursuant to a Common Stock Change Event, as to which **Section 5.09** will apply), then the Conversion Rate will 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 before the Open of Business on the Ex-Dividend Date for such dividend or distribution, or immediately before the Open of Business on the effective date of such stock split or stock

combination, as applicable;

CR_t = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date or effective date, as applicable;

OS_0 = the number of shares of Common Stock outstanding immediately before the Open of Business on such Ex-Dividend Date or effective date, as applicable, without giving effect to such dividend, distribution, stock split or stock

- 89 -

combination; and

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

If any dividend, distribution, stock split or stock combination of the type described in this **Section 5.05(A)(i)** is declared or announced, but not so paid or made, then the Conversion Rate will be readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution or to effect such stock split or stock combination, to the Conversion Rate that would then be in effect had such dividend, distribution, stock split or stock combination not been declared or announced.

(ii) *Rights, Options and Warrants.* If the Company distributes, to all or substantially all holders of Common Stock, rights, options or warrants (other than rights issued or otherwise distributed pursuant to a stockholder rights plan, as to which **Sections 5.05(A)(iii)(1)** and **5.05(F)** will apply) entitling such holders, for a period of not more than sixty (60) calendar days after the record date of such distribution, to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced, then the Conversion Rate will be increased based on the following formula:

$$CR_t = CR_0 \times \frac{OS + X}{OS + Y}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Open of Business on the Ex-Dividend Date for such distribution;

CR_t = the Conversion Rate in effect immediately after the Open of Business on such Ex-Dividend Date;

OS = the number of shares of Common Stock outstanding immediately before 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 = a number of shares of Common Stock obtained by dividing (x) the aggregate price payable to exercise such rights, options or warrants by (y) the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date such distribution is announced.

To the extent such rights, options or warrants are not so distributed, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the increase to

the Conversion Rate for such distribution been made on the basis of only the rights, options or warrants, if any, actually distributed. In addition, to the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants (including as a result of such rights, options or warrants not being exercised), the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the increase to the Conversion Rate for such distribution been made on the basis of delivery of only the number of shares of Common Stock actually delivered upon exercise of such rights, option or warrants.

For purposes of this **Section 5.05(A)(ii)**, in determining whether any rights, options or warrants entitle holders of Common Stock to subscribe for or purchase shares of Common Stock at a price per share that is less than the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before the date the distribution of such rights, options or warrants is announced, and in determining the aggregate price payable to exercise such rights, options or warrants, there will be taken into account any consideration the Company receives for such rights, options or warrants and any amount payable on exercise thereof, with the value of such consideration, if not cash, to be determined by the Company in good faith and in a commercially reasonable manner.

(iii) *Spin-Offs and Other Distributed Property.*

(1) *Distributions Other than Spin-Offs.* If the Company distributes shares of its Capital Stock, evidences of its indebtedness or other assets or property of the Company, or rights, options or warrants to acquire Capital Stock of the Company or other securities, to all or substantially all holders of the Common Stock, excluding:

(a) dividends, distributions, rights, options or warrants for which an adjustment to the Conversion Rate is required (or would be required without regard to **Section 5.05(C)**) pursuant to **Section 5.05(A)(i)** or **5.05(A)(ii)**;

(b) dividends or distributions paid exclusively in cash for which an adjustment to the Conversion Rate is required (or would be required without regard to **Section 5.05(C)**) pursuant to **Section 5.05(A)(iv)**;

(c) rights issued or otherwise distributed pursuant to a stockholder rights plan, except to the extent provided in **Section 5.05(F)**;

(d) Spin-Offs for which an adjustment to the Conversion Rate is required (or would be required without regard to **Section 5.05(C)**) pursuant to **Section 5.05(A)(iii)(2)**;

(e) a distribution solely pursuant to a tender offer or exchange offer for shares of Common Stock, as to which **Section 5.05(A)(v)** will apply; and

(f) a distribution solely pursuant to a Common Stock Change

Event, as to which **Section 5.09** will apply,

then the Conversion Rate will be increased based on the following formula:

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

where:

CR_0 = the Conversion Rate in effect immediately before 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 = the average of the Last Reported Sale Prices per share of Common Stock for the ten (10) consecutive Trading Days ending on, and including, the Trading Day immediately before such Ex-Dividend Date; and

FMV = the fair market value (as determined by the Company in good faith and in a commercially reasonable manner), as of such Ex-Dividend Date, of the shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants distributed per share of Common Stock pursuant to such distribution;

provided, however, that if FMV is equal to or greater than SP , then, in lieu of the foregoing adjustment to the Conversion Rate, each Holder will receive, for each \$1,000 principal amount of Notes held by such Holder on the record date for such distribution, at the same time and on the same terms as holders of Common Stock (and without having to convert its Notes), the amount and kind of shares of Capital Stock, evidences of indebtedness, assets, property, rights, options or warrants that such Holder would have received if such Holder had owned, on such record date, a number of shares of Common Stock equal to the Conversion Rate in effect on such record date.

To the extent such distribution is not so paid or made, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the distribution, if any, actually made or paid.

(2) *Spin-Offs*. If the Company distributes or dividends shares of Capital Stock of any class or series, or similar equity interests, of or relating to an Affiliate, a Subsidiary or other business unit of the Company to all or substantially all holders of the Common Stock (other than solely pursuant to (x) a Common Stock Change Event, as to which **Section 5.09** will apply; or (y) a tender offer or exchange offer for shares of Common Stock as to which **Section 5.05(A)(v)** will apply) and such Capital Stock or

Common Stock, as to which Section 505(A)(1) will apply), and such Capital Stock or equity interests are listed or quoted (or will be listed or quoted upon the consummation of the transaction) on a U.S. national securities exchange (a “**Spin-Off**”), then the Conversion

- 92 -

Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV + SP}{SP}$$

where:

CR_0 = the Conversion Rate in effect immediately before the Close of Business on the last Trading Day of the Spin-Off Valuation Period for such Spin-Off;

CR_1 = the Conversion Rate in effect immediately after the Close of Business on the last Trading Day of the Spin-Off Valuation Period;

FMV = the product of (x) the average of the Last Reported Sale Prices per share or unit of the Capital Stock or equity interests distributed in such Spin-Off over the ten (10) consecutive Trading Day period (the “**Spin-Off Valuation Period**”) beginning on, and including, the Ex-Dividend Date for such Spin-Off (such average to be determined as if references to Common Stock in the definitions of Last Reported Sale Price, Trading Day and Market Disruption Event were instead references to such Capital Stock or equity interests); and (y) the number of shares or units of such Capital Stock or equity interests distributed per share of Common Stock in such Spin-Off; and

SP = the average of the Last Reported Sale Prices per share of Common Stock for each Trading Day in the Spin-Off Valuation Period.

Notwithstanding anything to the contrary in this **Section 5.05(A)(iii)(2)**, (i) if any VWAP Trading Day of the Observation Period for a Note whose conversion will be settled pursuant to Cash Settlement or Combination Settlement occurs during the Spin-Off Valuation Period for such Spin-Off, then, solely for purposes of determining the Conversion Rate for such VWAP Trading Day for such conversion, such Spin-Off Valuation Period will be deemed to consist of the Trading Days occurring in the period from, and including, the Ex-Dividend Date for such Spin-Off to, and including, such VWAP Trading Day; and (ii) if the Conversion Date for a Note whose conversion will be settled pursuant to Physical Settlement occurs during the Spin-Off Valuation Period for such Spin-Off, then, solely for purposes of determining the Conversion Consideration for such conversion, such Spin-Off Valuation Period will be deemed to consist of the Trading Days occurring in the period from, and including, the Ex-Dividend Date for such Spin-Off to, and including, such Conversion Date.

To the extent any dividend or distribution of the type set forth in this **Section 5.05(A)(iii)(2)** is declared but not made or paid, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the dividend or distribution, if any, actually made or paid.

(iv) *Cash Dividends or Distributions.* If any cash dividend or distribution is made to all or substantially all holders of Common Stock, then the Conversion Rate will

- 93 -

be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP}{SP - D}$$

where:

CR_0 = the Conversion Rate in effect immediately before 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 such Ex-Dividend Date;

SP = the Last Reported Sale Price per share of Common Stock on the Trading Day immediately before such Ex-Dividend Date; and

D = the cash amount distributed per share of Common Stock in such dividend or distribution;

provided, however, that if D is equal to or greater than SP , then, in lieu of the foregoing adjustment to the Conversion Rate, each Holder will receive, for each \$1,000 principal amount of Notes held by such Holder on the record date for such dividend or distribution, at the same time and on the same terms as holders of Common Stock, and without having to convert its Notes, the amount of cash that such Holder would have received if such Holder had owned, on such record date, a number of shares of Common Stock equal to the Conversion Rate in effect on such record date.

To the extent such dividend or distribution is declared but not made or paid, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the dividend or distribution, if any, actually made or paid.

(v) *Tender Offers or Exchange Offers.* If the Company or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for shares of Common Stock (other than solely pursuant to an odd-lot tender offer pursuant to Rule 13e-4(h)(5) under the Exchange Act), and the value (determined as of the Expiration Time by the Company

in good faith and in a commercially reasonable manner) of the cash and other consideration paid per share of Common Stock in such tender or exchange offer exceeds the Last Reported Sale Price per share of Common Stock on the Trading Day immediately after the last date (the “**Expiration Date**”) on which tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended), then the Conversion Rate will be increased based on the following formula:

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

where:

- CR_0 = the Conversion Rate in effect immediately before the Close of Business on the last Trading Day of the Tender/Exchange Offer Valuation Period for such tender or exchange offer;
- CR_1 = the Conversion Rate in effect immediately after the Close of Business on the last Trading Day of the Tender/Exchange Offer Valuation Period;
- AC = the aggregate value (determined as of the time (the “**Expiration Time**”) such tender or exchange offer expires by the Company in good faith and in a commercially reasonable manner) of all cash and other consideration paid for shares of Common Stock purchased or exchanged in such tender or exchange offer;
- OS_0 = the number of shares of Common Stock outstanding immediately before the Expiration Time (including 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 Expiration Time (excluding all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer); and
- SP = the average of the Last Reported Sale Prices per share of Common Stock over the ten (10) consecutive Trading Day period (the “**Tender/Exchange Offer Valuation Period**”) beginning on, and including, the Trading Day immediately after the Expiration Date;

provided, however, that the Conversion Rate will in no event be adjusted down pursuant to this **Section 5.05(A)(v)**, except to the extent provided in the immediately following paragraph. Notwithstanding anything to the contrary in this **Section 5.05(A)(v)**, (i) if any VWAP Trading Day of the Observation Period for a Note whose conversion will be settled pursuant to Cash Settlement or Combination Settlement occurs during the Tender/Exchange Offer Valuation Period for such tender or exchange offer, then, solely for purposes of determining the Conversion Rate for such VWAP Trading Day for such conversion, such Tender/Exchange Offer Valuation Period will be deemed to consist of the Trading Days occurring in the period from, and including, the Trading Day immediately after the Expiration Date for such tender or exchange offer to, and including, such VWAP Trading Day; and (ii) if the Conversion Date for a Note whose conversion will be settled pursuant to Physical Settlement occurs during the Tender/Exchange Offer Valuation Period for such tender or exchange offer, then, solely for purposes of determining the Conversion Consideration for such conversion, such Tender/Exchange Offer Valuation Period will be deemed to consist of the Trading Days occurring in the period from, and including, the Trading Day immediately after the Expiration Date to, and including, such Conversion Date.

To the extent such tender or exchange offer is announced but not consummated (including

offer under applicable law), or any purchases or exchanges of shares of Common Stock in such tender or exchange offer are rescinded, the Conversion Rate will be readjusted to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the purchases or exchanges of shares of Common Stock, if any, actually made, and not rescinded, in such tender or exchange offer.

(B) *No Adjustments in Certain Cases.*

(i) *Where Holders Participate in the Transaction or Event Without Conversion.* Notwithstanding anything to the contrary in **Section 5.05(A)**, the Company will not be obligated to adjust the Conversion Rate on account of a transaction or other event otherwise requiring an adjustment pursuant to **Section 5.05(A)** (other than a stock split or combination of the type set forth in **Section 5.05(A)(i)** or a tender or exchange offer of the type set forth in **Section 5.05(A)(v)**) if each Holder participates, at the same time and on the same terms as holders of Common Stock, and solely by virtue of being a Holder of Notes, in such transaction or event without having to convert such Holder's Notes and as if such Holder held a number of shares of Common Stock equal to the product of (i) the Conversion Rate in effect on the related record date; and (ii) the aggregate principal amount (expressed in thousands) of Notes held by such Holder on such date.

(ii) *Certain Events.* The Company will not be required to adjust the Conversion Rate except as provided in **Section 5.05** or **Section 5.07**. Without limiting the foregoing, the Company will not be obligated to adjust the Conversion Rate on account of:

(1) except as otherwise provided in **Section 5.05**, the sale of shares of Common Stock for a purchase price that is less than the market price per share of Common Stock or less than the Conversion Price;

(2) 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 such plan;

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

(4) the issuance of any shares of Common Stock pursuant to any option, warrant, right or convertible or exchangeable security of the Company not described in **clause (3)** above and outstanding as of the Issue Date;

(5) for a third-party tender offer by any party other than a tender offer by one or more of the Company's Subsidiaries as described in **Section 5.05(A)(v)** above:

(6) upon the repurchase of any shares of the Common Stock pursuant to an open market share purchase program or other buy-back transaction, including structured or derivative transactions such as accelerated share repurchase transactions or similar

- 96 -

forward derivatives, or other buy-back transaction, that is not a tender offer or exchange offer of the kind described under **Section 5.05(A)(v)** above;

- (7) solely a change in the par value of the Common Stock; or
- (8) accrued and unpaid interest on the Notes.

(C) *Adjustment Deferral.* If an adjustment to the Conversion Rate otherwise required by this **Article 5** would result in a change of less than one percent (1%) to the Conversion Rate, then, notwithstanding anything to the contrary in this **Article 5**, the Company may, at its election, defer such adjustment, except that all such deferred adjustments must be given effect immediately upon the earliest of the following: (i) when all such deferred adjustments would result in a change of at least one percent (1%) to the Conversion Rate; (ii) the Conversion Date of, or any VWAP Trading Day of an Observation Period for, any Note; (iii) the date a Fundamental Change or Make-Whole Fundamental Change occurs; (iv) the date the Company calls any Notes for Redemption; and (v) October 15, 2029.

(D) *Adjustments Not Yet Effective.* Notwithstanding anything to the contrary in this Indenture or the Notes, if:

(i) a Note is to be converted and Physical Settlement or Combination Settlement applies to such conversion;

(ii) the record date, effective date or Expiration Time for any event that requires an adjustment to the Conversion Rate pursuant to **Section 5.05(A)** has occurred on or before the Conversion Date for such conversion (in the case of Physical Settlement) or on or before any VWAP Trading Day in the Observation Period for such conversion (in the case of Combination Settlement), but an adjustment to the Conversion Rate for such event has not yet become effective as of such Conversion Date or VWAP Trading Day, as applicable;

(iii) the Conversion Consideration due upon such conversion includes any whole shares of Common Stock (in the case of Physical Settlement) or due in respect of such VWAP Trading Day includes any whole or fractional shares of Common Stock (in the case of Combination Settlement); and

(iv) such shares are not entitled to participate in such event (because they were not held on the related record date or otherwise),

then, solely for purposes of such conversion, the Company will, without duplication, give effect

to such adjustment on such Conversion Date (in the case of Physical Settlement) or such VWAP Trading Day (in the case of Combination Settlement). In such case, if the date on which the Company is otherwise required to deliver the consideration due upon such conversion is before the first date on which the amount of such adjustment can be determined, then the Company will delay the settlement of such conversion until the Business Day after such first date.

(E) *Conversion Rate Adjustments where Converting Holders Participate in the Relevant Transaction or Event.* Notwithstanding anything to the contrary in this Indenture or the

- 97 -

Notes, if:

(i) a Conversion Rate adjustment for any dividend or distribution becomes effective on any Ex-Dividend Date pursuant to **Section 5.05(A)**;

(ii) a Note is to be converted pursuant to Physical Settlement or Combination Settlement;

(iii) the Conversion Date for such conversion (in the case of Physical Settlement) or any VWAP Trading Day in the Observation Period for such conversion (in the case of Combination Settlement) occurs on or after such Ex-Dividend Date and on or before the related record date;

(iv) the Conversion Consideration due upon such conversion includes any whole shares of Common Stock (in the case of Physical Settlement) or due in respect of such VWAP Trading Day includes any whole or fractional shares of Common Stock (in the case of Combination Settlement), in each case based on a Conversion Rate that is adjusted for such dividend or distribution; and

(v) such shares would be entitled to participate in such dividend or distribution (including pursuant to **Section 5.02(C)**),

then (x) in the case of Physical Settlement, such Conversion Rate adjustment will not be given effect for such conversion and the shares of Common Stock issuable upon such conversion based on such unadjusted Conversion Rate will not be entitled to participate in such dividend or distribution, but there will be added, to the Conversion Consideration otherwise due upon such conversion, the same kind and amount of consideration that would have been delivered in such dividend or distribution with respect to such shares of Common Stock had such shares been entitled to participate in such dividend or distribution; and (y) in the case of Combination Settlement, the Conversion Rate adjustment relating to such Ex-Dividend Date will be made for such conversion in respect of such VWAP Trading Day, but the shares of Common Stock issuable with respect to such VWAP Trading Day based on such adjusted Conversion Rate will not be entitled to participate in such dividend or distribution.

(F) *Stockholder Rights Plans.* If any shares of Common Stock are to be issued upon conversion of any Note and, at the time of such conversion, the Company has in effect any

stockholder rights plan, then the Holder of such Note will be entitled to receive, in addition to, and concurrently with the delivery of, the Conversion Consideration otherwise payable under this Indenture upon such conversion, the rights set forth in such stockholder rights plan, unless such rights have separated from the Common Stock at such time, in which case, and only in such case, the Conversion Rate will be adjusted pursuant to **Section 5.05(A)(iii)(1)** on account of such separation as if, at the time of such separation, the Company had made a distribution of the type referred to in such Section to all holders of the Common Stock, subject to potential readjustment in accordance with the last paragraph of **Section 5.05(A)(iii)(1)**.

(G) *Limitation on Effecting Transactions Resulting in Certain Adjustments.* The Company will not engage in or be a party to any transaction or event that would require the Conversion Rate to be adjusted pursuant to **Section 5.05(A)** or **Section 5.07** to an amount that

would result in the Conversion Price per share of Common Stock being less than the par value per share of Common Stock.

(H) *Equitable Adjustments to Prices.* Whenever any provision of this Indenture requires the Company to calculate the average of the Last Reported Sale Prices, or any function thereof, over a period of multiple days (including to calculate the Stock Price or an adjustment to the Conversion Rate), or to calculate Daily VWAPs, Daily Conversion Values, Daily Cash Amounts or Daily Share Amounts over an Observation Period, the Company will, if appropriate, make proportionate adjustments to such calculations or figures to account for any adjustment to the Conversion Rate pursuant to **Section 5.05(A)(i)** that becomes effective, or any event requiring such an adjustment to the Conversion Rate where the Ex-Dividend Date, effective date or Expiration Date, as applicable, of such event occurs, at any time during such period or Observation Period, as applicable.

(I) *Calculation of Number of Outstanding Shares of Common Stock.* For purposes of **Section 5.05(A)**, the number of shares of Common Stock outstanding at any time will (i) include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock; and (ii) exclude shares of Common Stock held in the Company's treasury (unless the Company pays any dividend or makes any distribution on shares of Common Stock held in its treasury).

(J) *Calculations.* All calculations with respect to the Conversion Rate and adjustments thereto will be made to the nearest 1/10,000th of a share of Common Stock (with 5/100,000ths rounded upward).

(K) *Notice of Conversion Rate Adjustments.* Upon the effectiveness of any adjustment to the Conversion Rate pursuant to **Section 5.05(A)**, the Company will promptly send notice to the Holders, the Trustee and the Conversion Agent containing (i) a brief description of the transaction or other event on account of which such adjustment was made; (ii) the Conversion Rate in effect immediately after such adjustment; and (iii) the effective time of such adjustment.

Section 5.06. VOLUNTARY ADJUSTMENTS.

(A) *Generally.* To the extent permitted by law and applicable stock exchange rules, the Company, from time to time, may (but is not required to) increase the Conversion Rate by any amount if (i) the Board of Directors determines that such increase is either (x) in the best interest of the Company; or (y) advisable to avoid or diminish any income tax imposed on holders of Common Stock or rights to purchase Common Stock as a result of any dividend or distribution of shares (or rights to acquire shares) of Common Stock or any similar event; (ii) such increase is in effect for a period of at least twenty (20) Business Days; and (iii) such increase is irrevocable during such period.

(B) *Notice of Voluntary Increases.* If the Board of Directors determines to increase the Conversion Rate pursuant to **Section 5.06(A)**, then, no later than the first Business Day of the related twenty (20) Business Day period referred to in **Section 5.06(A)**, the Company will send notice to each Holder, the Trustee and the Conversion Agent of such increase, the amount thereof and the period during which such increase will be in effect.

Section 5.07. ADJUSTMENTS TO THE CONVERSION RATE IN CONNECTION WITH A MAKE-WHOLE FUNDAMENTAL CHANGE.

(A) *Generally.* If a Make-Whole Fundamental Change occurs and the Conversion Date for the conversion of a Note occurs during the related Make-Whole Fundamental Change Conversion Period, then, subject to this **Section 5.07**, the Conversion Rate applicable to such conversion will be increased by a number of shares (the “**Additional Shares**”) set forth in the table below with respect to the applicable series of such Note corresponding (after interpolation as provided in, and subject to, the provisions below) to the Make-Whole Fundamental Change Effective Date and the Stock Price of such Make-Whole Fundamental Change:

(i) with respect to the Series 1 Notes:

Make-Whole Fundamental Change Effective Date	Stock Price										
	\$0.9692	\$1.25	\$1.46	\$1.89	\$2.50	\$3.50	\$5.00	\$7.50	\$10.00	\$20.00	\$40.00
August 8, 2024	343.9262	342.6359	278.1005	194.8397	130.4590	78.2538	43.2535	19.7706	9.9811	0.3480	0.0000
January 15, 2026	343.9262	327.8854	262.3352	179.4016	117.0781	68.2560	36.7323	16.2904	7.9953	0.1965	0.0000
January 15, 2027	343.9262	305.6088	240.1484	159.2503	100.5994	56.6031	29.5186	12.6507	5.9874	0.0606	0.0000
January 15, 2028	343.9262	272.7555	207.4017	129.8676	77.2144	40.9191	20.4539	8.4643	3.8334	0.0001	0.0000
January 15, 2029	343.9262	220.7471	154.9420	83.7557	42.8903	20.3674	10.0060	4.2161	1.8400	0.0000	0.0000
January 15, 2030	343.9262	112.1475	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

(ii) with respect to the Series 2 Notes:

Make-Whole Fundamental Change Effective Date	Stock Price										
	\$0.9692	\$1.50	\$2.00	\$2.42	\$3.15	\$4.00	\$5.00	\$7.50	\$10.00	\$20.00	\$40.00
August 8, 2024	619.0672	375.0586	261.2434	204.5387	144.7279	104.8157	76.7882	42.1696	26.4956	6.5316	0.0000
January 15, 2026	619.0672	359.1225	244.4019	188.2995	130.3276	92.6066	66.7387	35.7425	22.1230	5.2177	0.0000
January 15, 2027	619.0672	338.8521	224.1250	169.2193	113.8573	78.9664	55.7732	29.0160	17.6927	3.9869	0.0000
January 15, 2028	619.0672	312.3050	196.3463	142.7584	91.0400	60.3271	41.1050	20.5176	12.3456	2.6637	0.0000
January 15, 2029	619.0672	278.1147	156.0985	103.3664	57.3221	33.8871	21.4437	10.3302	6.3480	1.3538	0.0000
January 15, 2030	619.0672	253.9552	87.2885	0.5116	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

If such Make-Whole Fundamental Change Effective Date or Stock Price is not set forth in the applicable table above, then:

(i) if such Stock Price is between two Stock Prices in the applicable table above or the Make-Whole Fundamental Change Effective Date is between two dates in the applicable table above, then the number of Additional Shares will be determined by straight-line interpolation between the numbers of Additional Shares set forth for the higher and lower Stock Prices in the applicable table above or the earlier and later dates in the applicable table above, based on a 365- or 366-day year, as applicable; and

(ii) if the Stock Price is greater than (u) with respect to the Series 1 Notes, \$40.00 and (v) with respect to the Series 2 Notes, \$40.00 (in each case subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the applicable table above are adjusted pursuant to **Section 5.07(B)**), or less than (x) with

- 100 -

respect to the Series 1 Notes, \$0.9692 and (y) with respect to the Series 2 Notes, \$0.9692 (in each case subject to adjustment in the same manner), per share, then no Additional Shares will be added to the Conversion Rate.

Notwithstanding anything to the contrary in this Indenture or the Notes, in no event will the Conversion Rate be increased to an amount that exceeds (x) with respect to the Series 1 Notes, 1,031.7787 shares of Common Stock and (y) with respect to the Series 2 Notes, 1,031.7787 shares of Common Stock, in each case per \$1,000 principal amount of Notes, which amount is subject to adjustment in the same manner as, and at the same time and for the same events for which, the Conversion Rate is required to be adjusted pursuant to **Section 5.05(A)**.

(B) *Adjustment of Stock Prices and Number of Additional Shares.* The Stock Prices in the first row (*i.e.*, the column headers) of the applicable table set forth in **Section 5.07(A)** will be adjusted in the same manner as, and at the same time and for the same events for which, the Conversion Price is adjusted as a result of the operation of **Section 5.05(A)**. The numbers of Additional Shares in the applicable table set forth in **Section 5.07(A)** will be adjusted in the same manner as, and at the same time and for the same events for which, the Conversion Rate is adjusted pursuant to **Section 5.05(A)**.

(C) *Notice of the Occurrence of a Make-Whole Fundamental Change.* The Company will notify the Holders, the Trustee and the Conversion Agent of each Make-Whole Fundamental Change (i) occurring pursuant to **clause (A)** of the definition thereof no later than the Business Day after the effective date of such Make-Whole Fundamental Change; and (ii) occurring pursuant to **clause (B)** of the definition thereof in accordance with **Section 4.03(E)**.

Section 5.08. EXCHANGE IN LIEU OF CONVERSION.

Notwithstanding anything to the contrary in this **Article 5**, and subject to the terms of this **Section 5.08**, if a Note is submitted for conversion, the Company may elect to arrange to have such Note exchanged in lieu of conversion by a financial institution designated by the Company. To make such election, the Company must send notice of such election to the Holder of such Note, the Trustee and the Conversion Agent before the Close of Business on the Business Day immediately following the Conversion Date for such Note. If the Company has made such election, then:

(A) no later than the Business Day immediately following such Conversion Date, the Company must deliver (or cause the Conversion Agent to deliver) such Note, together with delivery instructions for the Conversion Consideration and Make-Whole Premium Consideration due upon such conversion (including wire instructions, if applicable), to a financial institution designated by the Company that has agreed to deliver such Conversion Consideration and Make-

Whole Premium Consideration in the manner and at the time the Company would have had to deliver the same pursuant to this **Article 5**;

(B) if such Note is a Global Note, then (i) such designated institution will send written confirmation to the Conversion Agent promptly after wiring the cash Conversion Consideration and Make-Whole Premium Consideration, if any, and delivering any other Conversion Consideration and Make-Whole Premium Consideration, due upon such conversion to the Holder of such Note; and (ii) the Conversion Agent will as soon as reasonably practicable thereafter

- 101 -

contact such Holder's custodian with the Depository to confirm receipt of the same; and

(C) such Note will not cease to be outstanding by reason of such exchange in lieu of conversion;

provided, however, that if such financial institution does not accept such Note or fails to timely deliver such Conversion Consideration and Make-Whole Premium Consideration, then the Company will be responsible for delivering such Conversion Consideration and Make-Whole Premium Consideration in the manner and at the time provided in this **Article 5** as if the Company had not elected to make an exchange in lieu of conversion. The Conversion Agent will be entitled to conclusively rely upon the Company's instruction in connection with effecting such exchange election and will have no liability in respect of such exchange election.

Section 5.09. EFFECT OF COMMON STOCK CHANGE EVENT.

(A) *Generally*. If there occurs any:

(i) recapitalization, reclassification or change of the Common Stock (other than (x) changes solely resulting from a subdivision or combination of the Common Stock, (y) a change only in par value or from par value to no par value or no par value to par value and (z) stock splits and stock combinations that do not involve the issuance of any other series or class of securities);

(ii) consolidation, merger, combination or binding or statutory share exchange involving the Company;

(iii) sale, lease or other transfer of all or substantially all of the assets of the Company and its Subsidiaries, taken as a whole, to any Person; or

(iv) other similar event,

and, as a result of which, the Common Stock is converted into, or is exchanged for, or represents solely the right to receive, other securities, cash or other property, or any combination of the foregoing (such an event, a "**Common Stock Change Event**," and such other securities, cash or property, the "**Reference Property**," and the amount and kind of Reference Property that a holder of one (1) share of Common Stock would be entitled to receive on account of such Common Stock Change Event (without giving effect to any arrangement not to issue or deliver a fractional portion

Change Event (without giving effect to any arrangement not to issue or deliver a fractional portion of any security or other property), a “**Reference Property Unit**”), then, notwithstanding anything to the contrary in this Indenture or the Notes,

(1) from and after the effective time of such Common Stock Change Event, (I) the Conversion Consideration and any Make-Whole Premium Consideration due upon conversion of any Note, and the conditions to any such conversion, will be determined in the same manner as if each reference to any number of shares of Common Stock in **Section 4.04(B)** or this **Article 5** (or in any related definitions) were instead a reference to the same number of Reference Property Units; (II) for purposes of **Section 4.03**, each reference to any number of shares of Common Stock in such Section (or in any related definitions) will instead be deemed to be a reference to the same number

of Reference Property Units; and (III) for purposes of the definitions of “Fundamental Change” and “Make-Whole Fundamental Change,” references to “Common Stock” and the Company’s “common equity” will be deemed to refer to the common equity (including depositary receipts representing common equity), if any, forming part of such Reference Property;

(2) if such Reference Property Unit consists entirely of cash, then (I) each conversion of any Note with a Conversion Date that occurs on or after the effective date of such Common Stock Change Event will be settled entirely in cash in an amount, per \$1,000 principal amount of such Note being converted, equal to the product of (x) the Conversion Rate in effect on such Conversion Date (including, for the avoidance of doubt, any increase to such Conversion Rate pursuant to **Section 5.07**, if applicable); and (y) the amount of cash constituting such Reference Property Unit, and any Make-Whole Premium Consideration due in connection therewith will be settled by Cash Settlement; and (II) the Company will settle each such conversion no later than the tenth (10th) Business Day after the relevant Conversion Date; and

(3) for these purposes, (I) the Daily VWAP of any Reference Property Unit or portion thereof that consists of a class of common equity securities will be determined by reference to the definition of “Daily VWAP,” substituting, if applicable, the Bloomberg page for such class of securities in such definition; and (II) the Daily VWAP of any Reference Property Unit or portion thereof that does not consist of a class of common equity securities, and the Last Reported Sale Price of any Reference Property Unit or portion thereof that does not consist of a class of securities, will be the fair value of such Reference Property Unit or portion thereof, as applicable, determined in good faith and in a commercially reasonable manner by the Company (or, in the case of cash denominated in U.S. dollars, the face amount thereof).

If the Reference Property consists of more than a single type of consideration to be determined based in part upon any form of stockholder election, then the composition of the Reference Property Unit will be deemed to be the weighted average of the types and amounts of consideration actually received, per share of Common Stock, by the holders of Common Stock. The Company will notify Holders, the Trustee and the Conversion Agent of such weighted average as soon as practicable after such determination is made.

At or before the effective time of such Common Stock Change Event, the Company and the resulting, surviving or transferee Person (if not the Company) of such Common Stock Change Event (the “**Successor Person**”) will execute and deliver to the Trustee a supplemental indenture pursuant to **Section 8.01(F)**, which supplemental indenture will (x) provide for subsequent conversions of Notes in the manner set forth in this **Section 5.09**; (y) provide for subsequent adjustments to the Conversion Rate pursuant to **Section 5.05(A)** in a manner consistent with this **Section 5.09**; and (z) contain such other provisions, if any, that the Company reasonably determines are appropriate to preserve the economic interests of the Holders and to give effect to the provisions of this **Section 5.09(A)**. If the Reference Property includes shares of stock or other securities or assets (other than cash) of a Person other than the Successor Person, then such other Person will also execute such supplemental indenture and such supplemental indenture will contain such additional provisions, if any, that the Company reasonably determines are appropriate

to preserve the economic interests of the Holders.

(B) *Notice of Common Stock Change Events.* The Company will provide notice of each Common Stock Change Event to the Holders, the Trustee and the Conversion Agent no later than the Business Day after the effective date of such Common Stock Change Event.

(C) *Compliance Covenant.* The Company will not become a party to any Common Stock Change Event unless its terms are consistent with this **Section 5.09**.

Article 6. SUCCESSORS

Section 6.01. WHEN THE COMPANY MAY MERGE OR TRANSFER ASSETS.

(A) *Generally.* The Company shall not, directly or indirectly, consolidate, amalgamate or merge with or into or wind up or convert into (whether or not the Company is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to, any Person unless:

(i) (a) the Company is the surviving Person or the Person formed by or surviving any such consolidation, amalgamation, merger, winding up or conversion (if other than the Company) or to which such sale, assignment, transfer, lease, conveyance or other disposition shall have been made is a corporation, partnership, limited liability company or similar entity organized or existing under the laws of an Approved Jurisdiction (the Company or such Person, as the case may be, being herein called the “**Successor Entity**”); and (b) the Successor Entity (if other than the Company) expressly assumes all the obligations of the Company under the Notes Documents pursuant to supplemental indentures, any applicable Collateral Documents or other documents or instruments in form reasonably satisfactory to the Trustee and will take such action (or agree to take such action) and deliver such agreements, instruments, or documents as may be necessary or appropriate to cause any property or assets that constitute Collateral owned by or transferred to the Successor Entity to be subject to the Liens of the Collateral Agent in the manner and to the extent required under this Indenture;

(ii) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Entity or any of its Subsidiaries as a result of such transaction as having been incurred by the Successor Entity or such Subsidiary at the time of such transaction) no Default shall have occurred and be continuing;

(iii) each Subsidiary Guarantor, unless it is the other party to the transactions described above, shall have by supplemental indenture confirmed that its Guarantee shall apply to such Person’s obligations under this Indenture and the Securities; and

(iv) before the effective time of any such transaction, the Company will deliver

to the Trustee and the Collateral Agent (1) an Officer's Certificate and Opinion of Counsel, each stating that (i) such transaction (and, if applicable, the related supplemental indenture(s) and any Collateral Documents or other documents required by this **Section 6.01(A)**) comply with this Indenture, including this **Section 6.01(A)**; and (ii) all

- 104 -

conditions precedent to such transaction provided in this Indenture have been satisfied and (2) an Officer's Certificate stating that the obligations of the Company and the Subsidiary Guarantors under the Notes Documents remain obligations of the Successor Entity and the Subsidiary Guarantors (respectively) and confirming the necessary actions to continue the perfection and priority of the Collateral Agent's lien in the Collateral and of the preservation of its rights therein and that all such necessary actions have been taken (together with evidence thereof).

(B) The Successor Entity (if other than the Company) shall succeed to, and be substituted for, the Company under the Notes Documents, and, except in the case of a lease, in such event the Company will automatically be released and discharged from its obligations under the Notes. Notwithstanding **clause (ii)** of **Section 6.01(A)**, the Company may consolidate, amalgamate or merge with or into, or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets to, an Affiliate of the Company incorporated or organized solely for the purpose of reincorporating or reorganizing the Company in another Approved Jurisdiction, and notwithstanding such **clause (ii)** the Company may consolidate, amalgamate or merge with or into or wind up or convert into (whether or not the Company is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to, any Subsidiary of the Company, in each case, so long as the amount of Indebtedness of the Company and the Subsidiaries is not increased thereby. This **Article 6** will not apply to a sale, assignment, transfer, lease, conveyance or other disposition of property or assets between or among any Subsidiary to the Company.

Section 6.02. WHEN THE SUBSIDIARY GUARANTORS MAY MERGE OR TRANSFER ASSETS.

(A) Subject to the provisions of **Section 12.06** (which govern the release of a Guarantee upon the sale, disposition, exchange or other transfer of the Capital Stock of a Subsidiary Guarantor), none of the Subsidiary Guarantors shall, and the Company shall not permit any Subsidiary Guarantor to, directly or indirectly, consolidate, amalgamate or merge with or into or wind up or convert into (whether or not such Subsidiary Guarantor is the surviving Person), or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets in one or more related transactions to, any Person unless:

(i) either (A) such Subsidiary Guarantor is the surviving Person or the Person formed by or surviving any such consolidation, amalgamation, merger, winding up or conversion (if other than such Subsidiary Guarantor) or to which such sale, assignment, transfer, lease, conveyance or other disposition shall have been made is a corporation, partnership, limited liability company or similar entity organized or existing under the laws of an Approved Jurisdiction (such Subsidiary Guarantor or such Person, as the case may be, being herein called the "Successor Subsidiary Guarantor") and the Successor

be, being herein called the **Successor Subsidiary Guarantor**) and the Successor Subsidiary Guarantor (if other than such Subsidiary Guarantor) expressly assumes all the obligations of such Subsidiary Guarantor under the Notes Documents, including its Guarantee, pursuant to a supplemental indenture, any applicable Collateral Documents or other documents or instruments in form reasonably satisfactory to the Trustee and the Successor Subsidiary Guarantor will take such action (or agree to take such action) and deliver such agreements, instruments, or documents as may be necessary or appropriate to cause any property or assets that constitute Collateral owned by or transferred to the

- 105 -

Successor Subsidiary Guarantor to be subject to the Liens of the Collateral Agent in the manner and to the extent required under this Indenture, and immediately after giving effect to such transaction, no Default or Event of Default will have occurred and be continuing, or (B) such sale or disposition or consolidation, amalgamation or merger is not in violation of **Section 3.12**; and

(ii) before the effective time of any such transaction, the Company will deliver to the Trustee and the Collateral Agent an Officer's Certificate and Opinion of Counsel, each stating that (i) such transaction (and, if applicable, the related supplemental indenture and any Collateral Documents) comply with the Indenture, including **Section 6.02**; and (ii) all conditions precedent to such transaction provided in this Indenture have been satisfied.

(B) Except as otherwise provided in this Indenture, the Successor Subsidiary Guarantor (if other than such Subsidiary Guarantor) will succeed to, and be substituted for, such Subsidiary Guarantor under the Notes, and, except in the case of a lease, in such event such Subsidiary Guarantor will automatically be released and discharged from its obligations under the Notes Documents.

(C) Notwithstanding the foregoing, any Subsidiary Guarantor may consolidate, amalgamate, merge with or into or wind up or convert into, or sell, assign, transfer, lease, convey or otherwise dispose of all or substantially all of its properties or assets to, the Company or any other Subsidiary Guarantor.

Article 7. DEFAULTS AND REMEDIES

Section 7.01. EVENTS OF DEFAULT.

(A) *Definition of Events of Default.* "**Event of Default**" means the occurrence of any of the following:

(i) a default in the payment when due (whether at maturity, upon Redemption, required repurchase pursuant to **Section 3.12** or Repurchase Upon Fundamental Change or otherwise) of the principal of, or the Redemption Price, required repurchase price or Fundamental Change Repurchase Price for, and any Make-Whole Premium (if the applicable Make-Whole Premium Settlement Method is Cash Settlement) due on, any Note;

(ii) a default for fifteen (15) consecutive days in the payment when due of interest on any Note;

(iii) the Company's failure to deliver, when required by this Indenture, (1) a Fundamental Change Notice, if such failure is not cured within three (3) Business Days after its occurrence, or (2) a notice of Asset Sale Offer when required pursuant to the terms of this Indenture, if such failure is not cured within fifteen (15) days after its occurrence;

(iv) a default (1) in the Company's obligation to convert a Note in accordance with **Article 5** upon the exercise of the conversion right with respect thereto, or (2) in the payment when due (whether upon conversion or Redemption or otherwise) of any Make-

Whole Premium (if the applicable Make-Whole Premium Settlement Method is Physical Settlement) due on any Note, in each case if such default is not cured within three (3) Business Days after its occurrence;

(v) a default in the Company's or any Subsidiary Guarantor's obligations under **Section 3.08** through **3.19** or **Article 6**;

(vi) a default in any of the Company's obligations or agreements, or in any Subsidiary Guarantor's obligations or agreements, under this Indenture or the Notes (other than a default set forth in **clause (i), (ii), (iii), (iv)** or **(v)** of this **Section 7.01(A)**) where such default is not cured or waived within thirty (30) days after written notice to the Company by the Trustee, or to the Company and the Trustee by Holders of at least twenty-five percent (25%) of the aggregate principal amount of Notes then outstanding of the series as to which such obligation or agreement applies, considered as one class, which notice must specify such default, demand that it be remedied and state that such notice is a "Notice of Default";

(vii) a default by the Company or any of the Company's Subsidiaries with respect to any one or more mortgages, agreements or other instruments under which there is outstanding, or by which there is secured or evidenced, any indebtedness for money borrowed of at least five million five hundred thousand dollars (\$5,500,000) (or its foreign currency equivalent) in the aggregate of the Company or any of the Company's Subsidiaries, whether such indebtedness exists as of the Issue Date or is thereafter created, where such default:

(1) constitutes a failure to pay the principal of, or premium or interest on, any of such indebtedness when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise, in each case after the expiration of any applicable grace period; *provided*, that no such event (other than the failure to make a principal payment at stated final maturity) under any Obligations (as defined in the First Lien Indenture) shall constitute a Default or Event of Default under this **clause (vii)(1)** until the Indebtedness under such First Lien Indebtedness shall have been accelerated as a result of such event; or

(2) results in such indebtedness becoming or being declared due and payable before its stated maturity;

(viii) the Company or any of the Subsidiary Guarantor's or any of the Company's Significant Subsidiaries, pursuant to or within the meaning of any Bankruptcy Law, either:

(1) commences a voluntary case or proceeding;

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

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

- (4) makes a general assignment for the benefit of its creditors;
- (5) takes any comparable action under any foreign Bankruptcy Law; or
- (6) generally is not paying its debts as they become due; or

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

(1) is for relief against the Company, any Subsidiary Guarantor or any of the Company's Significant Subsidiaries in an involuntary case or proceeding;

(2) appoints a custodian of the Company, any Subsidiary Guarantor or any of the Company's Significant Subsidiaries, or for any substantial part of the property of the Company, any Subsidiary Guarantor or any of the Company's Significant Subsidiaries;

(3) orders the winding up or liquidation of the Company, any Subsidiary Guarantor or any of the Company's Significant Subsidiaries; or

(4) grants any similar relief under any foreign Bankruptcy Law,

and, in each case under this **Section 7.01(A)(ix)**, such order or decree remains unstayed and in effect for at least sixty (60) days.

(x) one or more final and non-appealable judgments being rendered against the Company, any Subsidiary Guarantor or any of the Company's Subsidiaries for the payment of at least five million five hundred thousand dollars (\$5,500,000) (or its foreign currency equivalent) in the aggregate (excluding any amounts covered by insurance or bond), where such judgment is not discharged, stayed, vacated or otherwise satisfied within sixty (60) days after (i) the date on which the right to appeal the same has expired, if no such appeal has commenced or (ii) the date on which all rights to appeal have been extinguished;

(xi) any Guarantee ceases to be in full force and effect or any Subsidiary Guarantor denies or disaffirms its obligations under the Guarantee (in each case, except (i) in connection with a transaction expressly permitted under this Indenture or the Collateral Documents, in each case solely to the extent the release of such Guarantee is permitted under this Indenture or the Collateral Documents or (ii) as a result of the satisfaction and discharge of this Indenture in accordance with **Article 9**);

(xii) any material provision of any Notes Document shall for any reason cease to be valid and binding on or enforceable against the Company or any of its Subsidiaries, or the Company or any of its Subsidiaries shall so state in writing or bring an action to limit its obligations or liabilities thereunder except (i) as permitted by the Notes Documents, (ii)

resulting from the satisfaction of the obligations (other than contingent obligations that have yet to accrue) under this Indenture, or (iii) resulting from the application of applicable law;

- 108 -

(xiii) any security interest or Liens in favor of the Holders purported to be created by any Collateral Document on any Collateral with a value greater than two million two hundred thousand dollars (\$2,200,000), individually or in the aggregate, shall cease to be in full force and effect, or shall be asserted by or on behalf of the Company or any of the Subsidiary Guarantors in writing 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 this Indenture or the Collateral Documents, in each case solely to the extent such termination or release is permitted under this Indenture or the Collateral Documents or (iii) or, subject to **Section 11.01(D)** resulting from acts or omissions of the Trustee or Collateral Agent or (iv) as a result of the satisfaction and discharge of this Indenture in accordance with **Article 9**);

(xiv) the Company or any Subsidiary Guarantor fails to comply for sixty (60) days after notice with its obligations contained in the Collateral Documents, except for a failure with respect to assets or property with an aggregate value of less than two million two hundred thousand dollars (\$2,200,000); and

(xv) any representation or warranty made in writing by or on behalf of the Company or any Subsidiary Guarantor in connection with the issuance and sale of the Securities or made in writing by or on behalf of the Company or any Subsidiary Guarantor in connection with the transactions contemplated by the Notes Documents proves to have been false or incorrect in any material respect on the date as of which made (or, if such representation or warranty is given as of a specific time, as of such time) and written notice thereof is delivered to the Company by the Trustee, at the direction of Initial Purchasers holding at least ten percent (10%) of the aggregate principal amount of Notes then outstanding, which notice must specify such default and state that such notice is a "Notice of Default".

(B) *Cause Irrelevant.* Each of the events set forth in **Section 7.01(A)** will constitute an Event of Default regardless of the cause thereof or whether voluntary or involuntary or 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.

Section 7.02. ACCELERATION.

(A) *Automatic Acceleration in Certain Circumstances.* If an Event of Default set forth in **Section 7.01(A)(viii)** or **7.01(A)(ix)** occurs with respect to the Company or any Subsidiary Guarantor then the Redemption Price which is inclusive of the accrued and unpaid interest on

Guarantor, then the Redemption Price, which is inclusive of the accrued and unpaid interest on such Note, as of the date of such Event of Default, of all of the Notes then outstanding will immediately become due and payable without any further action or notice by any Person.

(B) *Optional Acceleration.* Subject to **Section 7.03**, if an Event of Default (other than an Event of Default set forth in **Section 7.01(A)(viii)** or **7.01(A)(ix)** with respect to the Company or any Subsidiary Guarantor) occurs and is continuing, then the Trustee, by written notice to the Company, or Holders of at least twenty-five percent (25%) of the aggregate principal amount of Notes then outstanding of all series with respect to which such Event of Default applies, considered

- 109 -

as one class, by written notice to the Company and the Trustee, may declare the Redemption Price, which is inclusive of the accrued and unpaid interest on such Note, as of the date of such Event of Default, of all of the Notes then outstanding to become due and payable immediately.

(C) *Rescission of Acceleration.* Notwithstanding anything to the contrary in this Indenture or the Notes, the Required Holders of all Notes of the series with respect to which the Event of Default resulting in acceleration applies, by written notice to the Company and the Trustee, may, on behalf of all Holders, rescind any acceleration of the Notes and its consequences with respect to such series if (i) such rescission would not conflict with any judgment or decree of a court of competent jurisdiction; and (ii) all existing Events of Default (except the non-payment of principal of, or interest on, the Notes that has become due solely because of such acceleration) with respect to such series have been cured or waived. No such rescission will affect any subsequent Default or impair any right consequent thereto.

(D) If the principal of, premium, and accrued and unpaid interest, if any, on the Notes becomes due and payable as provided above (an “**Acceleration**”), the principal of, and the premium, if any, and accrued but unpaid interest on the Notes that shall be due and payable in connection with any payment that occurs following such Acceleration shall equal the Redemption Price at such time, as if such Acceleration were an optional redemption of the Notes affected thereby on the date such amount is paid. The amount described in the preceding sentence is intended to be liquidated damages and not unmatured interest or a penalty. EACH OF THE COMPANY AND THE SUBSIDIARY GUARANTORS EXPRESSLY WAIVES (TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO) THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE REDEMPTION PRICE UPON ANY SUCH ACCELERATION. Each of the Company and the Subsidiary Guarantors expressly agrees (to the fullest extent that it may lawfully do so) that: (A) the Redemption Price is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (B) no portion of the Redemption Price shall constitute, or be deemed or considered to be, unmatured interest on the Notes or other amount and none of the Company or any Subsidiary Guarantor shall argue under any circumstance that the Redemption Price or any portion thereof constitutes unmatured interest on the Notes; (C) the Redemption Price shall be payable notwithstanding the then prevailing market rates at the time payment is made; (D) there has been a course of conduct between the Holders and the Company and the Subsidiary Guarantors giving specific consideration in this transaction for such agreement to pay the Redemption Price; (E) each of the Company and each Subsidiary Guarantor shall be estopped hereafter from claiming differently than as agreed to in

Subsidiary Guarantor shall be estopped hereafter from claiming differently than as agreed to in this paragraph; and (F) in view of the impracticability and extreme difficulty of ascertaining actual damages, the Company and the Subsidiary Guarantors on the one hand, and each of the Holders, by holding the Notes, on the other hand, mutually agree that the Redemption Price is a reasonable calculation of the Holders' lost profits as a result of any such prepayments and is not a penalty. For the avoidance of doubt, the Company or any Subsidiary Guarantor's payment of the Redemption Price shall not be in lieu of, or otherwise reduce or eliminate, the Company's obligations to the Trustee, the Collateral Agent or any Note Agent under this Indenture or any other Notes Documents.

Section 7.03. SOLE REMEDY FOR A FAILURE TO REPORT.

(A) *Generally.* Notwithstanding anything to the contrary in this Indenture or the Notes, the Company may elect that the sole remedy for any Event of Default (a “**Reporting Event of Default**”) pursuant to **Section 7.01(A)(vi)** arising from the Company’s failure to comply with **Section 3.02** will, for each of the first one hundred and eighty (180) calendar days on which a Reporting Event of Default has occurred and is continuing, consist exclusively of the accrual of Special Interest on the Notes. If the Company has made such an election, then (i) the Notes will be subject to acceleration pursuant to **Section 7.02** on account of the relevant Reporting Event of Default from, and including, the one hundred and eighty first (181st) calendar day on which a Reporting Event of Default has occurred and is continuing or if the Company fails to pay any accrued and unpaid Special Interest when due; and (ii) Special Interest will cease to accrue on any Notes from, and including, such one hundred and eighty first (181st) calendar day (it being understood that interest on any defaulted Special Interest will nonetheless accrue pursuant to **Section 2.05(B)**).

(B) *Amount and Payment of Special Interest.* Any Special Interest that accrues on a Note pursuant to **Section 7.03(A)** will be payable on the same dates and in the same manner as the Stated Interest on such Note and will accrue at a rate per annum equal to one quarter of one percent (0.25%) of the principal amount thereof for the first ninety (90) days on which Special Interest accrues and, thereafter, at a rate per annum equal to one half of one percent (0.50%) of the principal amount thereof; *provided, however,* that in no event will Special Interest, together with any Additional Interest, accrue on any day on a Note at a combined rate per annum that exceeds one half of one percent (0.50%). For the avoidance of doubt, any Special Interest that accrues on a Note will be in addition to the Stated Interest that accrues on such Note and, subject to the proviso of the immediately preceding sentence, in addition to any Additional Interest that accrues on such Note.

(C) *Notice of Election.* To make the election set forth in **Section 7.03(A)**, the Company must send to the Holders, the Trustee and the Paying Agent, before the date on which each Reporting Event of Default first occurs, a notice that (i) briefly describes the report(s) that the Company failed to file with or furnish to the SEC; (ii) states that the Company is electing that the sole remedy for such Reporting Event of Default consist of the accrual of Special Interest; and (iii) briefly describes the periods during which and rate at which Special Interest will accrue and the circumstances under which the Notes will be subject to acceleration on account of such Reporting Event of Default.

(D) *Notice to Trustee and Paying Agent; Trustee’s Disclaimer.* If Special Interest accrues on any Note, then, no later than five (5) Business Days before each date on which such Special Interest is to be paid, the Company will deliver an Officer’s Certificate to the Trustee and the Paying Agent stating (i) that the Company is obligated to pay Special Interest on such Note on such date of payment; and (ii) the amount of such Special Interest that is payable on such date of payment. The Trustee will have no duty to determine whether any Special Interest is payable or the amount thereof.

(E) *No Effect on Other Events of Default.* No election pursuant to this **Section 7.03** with respect to a Reporting Event of Default will affect the rights of any Holder with respect to

any other Event of Default, including with respect to any other Reporting Event of Default.

Section 7.04. OTHER REMEDIES.

(A) *Trustee and the Collateral Agent May Pursue All Remedies.* If an Event of Default occurs and is continuing, then the Trustee and the Collateral Agent may (but shall not be obligated to, except to the extent directed by the Required Holders), subject to the Intercreditor Agreement, pursue any available remedy to collect the payment of any amounts due with respect to the Notes or to enforce the performance of any provision of this Indenture or the Notes.

(B) *Procedural Matters.* Subject to the Intercreditor Agreement, the Trustee and the Collateral Agent may maintain a proceeding even if it does not possess any of the Notes or does not produce any of them in such proceeding. A delay or omission by the Trustee, the Collateral Agent, or any Holder in exercising any right or remedy following an Event of Default will not impair the right or remedy or constitute a waiver of, or acquiescence in, such Event of Default. All remedies will be cumulative to the extent permitted by law.

Section 7.05. WAIVER OF PAST DEFAULTS.

An Event of Default pursuant to **clause (i), (ii), Section 7.01(A)(iii)(1), (iv) or (vi) of Section 7.01(A)** (that, in the case of **clause (vi)** only, results from a Default under any covenant that cannot be amended without the consent of each affected Holder), and a Default that could lead to such an Event of Default, can be waived only with the consent of each affected Holder. In the case of a Default or Event of Default affecting the rights of the Holders of Notes of any series which does not similarly affect the rights of Holders of all other series of Notes at the time outstanding, such Default or Event of Default may be waived, on behalf of the Holders of all Notes of such affected series, by the Required Holders of such affected series then outstanding voting as a single class. Each other Default or Event of Default may be waived, on behalf of all Holders, by the Required Holders of all Notes then outstanding voting as a single class. If an Event of Default is so waived, then it will cease to exist. If a Default is so waived, then it will be deemed to be cured and any Event of Default arising therefrom will be deemed not to occur. However, no such waiver will extend to any subsequent or other Default or Event of Default or impair any right arising therefrom.

Section 7.06. CONTROL BY REQUIRED HOLDERS.

Subject to the Intercreditor Agreement, the Required Holders of all series of Notes may direct the time, method and place of conducting any proceeding for exercising any remedy available to the Trustee or the Collateral Agent or exercising any trust or power conferred on it. However, the Trustee or the Collateral Agent may refuse to follow any direction that conflicts with law, this Indenture or the Notes, or that, subject to **Section 10.01**, the Trustee or the Collateral Agent, as applicable, determines may be unduly prejudicial to the rights of other Holders or may involve the Trustee or the Collateral Agent in liability, unless the Trustee or the Collateral Agent is offered, and, if requested, provided security and indemnity reasonably satisfactory to the Trustee

is entered, and, if requested, provided security and indemnity reasonably satisfactory to the Trustee or the Collateral Agent against any loss, liability or expense to the Trustee or the Collateral Agent that may result from following such direction.

- 112 -

Section 7.07. LIMITATION ON SUITS.

No Holder may pursue any remedy with respect to this Indenture or the Notes (except to enforce (x) its rights to receive the principal of, or the Redemption Price, required repurchase price or Fundamental Change Repurchase Price for, or any applicable Make-Whole Premium or interest on, any Notes; or (y) the Company's obligations to convert any Notes and deliver the Conversion Consideration and applicable Make-Whole Premium Consideration due thereon, pursuant to **Article 5**), unless:

(A) such Holder has previously delivered to the Trustee and the Collateral Agent notice that an Event of Default is continuing;

(B) Holders of at least twenty-five percent (25%) in aggregate principal amount of the Notes of the affected series then outstanding, considered as one class, deliver a request to the Trustee and the Collateral Agent to pursue such remedy;

(C) such Holder or Holders offer and, if requested, provide to the Trustee or the Collateral Agent security and indemnity reasonably satisfactory to the Trustee against any loss, liability or expense to the Trustee and the Collateral Agent that may result from the Trustee or Collateral Agent following such request;

(D) the Trustee and the Collateral Agent do not comply with such request within sixty (60) calendar days after its receipt of such request and such offer of security or indemnity; and

(E) during such sixty (60) calendar day period, the Required Holders of all Notes of the affected series do not deliver to the Trustee and the Collateral Agent a direction that is inconsistent with such request.

A Holder of a Note may not use this Indenture to prejudice the rights of another Holder or to obtain a preference or priority over another Holder. Neither the Trustee nor the Collateral Agent will have any duty to determine whether any Holder's use of this Indenture complies with the preceding sentence.

Section 7.08. ABSOLUTE RIGHT OF HOLDERS TO INSTITUTE SUIT FOR THE ENFORCEMENT OF THE RIGHT TO RECEIVE PAYMENT AND CONVERSION CONSIDERATION.

Notwithstanding anything to the contrary in this Indenture or the Notes (but without limiting **Section 8.01**), the right of each Holder of a Note to bring suit for the enforcement of any payment or delivery, as applicable, of the principal of, or the Redemption Price, required repurchase price or Fundamental Change Repurchase Price for, or any Make-Whole Premium or

interest on, or the Conversion Consideration or Make-Whole Premium Consideration due pursuant to **Article 5** upon conversion of, such Note on or after the respective due dates therefor provided in this Indenture and the Notes, will not be impaired or affected without the consent of such Holder.

Section 7.09. COLLECTION SUIT BY TRUSTEE.

Without limiting any other rights of the Trustee or any Holder under this Indenture or applicable law in connection with an Event of Default, subject to the Intercreditor Agreement, the

- 113 -

Trustee will have the right, upon the occurrence and continuance of an Event of Default pursuant to **clause (i), (ii) or (iv) of Section 7.01(A)**, to recover judgment in its own name and as trustee of an express trust against the Company for the total unpaid or undelivered principal of, or Redemption Price, required repurchase price or Fundamental Change Repurchase Price for, or Make-Whole Premium or interest on, or Conversion Consideration or Make-Whole Premium Consideration due pursuant to **Article 5** upon conversion of, the Notes, as applicable, and, to the extent lawful, any Default Interest on any Defaulted Amounts, and such further amounts sufficient to cover the costs and expenses of collection, including compensation provided for in **Section 10.06**.

Section 7.10. TRUSTEE MAY FILE PROOFS OF CLAIM.

The Trustee has the right to (A) file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee, the Collateral Agent, the Note Agents and the Holders allowed in any judicial proceedings relative to the Company (or any other obligor upon the Notes) or its creditors or property and (B) collect, receive and distribute any money or other property payable or deliverable on any such claims. Each Holder authorizes any custodian in such proceeding to make such payments to the Trustee, and, if the Trustee consents to the making of such payments directly to the Holders, to pay to the Trustee, the Collateral Agent and the Note Agents any amount due to the Trustee for the reasonable compensation, expenses, disbursements and advances of the Trustee, the Collateral Agent, the Note Agents and their agents and counsel, and any other amounts payable to the Trustee, the Note Agents and the Collateral Agent pursuant to **Section 10.06** of this Indenture or any Notes Documents. Payment of any compensation, expenses, disbursements, advances and other amounts will be secured by a lien on, and will be paid out of, any and all distributions, dividends, money, securities and other properties that the Holders may be entitled to receive in such proceeding (whether in liquidation or under any plan of reorganization or arrangement or otherwise). Nothing in this Indenture will be deemed to authorize the Trustee or the Collateral Agent to authorize, consent to, accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Notes or the rights of any Holder, or to authorize the Trustee or the Collateral Agent to vote in respect of the claim of any Holder in any such proceeding.

Section 7.11. PRIORITIES.

Subject to the Intercreditor Agreement, the Trustee will pay or deliver in the following order any money or other property that is collected pursuant to this **Article 7**:

First: to the Trustee, the Collateral Agent, the Note Agents and their agents and attorneys for amounts due under **Section 10.06** of this Indenture or under any Notes Documents, including payment of all fees, compensation, expenses (including any fees and expenses of counsel and other advisors), indemnification amounts and liabilities incurred, and all advances made, by the Trustee, the Collateral Agent and the Note Agents and the costs and expenses of collection;

Second: to Holders for unpaid amounts or other property due on the Notes, including the principal of, or the Redemption Price, required repurchase price or Fundamental Change Repurchase Price for, or any Make-Whole Premium or interest on, or any Conversion Consideration or Make-Whole Premium Consideration due upon

conversion of, the Notes, ratably, and without preference or priority of any kind, according to such amounts or other property due and payable on all of the Notes; and

Third: to the Company or such other Person as a court of competent jurisdiction directs.

The Trustee may fix a record date and payment date for any payment or delivery to the Holders pursuant to this **Section 7.11**, in which case the Trustee will instruct the Company to, and the Company will, deliver, at least fifteen (15) calendar days before such record date, to each Holder, the Trustee and the Collateral Agent a notice stating such record date, such payment date and the amount of such payment or nature of such delivery, as applicable.

Section 7.12. UNDERTAKING FOR COSTS.

In any suit for the enforcement of any right or remedy under this Indenture or the Notes or in any suit against the Trustee or the Collateral Agent for any action taken or omitted by it as Trustee or the Collateral Agent, a court, in its discretion, may (A) require the filing by any litigant party in such suit of an undertaking to pay the costs of such suit; and (B) assess reasonable costs (including reasonable attorneys' fees) against any litigant party in such suit, having due regard to the merits and good faith of the claims or defenses made by such litigant party; *provided, however*, that this **Section 7.12** does not apply to any suit by the Trustee, or the Collateral Agent any suit by a Holder pursuant to **Section 7.08** or any suit by one or more Holders of more than ten percent (10%) in aggregate principal amount of the Notes then outstanding, considered as one class.

Article 8. AMENDMENTS, SUPPLEMENTS AND WAIVERS

Section 8.01. WITHOUT THE CONSENT OF HOLDERS.

Notwithstanding anything to the contrary in **Section 8.02**, the Company, the Subsidiary Guarantors, the Trustee and the Collateral Agent (if applicable) may amend or supplement any Notes Documents without the consent of any Holder to:

(A) cure any ambiguity or correct any omission, defect or inconsistency in this Indenture or the Notes;

(B) add guarantees with respect to the Company's obligations under this Indenture or the Notes to the extent such guarantees are contemplated by this Indenture or to confirm and evidence the release, termination or discharge of any guarantee (including any Guarantee) with respect to the Notes when such release, termination or discharge is permitted under this Indenture or the other Notes Documents, as applicable;

(C) add additional assets to Collateral to further secure the Notes or any Guarantee or to release Collateral from the Lien of this Indenture and the Collateral Documents when permitted or required by the Collateral Documents or this Indenture;

(D) add to the Company's or any Subsidiary Guarantor's covenants or Events of Default for the benefit of the Holders of all series of Notes or surrender any right or power conferred on the Company;

(E) provide for the assumption of the Company's or any Subsidiary Guarantor's obligations under this Indenture and the Notes pursuant to, and in compliance with, **Article 6** and **Article 12**, as applicable;

(F) enter into supplemental indentures pursuant to, and in accordance with, **Section 5.09** in connection with a Common Stock Change Event;

(G) irrevocably elect or eliminate any Conversion Settlement Method or Specified Dollar Amount; *provided, however*, that no such election or elimination will affect any Conversion Settlement Method theretofore elected (or deemed to be elected) with respect to any Note pursuant to **Section 5.03(A)**;

(H) evidence or provide for the acceptance of the appointment, under this Indenture, of a successor Trustee, Registrar, Paying Agent, Conversion Agent or Collateral Agent;

(I) [Reserved];

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

(K) provide for or confirm the issuance of Additional Notes pursuant to **Section 2.03(B)**;

(L) comply with any requirement of the SEC in connection with any qualification of this Indenture or any supplemental indenture under the Trust Indenture Act, as then in effect;

(M) comply with the Depositary Procedures in a manner that does not adversely affect the rights of any Holder; or

(N) make any other change to this Indenture or any of the Notes Documents that does not, individually or in the aggregate with all other such changes, adversely affect the rights of the Holders of the Notes of any series (other than Holders that have consented to such change).

Section 8.02. WITH THE CONSENT OF HOLDERS.

(A) *Generally*. Subject to **Sections 8.01, 7.05** and **7.08** and the immediately following sentence, the Company, the Subsidiary Guarantors, the Collateral Agent and the Trustee may, with the consent of the Required Holders, amend or supplement any Notes Document or waive compliance with any provision of any Notes Document. Notwithstanding anything to the contrary in the foregoing sentence, but subject to **Section 8.01**, without the consent of each affected Holder, no amendment or supplement to any Notes Documents, or waiver of any provision of any Notes Documents, may:

(i) reduce the principal, or extend the stated maturity (or amend the definition of "Maturity Date", as in effect on the Issue Date), of any Note;

(ii) reduce the Redemption Price, the repurchase price specified in **Section 3.12** or Fundamental Change Repurchase Price or Make-Whole Premium for any Note or change the times at which, or the circumstances under which, the Notes may or will be

- 116 -

redeemed or repurchased by the Company;

(iii) reduce the rate, or extend the stated time for the payment, of interest on any Note;

(iv) make any change that adversely affects the conversion rights of any Note;

(v) impair the rights of any Holder of a Note set forth in **Section 7.08** (as such section is in effect on the Issue Date);

(vi) change or modify the ranking of the Notes or the Guarantees, change or modify the lien priority or payment priority of the Notes or the Guarantees, release any Guarantee except as permitted by the terms of the Notes Documents, or subordinate the Notes, the Guarantee, or the liens securing the Notes or the Guarantees to any other Indebtedness of the Company or any Subsidiary Guarantor except as permitted by the terms of the Notes Documents;

(vii) make any Note payable in money, or at a place of payment, other than that stated in this Indenture or the Note;

(viii) reduce the amount of Notes whose Holders must consent to any amendment, supplement, waiver or other modification; or

(ix) make any direct or indirect change to any amendment, supplement, waiver or modification provision of the Notes Documents that requires the consent of each affected Holder.

Notwithstanding the foregoing, subject to the following sentence, if any amendment, waiver or other modification affects only the rights of a particular series of Notes, the Holders of any other series of Notes shall not be required to consent thereto and, in such case, only the consent of the Required Holders of the affected series of Notes or each Holder, as applicable, shall be required to consent thereto. For the avoidance of doubt, it is understood and agreed that any matter described in this **Section 8.02(A)** that by its terms applies only to a particular series of Notes shall not be deemed to affect the rights of, or require the consent of, the Holders of any other series of Notes and shall require only the consent of the Holders of the affected series of Notes, as the case may be, unless such amendment, waiver or other modification would have a material adverse effect on the Holders of another series of Notes or is otherwise specified in this **Section 8.02(A)** as requiring the consent of Holders of any or all series of the Notes. In addition, without the consent of the Holders of at least 66 2/3% in principal amount of the Notes then outstanding (A) of all series, voting as one class, and (B) to the extent adversely affecting less than all of the series of

Notes, each affected series, voting as a separate class, no amendment, supplement or waiver may modify any Collateral Document or the provisions in this Indenture dealing with the Collateral or the Collateral Documents in a manner that would (i) have the impact of releasing all or substantially all of the Collateral from the Liens of the Collateral Documents with respect to one or more series of the Notes (except as permitted by the terms of this Indenture or the Collateral Documents as in effect on the Issue Date) or (ii) permit the Company to issue additional Notes under this Indenture (except as permitted as of the date hereof) or incur Indebtedness that is pari passu with the Notes of any or all series of the Notes as it relates to the Collateral.

- 117 -

For the avoidance of doubt, pursuant to **clauses (i), (ii), (iii) and (iv)** of this **Section 8.02(A)**, no amendment or supplement to this Indenture or the Notes, or waiver of any provision of this Indenture or the Notes, may change the amount or type of consideration due on any Note (whether on an Interest Payment Date, Redemption Date, required repurchase date pursuant to **Section 3.12**, Fundamental Change Repurchase Date or the Maturity Date or upon conversion, or otherwise), or the date(s) or time(s) such consideration is payable or deliverable, as applicable, without the consent of each affected Holder.

(B) *Holders Need Not Approve the Particular Form of any Amendment.* A consent of any Holder pursuant to this **Section 8.02** need approve only the substance, and not necessarily the particular form, of the proposed amendment, supplement or waiver.

Section 8.03. NOTICE OF AMENDMENTS, SUPPLEMENTS AND WAIVERS.

As soon as reasonably practicable after any amendment, supplement or waiver pursuant to **Section 8.01** or **8.02** becomes effective, the Company will send to the Holders and the Trustee notice that (A) describes the substance of such amendment, supplement or waiver in reasonable detail and (B) states the effective date thereof; *provided, however*, that the Company will not be required to provide such notice to the Holders if such amendment, supplement or waiver is included in a periodic report filed by the Company with the SEC within four (4) Business Days of its effectiveness. The failure to send, or the existence of any defect in, such notice will not impair or affect the validity of such amendment, supplement or waiver.

Section 8.04. REVOCATION, EFFECT AND SOLICITATION OF CONSENTS; SPECIAL RECORD DATES; ETC.

(A) *Revocation and Effect of Consents.* The consent of a Holder of a Note to an amendment, supplement or waiver will bind (and constitute the consent of) each subsequent Holder of any Note to the extent the same evidences any portion of the same indebtedness as the consenting Holder's Note, subject to the right of any Holder of a Note to revoke (if not prohibited pursuant to **Section 8.04(B)**) any such consent with respect to such Note by delivering notice of revocation to the Trustee before the time such amendment, supplement or waiver becomes effective.

(B) *Special Record Dates.* The Company may, but is not required to, fix a record date for the purpose of determining the Holders entitled to consent or take any other action in

connection with any amendment, supplement or waiver pursuant to this **Article 8**. If a record date is fixed, then, notwithstanding anything to the contrary in **Section 8.04(A)**, only Persons who are Holders as of such record date (or their duly designated proxies) will be entitled to give such consent, to revoke any consent previously given or to take any such action, regardless of whether such Persons continue to be Holders after such record date; *provided, however*, that no such consent will be valid or effective for more than one hundred and twenty (120) calendar days after such record date.

(C) *Solicitation of Consents*. For the avoidance of doubt, each reference in this Indenture or the Notes to the consent of a Holder will be deemed to include any such consent obtained in connection with a repurchase of, or tender or exchange offer for, any Notes.

(D) *Effectiveness and Binding Effect.* Each amendment, supplement or waiver pursuant to this **Article 8** will become effective in accordance with its terms and, when it becomes effective with respect to any Note (or any portion thereof), will thereafter bind every Holder of such Note (or such portion).

Section 8.05. NOTATIONS AND EXCHANGES.

If any amendment, supplement or waiver changes the terms of a Note, then the Trustee or the Company may, in its discretion, require the Holder of such Note to deliver such Note to the Trustee so that the Trustee may place an appropriate notation prepared by the Company on such Note and return such Note to such Holder. Alternatively, at its discretion, the Company may, in exchange for such Note, issue, execute and deliver, and the Trustee will authenticate, in each case in accordance with **Section 2.02**, a new Note that reflects the changed terms. The failure to make any appropriate notation or issue a new Note pursuant to this **Section 8.05** will not impair or affect the validity of such amendment, supplement or waiver.

Section 8.06. TRUSTEE AND COLLATERAL AGENT TO EXECUTE SUPPLEMENTAL INDENTURES.

The Trustee and the Collateral Agent will execute and deliver any amendment or supplemental indenture authorized pursuant to this **Article 8**; *provided, however*, that the Trustee and the Collateral Agent need not (but may, in its sole and absolute discretion) execute or deliver any such amendment or supplemental indenture that adversely affects the Trustee's, the Note Agent's or the Collateral Agent's rights, duties, liabilities or immunities. In executing any amendment or supplemental indenture, the Trustee and the Collateral Agent will be entitled to receive, and (subject to **Sections 10.01** and **10.02**) will be fully protected in relying on, an Officer's Certificate and an Opinion of Counsel stating that (A) the execution and delivery of such amendment or supplemental indenture is authorized or permitted by this Indenture; and (B) in the case of the Opinion of Counsel, such amendment or supplemental indenture is valid, binding and enforceable against the Company (and any Subsidiary Guarantor) in accordance with its terms.

Section 8.07. ADDITIONAL VOTING TERMS; CALCULATION OF PRINCIPAL AMOUNT.

All Notes issued under this Indenture shall vote and consent together on all matters (as to which any of such Notes may vote) as one class. Determinations as to whether Holders of the requisite aggregate principal amount of Notes have concurred in any direction, waiver or consent shall be made in accordance with this **Article 8**. Any reference to "consent," "direction", "approval", "objection", "acceptance", "election", "determination", "satisfaction", "request" or "waiver" by or of the Required Holders (or any other requisite percentage of Holders) hereunder shall include the consent, direction, approval, objection, acceptance, election, determination, satisfaction, request or waiver made or granted by the written consent of Indirect Participants holding beneficial interests in Global Notes representing a majority (or such other requisite percentage expressly provided for in this Indenture) of the aggregate principal amounts of the Notes then outstanding (excluding any Notes held by the Company or any of its Affiliates), provided that such written consent contains, as to each Indirect Participant, a representation as to the amount of such Indirect Participant's beneficial ownership in the Notes and reasonably contemporary evidence thereof in the form of a brokerage statement identifying the Indirect

Agent, each Note Agent and the Company may each rely on such written consent and representations, without independent verification, as evidence of the Indirect Participants' consent, direction, approval, objection, acceptance, election, determination, satisfaction, request or waiver.

Article 9. SATISFACTION AND DISCHARGE

Section 9.01. TERMINATION OF COMPANY'S OBLIGATIONS.

This Indenture will be discharged, and will cease to be of further effect as to all Notes issued under this Indenture, when:

(A) all Notes then outstanding (other than Notes replaced pursuant to **Section 2.12**) have (i) been delivered to the Trustee for cancellation; or (ii) become due and payable (whether on a Redemption Date, a Fundamental Change Repurchase Date, the Maturity Date, upon conversion or otherwise) for an amount of cash or Conversion Consideration, as applicable, that has been fixed;

(B) the Company has caused there to be irrevocably deposited with the Trustee, or with the Paying Agent, in each case for the benefit of the Holders, or has otherwise caused there to be delivered to the Holders, cash (or, with respect to Notes to be converted, Conversion Consideration) sufficient to satisfy all amounts or other property due on all Notes then outstanding (other than Notes replaced pursuant to **Section 2.12**);

(C) the Company has paid all other amounts payable by it under this Indenture; and

(D) the Company has delivered to the Trustee and the Collateral Agent an Officer's Certificate and an Opinion of Counsel, each stating that the conditions precedent to the discharge of this Indenture have been satisfied;

provided, however, that **Section 2.10(E)**, **Article 10** and **Section 13.01** will survive such discharge and, until no Notes remain outstanding, **Section 2.14** and the obligations of the Trustee, the Paying Agent and the Conversion Agent with respect to money or other property deposited with them will survive such discharge.

At the Company's request, the Trustee will acknowledge the satisfaction and discharge of this Indenture.

Section 9.02. REPAYMENT TO COMPANY.

Subject to applicable unclaimed property law, the Trustee, the Paying Agent and the Conversion Agent will promptly notify the Company if there exists (and, at the Company's written request, promptly deliver to the Company) any cash, Conversion Consideration or other property held by any of them for payment or delivery on the Notes that remain unclaimed two (2) years after the date on which such payment or delivery was due. After such delivery to the Company,

the Trustee, the Paying Agent and the Conversion Agent will have no further liability to any Holder with respect to such cash, Conversion Consideration or other property, and Holders entitled to the payment or delivery of such cash, Conversion Consideration or other property must look to the Company for payment as a general creditor of the Company.

- 120 -

Section 9.03. REINSTATEMENT.

If the Trustee, the Paying Agent or the Conversion Agent is unable to apply any cash or other property deposited with it pursuant to **Section 9.01** because of any legal proceeding or any order or judgment of any court or other governmental authority that enjoins, restrains or otherwise prohibits such application, then the discharge of this Indenture pursuant to **Section 9.01** will be rescinded; *provided, however*, that if the Company thereafter pays or delivers any cash or other property due on the Notes to the Holders thereof, then the Company will be subrogated to the rights of such Holders to receive such cash or other property from the cash or other property, if any, held by the Trustee, the Paying Agent or the Conversion Agent, as applicable.

Article 10. TRUSTEE AND COLLATERAL AGENT

Section 10.01. DUTIES OF THE TRUSTEE.

(A) If an Event of Default has occurred and is continuing, and a Responsible Officer of the Trustee has received written notice thereof, the Trustee will (subject in all cases to the receipt of written directions from the required percentage of Holders as permitted or required by this Indenture) exercise such of the rights and powers vested in it by this Indenture, as so directed, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs; *provided* that 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 Trustee in its sole discretion against any loss, liability or expense that might be incurred by it in compliance with such request or direction.

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

(i) the duties of the Trustee will be determined solely by the express provisions of this Indenture, and the Trustee need perform only those duties that are specifically set forth in this Indenture and no others, and no implied covenants or obligations will be read into this Indenture against the Trustee;

(ii) the Trustee shall not be liable, answerable or accountable under any circumstances, except for its own gross negligence, or willful misconduct, as conclusively determined by the final judgment of a court of competent jurisdiction, no longer subject to appeal or review and

(iii) in the absence of bad faith or willful misconduct on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions

expressed therein, upon Officer's Certificates or Opinions of Counsel that are provided to the Trustee and conform to the requirements of this Indenture. However, the Trustee will examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture.

(C) The Trustee may not be relieved from liabilities for its gross negligence or willful

- 121 -

misconduct, except that:

(i) this paragraph will not limit the effect of **Section 10.01(B)**;

(ii) the Trustee will not be liable for any error of judgment made in good faith by the Trustee, unless it is proved that the Trustee was grossly negligent in ascertaining the pertinent facts as conclusively determined by the final judgment of a court of competent jurisdiction, no longer subject to appeal or review; and;

(iii) the Trustee will not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to the terms of the Indenture or any Notes Document.

(D) Each provision of this Indenture and the Notes Documents that in any way relates to the Trustee is subject to **Article 10**, regardless of whether such provision so expressly provides.

(E) No provision of this Indenture will require the Trustee to expend or risk its own funds or incur any liability nor shall the Trustee be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

(F) The Trustee will not be liable for interest on any money received by it, except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds, except to the extent required by law.

(G) Unless a Responsible Officer of the Trustee has received notice from the Company that Additional Interest is owing on the Notes or that the Company has elected to pay Special Interest on the Notes, the Trustee may assume without liability that no Additional Interest or Special Interest, as applicable, is payable.

(H) The rights, privileges, protections, immunities and benefits given to the Trustee, including its right to be indemnified, are extended to, and will be enforceable by, the Trustee in each of its capacities under this Indenture, including as Note Agent and Collateral Agent.

(I) The Trustee will not be charged with knowledge of any document or agreement other than this Indenture and the Notes.

(A) The Trustee may conclusively rely on and be fully protected in acting or refraining from acting upon any document (whether in its original or facsimile form) that it believes to be genuine and signed or presented by the proper Person, and the Trustee need not investigate any fact or matter stated in such document.

(B) Before the Trustee acts or refrains from acting, it may require an Officer's Certificate, an Opinion of Counsel or both. The Trustee will not be liable for any action it takes or omits to take in good faith in reliance on such Officer's Certificate or Opinion of Counsel. The Trustee may consult with counsel; and the written advice of such counsel, or any Opinion of Counsel, will constitute full and complete authorization of the Trustee to take or omit to take any

action in good faith in reliance thereon without liability.

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

(D) The Trustee will not be liable for any action it takes or omits to take in good faith and that it believes to be authorized or within the rights or powers vested in it by this Indenture.

(E) Unless otherwise specifically provided in this Indenture, any demand, request, direction or notice from the Company will be sufficient if signed by an Officer of the Company.

(F) The Trustee need not exercise any rights or powers vested in it by this Indenture or any other Notes Document at the request or direction of any Holder unless such Holder has offered the Trustee security or indemnity satisfactory to the Trustee in its sole discretion against any loss, liability or expense that it may incur in complying with such request or direction.

(G) The Trustee will not be responsible or liable for any punitive, special, indirect or consequential loss or damage (including lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(H) The Trustee will not be bound to make any investigation into (i) 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, (including any Officer's Certificate or Company Order) but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit and the Trustee will incur no liability or additional liability of any kind by reason of such inquiry or investigation, (ii) the performance or observance by the Company or any other Person of any of the covenants, agreements or other terms or conditions set forth in this Indenture or in any other Notes Document, or (iii) the occurrence of any Default, or the validity, enforceability, effectiveness or genuineness of this Indenture, any other Notes Document or any other agreement, instrument or document or any collateral or Lien.

(I) The permissive rights of the Trustee enumerated in this Indenture will not be construed as duties.

(J) If the Trustee requests instructions from the Company or the Holders with respect to any action or omission in connection with this Indenture, or any other Notes Document, the Trustee shall be entitled (without incurring any liability therefor) to refrain from taking such action and continue to refrain from acting unless and until the Trustee shall have received written instructions from the Company or the Required Holders, as applicable, with respect to such request. For purposes of clarity, but without limiting any rights, protections, immunities or indemnities afforded to the Trustee hereunder (including without limitation this **Article 10**), phrases such as "satisfactory to the Trustee," "approved by the Trustee," "acceptable to the Trustee," "as determined by the Trustee," "in the Trustee's discretion," "selected by the Trustee," "elected by the Trustee," "requested by the Trustee," and phrases of similar import that authorize or permit the Trustee to approve, disapprove, determine, act or decline to act in its discretion shall be subject to the Trustee receiving written direction from the Required Holders to take such action

require the Trustee to exercise any discretionary acts.

(K) The Trustee shall not be liable for failing to comply with its obligations under this Indenture or any other Notes Document in so far as the performance of such obligations is dependent upon the timely receipt of instructions and/or other information from the Company, any Holder (or percentage of Holders) or any other Person which are not received or not received by the time required.

(L) The Trustee shall not be liable in failing or refusing to take any action under this Indenture or any other Notes Document if the taking of such action, in the reasonable opinion of the Trustee (which may be based on the advice or opinion of counsel), (i) would violate applicable law, this Indenture or such other Notes Document or (ii) is not provided for in this Indenture or such other Notes Document.

(M) The Trustee shall not be required to take any action under this Indenture or any other Notes Document if taking such action (A) would subject the Trustee to a tax in any jurisdiction where it is not then subject to a tax or (B) would require the Trustee to qualify to do business in any jurisdiction where it is not then so qualified.

(N) The Trustee will not be charged with knowledge of any document or agreement other than this Indenture and the Notes.

(O) The Trustee may consult with counsel and an opinion or advise of such counsel or any Opinion of Counsel will be full and complete authorization and protection from liability in respect of any action take, suffered or omitted by it hereunder in good faith in reliance thereon.

(P) The Trustee may, from time to time, request that the Company and any other applicable party deliver a certificate (upon which the Trustee may conclusively rely) setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture or any related document together with a specimen signature of such authorized officers; *provided, however*, that from time to time, the Company or such other applicable party may, by delivering to the Trustee a revised certificate, change the information previously provided by it, but the Trustee shall be entitled to conclusively rely on the then current certificate until receipt of a superseding certificate.

Section 10.03. INDIVIDUAL RIGHTS OF THE TRUSTEE.

The Trustee, in its individual or any other capacity, may become the owner or pledgee of any Note and may otherwise deal with the Company or any of its Affiliates with the same rights that it would have if it were not Trustee; *provided, however*, that if the Trustee acquires a “conflicting interest” (within the meaning of Section 310(b) of the Trust Indenture Act), then it must promptly notify the Company and the Holders of such conflicting interest or resign as Trustee; *provided*, that the Company and the Holders acknowledge that GLAS Trust Company LLC is the trustee under the First Lien Indenture and no further notice of such potential or actual

conflicting interest shall be required. Each Note Agent will have the same rights and duties as the Trustee under this **Section 10.03**.

- 124 -

Section 10.04. TRUSTEE'S DISCLAIMER.

The Trustee will not be (A) responsible for, and makes no representation as to, the validity or adequacy of this Indenture or the Notes or the Notes Documents; (B) accountable for the Company's use of the proceeds from the Notes or any money paid to the Company or upon the Company's direction under any provision of this Indenture; (C) responsible for the use or application of any money received by any Paying Agent other than the Trustee; and (D) responsible for any statement or recital in this Indenture, the Notes, the Guarantees or any other document relating to the sale of the Notes or this Indenture, other than the Trustee's certificate of authentication.

Section 10.05. NOTICE OF DEFAULTS.

If a Default or Event of Default occurs and is continuing and is known to a Responsible Officer of the Trustee, then the Trustee will send Holders a notice of such Default or Event of Default within ninety (90) days after it occurs or, if it is not known to the Trustee at such time, promptly (and in any event within ten (10) Business Days) after it becomes known to a Responsible Officer; *provided, however*, that, except in the case of a Default or Event of Default in the payment of the principal of, or interest on, any Note, the Trustee may withhold such notice if and for so long as it in good faith determines that withholding such notice is in the interests of the Holders. The Trustee will not be deemed to have notice or be charged with knowledge of any Default or Event of Default unless written notice thereof has been received by a Responsible Officer, and such notice references the Notes and this Indenture and states on its face that a Default or Event of Default has occurred.

Section 10.06. COMPENSATION AND INDEMNITY.

(A) The Company will, pay the Trustee, the Collateral Agent and the Note Agents reasonable compensation for its acceptance of this Indenture and the other Notes Documents and services under this Indenture and the other Notes Documents as agreed in writing from time to time with the Company. Such compensation will not be limited by any law on compensation of a trustee of an express trust. In addition to such compensation, the Company will reimburse the Trustee, Collateral Agent and the Note Agents promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it under this Indenture and the other Notes Documents, including the reasonable compensation, disbursements and expenses of their agents and counsel.

(B) The Company and Guarantors will, jointly and severally, indemnify the Trustee, the Collateral Agent and each Note Agent and their directors, officers, employees and agents, in their capacities as such, against any and all losses, liabilities or expenses incurred by it arising out

of or in connection with the acceptance or administration of its duties under this Indenture and the other Notes Documents, including the costs and expenses of enforcing this Indenture against the Company or Subsidiary Guarantors (including this **Section 10.06**) and defending itself against any claim (whether asserted by the Company, any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties under this Indenture and the other Notes Documents, except to the extent any such loss, liability or expense is proved to be attributable to its gross negligence or willful misconduct, as determined by a final decision of a court of competent jurisdiction. The Trustee, the Collateral Agent or applicable Note Agent will

- 125 -

promptly notify the Company of any claim for which it may seek indemnity, but the Trustee's, the Collateral Agent's or applicable Note Agent's failure to so notify the Company will not relieve the Company or any Subsidiary Guarantor of its obligations under this **Section 10.06(B)**, except to the extent the Company or a Subsidiary Guarantor is materially prejudiced by such failure. The Company will defend such claim, and the Trustee, the Collateral Agent or applicable Note Agent, as applicable, will cooperate in such defense, at the reasonable request, and at the expense of the Company. If the Trustee, the Collateral Agent or any Note Agent is advised by counsel that it may have defenses available to it that are in conflict with the defenses available to the Company, or that there is an actual or potential conflict of interest, then the Trustee, the Collateral Agent or applicable Note Agent, as applicable, may retain separate counsel, and the Company will pay the reasonable fees and expenses of such counsel (including the reasonable fees and expenses of counsel to the Trustee, the Collateral Agent and Note Agents incurred in evaluating whether such a conflict exists). The Company shall not settle any such claim defended by it without the Trustee's, Note Agent's or Collateral Agent's, as applicable consent, which consent will not be unreasonably withheld.

(C) The obligations of the Company under this **Section 10.06** will survive the resignation or removal of the Trustee, Collateral Agent or Note Agent and the discharge of this Indenture.

(D) To secure the Company's payment obligations in this **Section 10.06**, the Trustee will have a lien prior to the Notes on all money or property held or collected by the Trustee or the Collateral Agent, except that held in trust to pay principal of, or interest on, particular Notes, which lien will survive the discharge of this Indenture.

(E) If the Trustee, any Note Agent or the Collateral Agent incurs expenses or renders services after an Event of Default pursuant to **clause (viii)** or **(ix)** of **Section 7.01(A)** occurs, then such expenses and the compensation for such services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under any Bankruptcy Law.

Section 10.07. REPLACEMENT OF THE TRUSTEE.

(A) Notwithstanding anything to the contrary in this **Section 10.07**, a resignation or removal of the Trustee, and the appointment of a successor Trustee, will become effective only upon such successor Trustee's acceptance of appointment as provided in this **Section 10.07**.

(B) The Trustee may resign at any time and be discharged from the trust created by this Indenture by so notifying the Company. The Required Holders of all Notes may remove the Trustee by so notifying the Trustee and the Company in writing. The Company may remove the Trustee if:

- (i) the Trustee fails to comply with **Section 10.09**;
- (ii) the Trustee is adjudged to be bankrupt or insolvent or an order for relief is entered with respect to the Trustee under any Bankruptcy Law;
- (iii) a custodian or public officer takes charge of the Trustee or its property; or

(iv) the Trustee becomes incapable of acting.

(C) If the Trustee resigns or is removed, or if a vacancy exists in the office of the Trustee for any reason, then (i) the Company will promptly appoint a successor Trustee; and (ii) at any time within one (1) year after the successor Trustee takes office, the Required Holders of all Notes may appoint a successor Trustee to replace such successor Trustee appointed by the Company.

(D) If a successor Trustee does not take office within sixty (60) days after the retiring Trustee resigns or is removed, then the retiring Trustee, the Company or the Holders of at least ten percent (10%) in aggregate principal amount of the Notes of all series then outstanding, considered as one class, may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(E) If the Trustee, after written request by a Holder of at least six (6) months, fails to comply with **Section 10.09**, then such Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(F) A successor Trustee will deliver a written acceptance of its appointment to the retiring Trustee and to the Company, upon which notice the resignation or removal of the retiring Trustee will become effective and the successor Trustee will have all the rights, powers and duties of the Trustee under this Indenture. The successor Trustee will send notice of its succession to Holders. The retiring Trustee will, upon payment of all amounts due to it under this Indenture, promptly transfer all property held by it as Trustee to the successor Trustee, which property will, for the avoidance of doubt, be subject to the lien provided for in **Section 10.06(D)**.

Section 10.08. SUCCESSOR TRUSTEE BY MERGER, ETC.

Any organization or entity into which the Trustee may be merged or converted or with which it may be consolidated, or any organization or entity resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any organization or entity succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such organization or entity shall be otherwise qualified and eligible under this **Article 10**, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

Section 10.09. ELIGIBILITY; DISQUALIFICATION.

There will at all times be a Trustee under this Indenture that is a corporation or limited liability company organized and doing business under the laws of the United States of America or of any state thereof, that is authorized under such laws to exercise corporate trustee power, that is subject to supervision or examination by federal or state authorities and that has a combined capital and surplus of at least \$500,000 as set forth in its most recent published annual report of condition.

Article 11. COLLATERAL AND SECURITY

Section 11.01. SECURITY INTEREST; COLLATERAL AGENT.

The due and punctual payment of the principal (including the Fundamental Change

Repurchase Price, required purchase price or Redemption Price, if applicable) of, and accrued and unpaid interest on the Notes when and as the same shall be due and payable, whether on an Interest Payment Date, at maturity, by acceleration, repurchase, redemption, prepayment, demand or otherwise, and interest on the overdue principal (including the Fundamental Change Repurchase Price, required purchase price or Redemption Price, if applicable) of, and accrued and unpaid interest on, the Notes and payment and performance of all other obligations of the Company and the Subsidiary Guarantors to the Holders, the Trustee, the Note Agents and the Collateral Agent under this Indenture, the Notes and the Guarantees, according to the terms hereunder or thereunder, are secured as provided in the Collateral Documents.

(A) The Company consents and agrees to be bound, and, subject to **Section 11.04**, to cause the Subsidiary Guarantors to consent and agree to be bound by the terms of the Collateral Documents, as the same may be in effect from time to time, and agrees to perform its, and to cause the Subsidiary Guarantors to perform their, obligations thereunder in accordance therewith. The Company will and, subject to **Section 11.05**, will cause each Subsidiary Guarantor to, do or cause to be done all such acts and things as may be required by the provisions of the Collateral Documents to assure and confirm to the Trustee that the Collateral Agent holds for the benefit of the Trustee and the Holders duly created, enforceable and perfected Liens as contemplated by the Collateral Documents or any part thereof, as from time to time constituted.

(B) The Collateral Agent agrees that it will hold 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 11.01**, to act, when directed by the Required Holders, in preservation of the security interest in the Collateral. The Collateral Agent is authorized and empowered, when directed by the Required Holders, to appoint one or more co-Collateral Agents as may be 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. Except as so directed (subject to **Section 11.01(D)**), and only if indemnified to its reasonable 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.

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.

(C) In acting as Collateral Agent hereunder and under the Collateral Documents, the Collateral Agent shall be afforded, and shall be entitled to enforce, each and all of the rights

Collateral Agent shall be afforded, and shall be entitled to enforce, each and all of the rights, privileges, protections, immunities, indemnities and benefits of the Trustee in this Indenture and the other Notes Documents, including, without limitation, under **Article 10**; *provided* that in that context any references in this Indenture to “Trustee” shall be references to “Collateral Agent”, and **Section 10.01(A)** does not apply to the Collateral Agent. Without limiting the immediately

- 128 -

preceding sentence, the Collateral Agent shall be entitled to compensation, reimbursement and indemnity in the same manner as the Trustee as provided in **Section 10.06**.

(D) Neither the Trustee nor the Collateral Agent nor any of their respective officers, directors, employees, attorneys or agents shall:

(i) be responsible or liable for the existence, genuineness, value or protection of any Collateral, for the legality, enforceability, effectiveness, or sufficiency of the Collateral Documents, for the creation, perfection, continuation, 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 to monitor the status of any Lien or performance of the Collateral, or for any failure to demand, collect, foreclose or realize upon or otherwise enforce any of the Liens or Collateral Documents or any delay in doing so. 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 any filings with respect to the U.S. Patent and Trademark Office or U.S. Copyright Office.

(E) At all times when the Trustee is not itself 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.

(F) Notwithstanding any provision to the contrary contained elsewhere in this Indenture and the Collateral 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 Collateral 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 this 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 this 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.

(G) No provision of this Indenture or any Collateral Document shall require the

(G) The 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 reasonably 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

- 129 -

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 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 unless the Collateral Agent has received security or indemnity from the Holders in an amount and in a form satisfactory to the Collateral Agent in its sole discretion, protecting the Collateral Agent from all such liability. The Collateral Agent shall at any time be entitled to cease taking any action described in this clause if it no longer reasonably deems any indemnity, security or undertaking from the Company or the Holders to be sufficient.

(H) Subject to **Section 11.04** hereof, in each case that the Collateral Agent may or is required hereunder to take any action (an “**Action**”), including without limitation to make any determination, to give consents, to exercise rights, powers or remedies, to release or sell Collateral or otherwise to act hereunder or under any Collateral Document, the Collateral Agent may seek direction from the Trustee or the Required Holders of all Notes. Neither the Trustee nor the Collateral Agent shall be liable with respect to any Action taken or omitted to be taken by it in accordance with the direction from the Required Holders of all Notes. If the Trustee or the Collateral Agent shall request direction from the Required Holders of all Notes with respect to any Action, the Trustee and the Collateral Agent shall be entitled to refrain from such Action unless and until the Trustee or Collateral Agent, as applicable, shall have received direction from the Required Holders of all Notes, and neither the Trustee nor the Collateral Agent shall incur liability to any Person by reason of so refraining. Notwithstanding the foregoing, if any such Action affects only the rights of a particular series of Notes, the Holders of any other series of Notes shall not be required to provide direction thereto and, in such case, only the direction from the Required Holders of the affected series of Notes shall be required with respect thereto.

(I) The Collateral Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, unless the Collateral Agent shall have received written notice from the Trustee, a Holder or the Company referring to this Indenture, describing such Default or Event of Default and stating that such notice is a “notice of default.” The Collateral Agent shall take such action with respect to such Default or Event of Default as may be requested by the Trustee in accordance with **Article 7** or the Holders of a majority in aggregate principal amount of the Notes subject to this **Article 11**.

(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 this 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 this Indenture and the Collateral Documents, the Collateral Agent and the Trustee may hold or obtain indicia of ownership primarily to protect the security interest of the Collateral Agent or the Trustee, as applicable, in the Collateral and that any such actions taken by the Collateral Agent or the Trustee shall not be construed as or otherwise constitute any participation

in the management of such Collateral. In the event that the Collateral Agent or the Trustee 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 either the Collateral Agent's or Trustee's sole discretion may cause the Collateral Agent or Trustee, as applicable, 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 the Collateral Agent or Trustee, as applicable, to incur liability under CERCLA or any other federal, state or local law, the Collateral Agent and the Trustee 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 or the Trustee'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. If at any time it is necessary or advisable for property to be possessed, owned, operated or managed by any person (including the Collateral Agent or the Trustee) other than the Company, the Required Holders shall direct the Collateral Agent or the Trustee to appoint an appropriately qualified Person (excluding the Collateral Agent or the Trustee) who they shall designate to possess, own, operate or manage, as the case may be, the property.

(K) Beyond the exercise of reasonable care in the custody thereof, neither the Trustee nor the Collateral Agent shall have any duty as to any Collateral in its possession or control or in the possession or control of any agent or bailee or any income thereon or as to preservation of rights against prior parties or any other rights pertaining thereto and neither the Trustee nor the Collateral Agent shall be responsible for filing any financing or continuation statements or recording any documents or instruments in any public office at any time or times or otherwise perfecting or maintaining the perfection of any security interest in the Collateral. Each of the Trustee and the Collateral Agent shall be deemed to have exercised reasonable care in the custody of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which it accords its own property and shall not be liable or responsible for any loss or diminution in the value of any of the Collateral, by reason of the act or omission of any carrier, forwarding agency or other agent or bailee selected by the Trustee or the Collateral Agent, as applicable, in good faith.

(L) Each successor Trustee may become the successor Collateral Agent as and when the successor Trustee becomes the Trustee.

(M) The Collateral Agent shall be fully justified in failing or refusing to take any action under this Indenture or the Collateral Documents unless it shall be directed by the Trustee (acting at the direction of the Required Holders) or the Required Holders. If the Collateral Agent so requests, it shall first be indemnified to its satisfaction by the Holders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Collateral Agent and the Trustee shall in all cases be fully protected in acting, or in refraining from acting, under this Indenture or the Collateral Documents in accordance with a request, direction, instruction, or consent of the Required Holders or, in the case of the Collateral Agent, at the request, direction, instruction, or consent of the Trustee (acting at the direction of the Required Holders). Such request and any action taken or failure to act pursuant thereto shall be binding upon

all of the Holders.

(N) Except as otherwise explicitly provided herein or in the Collateral Documents, the Collateral Agent, the Trustee nor any of their respective officers, directors, employees or agents shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof.

(O) The Collateral Agent and the Trustee assumes no responsibility for any failure or delay in performance or any breach by the Company or any other grantor under this Indenture and the Collateral Documents. The Collateral Agent and the Trustee shall not have any obligation to any Holder or any other Person to ascertain or inquire into the existence of any Default or Event of Default, the observance or performance by any obligor of any terms of this Indenture or the Collateral Documents, or the satisfaction of any conditions precedent contained in this Indenture or any Collateral Documents. The Collateral Agent and the Trustee shall not be required to initiate or conduct any litigation or collection or other proceeding under this Indenture or the Collateral Documents.

(P) Subject to the provisions of the applicable Collateral Documents and this Indenture, each Holder, by acceptance of the Notes, agrees that the Collateral Agent and the Trustee shall execute and deliver such intercreditor agreements as it may be presented from time to time and the Collateral Documents to which it is a party and all agreements, documents and instruments incidental thereto (including any releases permitted hereunder), and act in accordance with the terms thereof. For the avoidance of doubt, the Collateral Agent shall not be required to exercise discretion under this Indenture or the Collateral Documents and shall not be required to make or give any determination, consent, approval, request or direction without the Required Holders or the Trustee (acting at the direction of the Required Holders).

Section 11.02. AUTHORIZATION OF ACTIONS TO BE TAKEN BY THE TRUSTEE OR THE COLLATERAL AGENT UNDER THE COLLATERAL DOCUMENTS.

(A) Subject to the provisions of **Section 11.01** and the terms of the Collateral Documents, the Trustee may (but shall have no obligation to), in its sole discretion and without the consent of the Holders, direct, on behalf of the Holders of Notes, the Collateral Agent to take all actions it deems necessary or appropriate in order to:

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

(ii) collect and receive any and all amounts payable in respect of the obligations of the Company and the Subsidiary Guarantors under this Indenture, the Notes and the Collateral Documents.

(B) Subject to the provisions of this Indenture and the Collateral Documents. the

(c) Subject to the provisions of this Indenture and the Collateral Documents, the Trustee and/or the Collateral Agent will have power to institute and maintain such suits and proceedings as it may deem expedient (or as directed by the Required Holders of all Notes) to prevent any impairment of the Collateral by any acts that may be unlawful or in violation of this Indenture or the Collateral Documents, and such suits and proceedings as may be necessary to

- 132 -

preserve or protect the interests of the Trustee, the Collateral Agent and the interests of the Holders in the Collateral. The foregoing includes the power to institute and maintain 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 security interest under the Collateral Documents or be prejudicial to the interests of the Holders or of the Trustee and/or the Collateral Agent; *provided*, that neither the Collateral Agent nor the Trustee has any obligations to monitor or evaluate any proposed legislation, rule or order.

Section 11.03. AUTHORIZATION OF RECEIPT OF FUNDS BY THE TRUSTEE UNDER THE COLLATERAL DOCUMENTS.

The Trustee and/or the Collateral Agent is authorized to receive any funds for the benefit of the Collateral Agent and the Holders distributed under the Collateral Documents, and to make further distributions of such funds to the Holders according to the provisions of this Indenture with respect to the Collateral and such funds.

Section 11.04. TERMINATION OF SECURITY INTEREST; RELEASE OF COLLATERAL.

(A) Subject to **Section 11.04(B)**, Collateral will be released automatically from the Liens securing the Obligations of the Company and the Subsidiary Guarantors under this Indenture, the Notes, the Guarantees and the Collateral Documents without the consent or further action of any Person:

(i) in whole or in part, as applicable, upon the sale, transfer, exclusive license, agreement or other Disposition of such property or assets (including a Disposition resulting from eminent domain, condemnation or similar circumstances) by the Company or any Subsidiary Guarantor to the extent permitted pursuant to this Indenture and the Collateral Documents; *provided* that, (x) solely to the extent that such transaction constitutes the sale, Disposition of all or substantially all of the Company's property and assets, in one transaction or a series of related transactions, such transaction complies with **Section 6.01**; and (y) solely to the extent that such transaction constitutes the sale, Disposition of all or substantially all of a Subsidiary Guarantor's property and assets, in one transaction or a series of related transactions, such transaction complies with **Section 6.02**; and that the Company has delivered to the Trustee and the Collateral Agent an Officer's Certificate and Opinion of Counsel stating that such transaction complies with the provisions of this **Section 11.04**;

(ii) in whole or in part, as applicable, with the consent of the Holders of at least 66 2/3% in principal amount the Notes then outstanding in accordance with **Section 8.02**.

including consents obtained in connection with a tender offer or exchange offer, or purchase of Notes;

(iii) with respect to any Collateral securing the Guarantee of any Subsidiary Guarantor, when such Subsidiary Guarantor is released in accordance with the terms of **Section 12.06**;

(iv) upon the occurrence of a Fundamental Change described in **clauses (A)** or

- 133 -

(B) of the definition thereof;

(v) in whole or in part, as applicable, as to all or any portion of the Collateral which has been taken by eminent domain, condemnation or similar circumstances;

(vi) upon satisfaction and discharge of this Indenture as described under **Article 9**; or

(vii) in accordance with the applicable provisions of the Collateral Documents.

(B) With respect to any release of the Liens on the Collateral as provided in **Section 11.04(A)** above, upon receipt of an Officer's Certificate and (solely with respect to **Section 11.04(A)(i)** and (v)) an Opinion of Counsel each stating that all conditions precedent under this Indenture and the Notes Documents to such release or the entry into such agreements have been met and that the execution and delivery by the Trustee or the Collateral Agent of the documents requested by the Company in connection with such release or the entry into such agreements is authorized and expressly permitted by this Indenture and the other Notes Documents, and in the case of any release any appropriate instruments of termination, satisfaction, discharge or release prepared by the Company (in form and substance reasonably satisfactory to the Trustee and the Collateral Agent, without representation or warranty), the Trustee and the Collateral Agent shall execute, deliver or acknowledge (at the Company's expense) such instruments or releases as are requested to evidence the release and discharge of any Collateral expressly permitted to be released pursuant to this Indenture. Neither the Trustee nor the Collateral Agent shall have any duty or liability for determining the Company's compliance with this **Section 11.04**, but instead may rely on the Officer's Certificates issued by the Company under this **Section 11.04**. 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 (if applicable) Opinion of Counsel.

(C) The security interests granted under this Indenture and all Collateral Documents will terminate upon the full and final payment and performance of all Obligations (other than contingent indemnification obligations for which no claim has been made) of the Company and any other obligors, if any and as applicable, under this Indenture, the Notes, the Guarantees and the Collateral Documents.

(D) The release of any Collateral from the terms of the Collateral Documents shall not be deemed to impair the security under this Indenture or the Collateral Documents in contravention of the provisions hereof or affect the Lien of this Indenture or the Collateral Documents if and to the extent the Collateral is released pursuant to this Indenture or the Collateral Documents or upon the satisfaction and discharge of this Indenture. For the avoidance of doubt, the Company and the Subsidiary Guarantors shall not be required to comply with Section 314(d) of the Trust Indenture Act in connection with any release of Collateral. For the avoidance of doubt, the automatic release of any current assets constituting Collateral in connection with the sale, lease or other similar Disposition of such inventory of the Company and the Subsidiary Guarantors in the ordinary course of business shall not require delivery of any reports, certificates, opinions or other formal documentation.

(E) Upon such release or any release of Collateral or any part thereof in accordance with the provisions of this Indenture or the Collateral Documents, upon the request and at the sole cost and expense of the Company and the Subsidiary Guarantors, the Trustee shall direct the Collateral Agent to and upon such request and direction, the Collateral Agent shall:

(i) assign, transfer and deliver to the Company or the applicable Subsidiary Guarantor, as the case may be, against receipt and without recourse to or warranty by the Collateral Agent except as to the fact that the Collateral Agent has not encumbered the released assets, such of the Collateral or any part thereof to be released as may be in possession of the Collateral Agent and as shall not have been sold or otherwise applied pursuant to the terms of the Collateral Documents;

(ii) consent to the Company's filing of UCC financing statement amendments or releases (which shall be prepared by the Company or any Subsidiary Guarantor) to the extent necessary to delete such Collateral or any part thereof to be released from the description of assets in any previously filed financing statements; and

(iii) execute and deliver such documents, instruments or statements (which shall be prepared by the Company) and take such other action as the Company may request to cause to be released and reconveyed to the Company, or the applicable Subsidiary Guarantor, as the case may be, such Collateral or any part thereof to be released and to evidence or confirm that such Collateral or any part thereof to be released has been released from the Liens of each of this Indenture and each of the Collateral Documents.

Section 11.05. MAINTENANCE OF COLLATERAL.

The Company shall, and shall cause each of its Subsidiaries to keep and maintain all properties material to the conduct of its business or the business of any of its Subsidiaries in good working order and condition (ordinary wear and tear excepted), except where the failure to do so could not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the Company and its Subsidiaries' businesses, taken as a whole; *provided* that nothing in this **Section 11.05** shall prevent the Company or any Subsidiary from discontinuing the maintenance of any of such property if such discontinuance is, in the judgment of the Company, desirable to the conduct of the business of the Company and its Subsidiaries, taken as a whole.

To the extent the Company and the Subsidiary Guarantors are not able to execute and deliver all Collateral Documents required in connection with the creation and perfection of the Liens of the Collateral Agent on the Collateral (to the extent required by this Indenture or such Collateral Documents) on or prior to the Issue Date, the Company and the Subsidiary Guarantors will use their commercially reasonable efforts to have all security interests in the Collateral duly created and enforceable and perfected, to the extent required by this Indenture or such Collateral Documents, within the time period required by the Collateral Documents.

Section 11.06. COLLATERAL AGENT; COLLATERAL DOCUMENTS.

(A) GLAS Trust Company LLC is hereby designated and appointed as the Collateral Agent of the Secured Parties under this Indenture and the Collateral Documents and GLAS Trust Company LLC 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, privileges, immunities, indemnities and other benefits and protections granted to it under this Indenture (in addition to those that may be granted to it under the terms of such other Collateral Document or Collateral Documents).

(C) If the Company or any of its Subsidiaries (i) incurs any Indebtedness that is required to be subject to an intercreditor agreement, and (ii) delivers to the Collateral Agent and Trustee an Officer's Certificate so stating and certifying that the execution of such intercreditor agreement is authorized and permitted by this Indenture and the other Notes Documents and all conditions precedent to its execution have been satisfied, and requesting the Collateral Agent and Trustee, if applicable, to enter into an intercreditor agreement in favor of a designated agent or representative for the holders of such Indebtedness so incurred, the Collateral Agent and the Trustee (as applicable) shall (and are hereby authorized and directed to) enter into such intercreditor agreement (at the sole expense and cost of the Company, including fees (including legal fees) and expenses of the Collateral Agent and Trustee), bind the Holders on the terms set forth therein and perform and observe its obligations thereunder. Neither the Trustee nor the Collateral Agent shall be liable for any such execution in reliance upon any such Officer's Certificate, 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 intercreditor agreement, unless and until it receives such Officer's Certificate.

Section 11.07. REPLACEMENT OF COLLATERAL AGENT.

(A) The Collateral Agent may resign at any time by so notifying the Company in writing not less than forty-five (45) days prior to the effective date of such resignation. The Required Holders may remove the Collateral Agent by so notifying the removed Collateral Agent in writing not less than forty-five (45) 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 resolution of the Board of Directors 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

- 136 -

provisions of **Section 11.08**, 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) Any corporation or other entity into which the Collateral Agent 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 Collateral Agent shall be a party, or any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Collateral Agent (including the administration of this Indenture) shall be the successor to the Collateral Agent hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto.

Section 11.08. ACCEPTANCE BY COLLATERAL AGENT.

Any successor Collateral Agent appointed as provided in **Section 11.07** 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 10.06**, 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 claim 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 10.06**.

Upon acceptance of appointment by a successor Collateral Agent as provided in this **Section 11.08**, 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 13.01**. If the Company fails

Collateral Agent hereunder to the Holders in accordance with **Section 13.01**. If the Company fails to give such notice within ten (10) days after acceptance of appointment by the successor Collateral Agent, the successor Collateral Agent shall cause such notice to be given at the expense of the Company.

Section 11.09. 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 11** upon the Company with respect to the release, sale or other

- 137 -

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 11**; and if the Trustee, Collateral Agent, or their nominee or agent, shall be in possession of the Collateral under any provision of this Indenture, then such powers may be exercised by the Trustee, the Collateral Agent, or their nominee or agent.

Article 12. GUARANTEES

Section 12.01. GUARANTEE

Subject to this **Article 12**, each of the Subsidiary Guarantors hereby, jointly and severally, irrevocably and unconditionally guarantees, on a senior basis, to each Holder, the Trustee, each Note Agent and the Collateral Agent and each of their successors and assigns, irrespective of the validity and enforceability of this Indenture, the Notes or the Obligations under this Indenture and the Notes, that: (i) the principal, any repurchase price (including the Fundamental Change Purchase Price or Redemption Price, if applicable) of and accrued and unpaid interest on each of the Notes shall be promptly paid in full when due, whether at maturity, by acceleration, redemption, required repurchase 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, the Note Agents or the Collateral Agent hereunder or thereunder shall be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and (ii) in case of any extension of time of payment or renewal of any Notes or any of such other obligations, that same shall be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration or otherwise. Each Subsidiary Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

(A) The Subsidiary Guarantors hereby agree that their obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Notes or this Indenture, the absence of any action to enforce the same, any waiver, amendment or consent by any Holder with respect to any provisions hereof or thereof, the recovery of any judgment against the Company, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor. Each Subsidiary Guarantor 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 and covenants that this Guarantee shall

not be discharged except by complete performance of the obligations contained in the Notes, the Collateral Documents and this Indenture, or pursuant to **Section 12.06**. No obligation of any Subsidiary Guarantor hereunder shall be discharged other than by complete payment or performance of the guaranteed Obligations under the Notes (other than contingent obligations that have yet to accrue) in accordance with this Indenture, the Notes Documents and the Notes. Each Subsidiary Guarantor further waives any right such Subsidiary Guarantor may have under any applicable requirement of law to require the Trustee, any Note Agent, the Collateral Agent, or any Holder to seek recourse first against the Company or any of its Subsidiaries or any other Person, or to realize upon any Collateral for any of the Obligations under the Notes, as a condition precedent to enforcing such Subsidiary Guarantor's liability and obligations under this **Article 12**.

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

(C) Each Subsidiary Guarantor agrees that it 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 (other than contingent indemnity obligations) guaranteed hereby. Each Subsidiary Guarantor further agrees that, as between the Subsidiary Guarantors, on the one hand, and the Holders, the Trustee, the Note Agents and the Collateral Agent, on the other hand, (i) the maturity of the Obligations guaranteed hereby may be accelerated as provided in **Article 7** for the purposes of this Guarantee, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Obligations guaranteed hereby, and (ii) in the event of any declaration of acceleration of such Obligations as provided in **Article 7**, such Obligations (whether or not due and payable) shall forthwith become due and payable by the Subsidiary Guarantors for the purpose of this Guarantee. The Subsidiary Guarantors shall have the right to seek contribution from any non-paying Subsidiary Guarantor so long as the exercise of such right does not impair the rights of the Holders under the Guarantees.

(D) Each Guarantee shall remain in full force and effect and continue to be effective should any petition be filed by or against the Company or any Subsidiary Guarantor for liquidation or reorganization, should the Company or any Subsidiary Guarantor 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 or any Subsidiary Guarantor's assets, and shall, to the fullest extent expressly 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 or the Guarantees are, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee on the Notes or the Guarantees, whether as a "voidable preference," "fraudulent transfer" or otherwise, all as though such payment or performance had not been made. In the event that any payment or any part thereof, is rescinded, reduced, restored or returned, the Notes and such Guarantees shall, to the fullest extent expressly permitted by law, be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

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

(F) Each payment to be made by a Subsidiary Guarantor in respect of its Guarantee shall be made without set-off, counterclaim, reduction or diminution of any kind or nature.

(G) Neither the Company nor any Subsidiary Guarantor shall be required to make a notation on the Notes to reflect any such Guarantee or any such release, termination or discharge.

(H) Each Subsidiary Guarantor also agrees to pay any and all costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Trustee, any Note Agent, the

Section 12.02. LIMITATION ON GUARANTOR LIABILITY.

Each Subsidiary Guarantor, and, by its acceptance of any Note, each Holder, confirms that each Subsidiary Guarantor and the Holders intend that the Guarantee of each Subsidiary Guarantor does not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Guarantee. Each of the Trustee, the Holders and each Subsidiary Guarantor irrevocably agrees that the obligations of each Subsidiary Guarantor under its Guarantee will be limited to the maximum amount that will, after giving effect to such maximum amount and all other contingent and fixed liabilities of such Subsidiary Guarantor that are relevant under such laws, and after giving effect to any collections from, rights to receive contribution from or payments made by or on behalf of any other Subsidiary Guarantor in respect of the obligations of such other Subsidiary Guarantor under its Guarantee, result in the obligations of such Subsidiary Guarantor under its Guarantee not constituting a fraudulent transfer or fraudulent conveyance under federal or state law and not otherwise being void or voidable under any similar laws affecting the rights of creditors generally.

Section 12.03. EXECUTION AND DELIVERY.

To evidence a Guarantee set forth in **Section 12.01**, each Subsidiary Guarantor shall execute this Indenture or, if after the date hereof, a supplemental indenture pursuant to which it will agree to be a Subsidiary Guarantor and become bound by the terms of this Indenture applicable to Subsidiary Guarantors, including without limitation, this **Article 12**.

(A) Pursuant to any such supplemental indenture, each Subsidiary Guarantor shall agree that its Guarantee set forth in **Section 12.01** shall remain in full force and effect notwithstanding the absence of the endorsement of any notation of such Guarantee on the Notes.

(B) The delivery of any Note by the Trustee, after the authentication thereof hereunder, shall constitute due delivery of any Guarantee set forth in this Indenture on behalf of the Subsidiary Guarantors.

A Guarantee's validity will not be affected by the failure of any officer of a Subsidiary Guarantor executing this Indenture or any such amended or supplemental indenture on such Subsidiary Guarantor's behalf to hold, at the time any Note is authenticated, the same or any other office at each Subsidiary Guarantor, and each Guarantee will be valid and enforceable even if no notation, certificate or other instrument is set upon or attached to, or otherwise executed and delivered to the Holder of, any Note.

(C) If required by **Section 3.19**, the Company shall cause any newly created or acquired Subsidiary that is not an Excluded Subsidiary, or any Subsidiary previously deemed to be an Excluded Subsidiary that ceases to be an Excluded Subsidiary, to comply with the provisions of **Section 3.19** and this **Article 12**, to the extent applicable, within thirty (30) calendar days on which such Subsidiary that is not an Excluded Subsidiary is created or acquired or ceases to be an

such Subsidiary that is not an Excluded Subsidiary is created or acquired or ceases to be an Excluded Subsidiary.

- 140 -

Section 12.04. WHEN A SUBSIDIARY GUARANTOR MAY MERGE, ETC.

(A) No Subsidiary Guarantor will 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 Subsidiary Guarantor and its Subsidiaries, taken as a whole, to another Person (other than the Company or another Subsidiary Guarantor), except in accordance with, and in compliance with the terms of, **Section 6.02**.

Section 12.05. BENEFITS ACKNOWLEDGED.

Each Subsidiary Guarantor acknowledges that it will receive direct and indirect benefits from the financing arrangements contemplated by this Indenture and that the guarantee and waivers made by it pursuant to its Guarantee are knowingly made in contemplation of such benefits.

Section 12.06. RELEASE OF GUARANTEES.

A Guarantee by a Subsidiary Guarantor shall be automatically and unconditionally released and discharged, and such Guarantee shall thereupon terminate and be discharged and of no further force and effect, and no further action by such Subsidiary Guarantor, the Company or the Trustee shall be required for the release of such Subsidiary Guarantor's Guarantee:

(A) (i) concurrently with any sale, exchange, Disposition or transfer (by merger or otherwise) of (x) any Capital Stock of such Subsidiary Guarantor following which such Subsidiary Guarantor is no longer a Subsidiary of the Company (*provided* that such release shall only apply if such transaction is entered into for a bona fide business purpose and not to circumvent the requirement to provide a Guarantee or grant security) or (y) all or substantially all assets of such Subsidiary Guarantor to a Person other than the Company or one of its Subsidiaries, in each case, if such sale, exchange, transfer or other disposition is not prohibited by the applicable provisions of this Indenture and, (a) such sale, exchange, transfer or other disposition is in compliance with **Section 3.12** or (b) unless such sale, exchange, transfer or other disposition is with or to the Company, the surviving or transferee Person expressly assumes such Subsidiary Guarantor's obligations in accordance with **Section 12.04**;

(ii) upon the merger or consolidation of such Subsidiary Guarantor with and into either the Company or any other Subsidiary Guarantor wherein the Company or such other Subsidiary Guarantor, as applicable, is the surviving Person in such merger or consolidation, if such merger, consolidation or amalgamation is not prohibited by the applicable provisions of this Indenture and such surviving Person expressly assumes such Subsidiary Guarantor's obligations in accordance with **Section 12.04**;

(iii) upon the dissolution or liquidation of such Subsidiary Guarantor following the transfer of all or substantially all of its assets to either the Company or another Subsidiary Guarantor;

(iv) upon satisfaction and discharge of this Indenture as described under **Article 9** or;

- 141 -

(v) concurrently with such Subsidiary becoming an Excluded Subsidiary; and

upon such Subsidiary Guarantor delivering to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for in this **Section 12.06** relating to such release have been complied with.

At the written request, and sole cost and expense, of the Company, the Trustee (or the Collateral Agent, if applicable) shall execute and deliver any documents reasonably requested by the Company in order to evidence such release, discharge and termination in respect of the applicable Guarantee.

Article 13. MISCELLANEOUS

Section 13.01. NOTICES.

Any notice or communication by the Company or the Trustee (including in its capacity as Collateral Agent and any Note Agent) to the other will be deemed to have been duly given if in writing and delivered in person or by first class mail (registered or certified, return receipt requested), facsimile transmission, electronic transmission or other similar means of unsecured electronic communication or overnight air courier guaranteeing next day delivery, or to the other's address, which initially is as follows:

If to the Company:

Luminar Technologies, Inc.
2603 Discovery Drive, Suite 100
Orlando, FL 32826
Attention: Tom Fennimore
Email: tom@luminartech.com
with a copy (which will not constitute notice) to: legal.notices@luminartech.com

with a copy (which will not constitute notice) to:

Orrick, Herrington & Sutcliffe LLP
405 Howard Street
San Francisco, CA 94105
Attention: Dan Kim; Brett Cooper

Attention: Dan Kim, Drew Cooper
Email: dan.kim@orrick.com; bcooper@orrick.com

If to the Trustee:

GLAS Trust Company LLC
3 Second Street, Suite 206
Jersey City, NJ 07311
Attention: Luminar Technologies Second Lien Notes
Email: tmgus@glas.agency

with a copy (which will not constitute notice) to:

Moses & Singer LLP
The Chrysler Building
405 Lexington Avenue
New York, NY, 10174-1299
Attention: Andrew Oliver
Email: aoliver@mosessinger.com

with a copy (which will not constitute notice) to:

Ropes & Gray LLP
Prudential Tower, 800 Boylston Street
Boston, MA 02199-3600
Attention: Alyson Gal; Sam Badawi
Email: alyson.gal@ropesgray.com; sam.badawi@ropesgray.com

The Company or the Trustee, by notice to the other, may designate additional or different addresses (including facsimile numbers and electronic addresses) for subsequent notices or communications.

All notices and communications (other than those sent to Holders) will be deemed to have been duly given: (A) at the time delivered by hand, if personally delivered; (B) five (5) Business Days after being deposited in the mail, postage prepaid, if mailed; (C) when receipt acknowledged, if transmitted by electronic transmission or other similar means of unsecured electronic communication; and (D) the next Business Day after timely delivery to the courier, if sent by overnight air courier guaranteeing next day delivery.

The Trustee shall not have any duty to confirm that the person sending any notice, instruction or other communication by electronic transmission (including by e-mail, web portal or other electronic methods) is, in fact, a person authorized to do so. Electronic signatures believed by the Trustee to comply with the ESIGN Act of 2000 or other applicable law (including electronic images of handwritten signatures and digital signatures provided by DocuSign, Orbit, Adobe Sign or any other digital signature provider acceptable to the Trustee) shall be deemed original signatures for all purposes. Each other party assumes all risks arising out of the use of electronic signatures and electronic methods to send communications to the Trustee, including without limitation the risk of the Trustee acting on an unauthorized communication, and the risk of interception or misuse by third parties. Notwithstanding the foregoing, the Trustee may in any instance and in its sole discretion require that an original document bearing a manual signature be delivered to the Trustee in lieu of, or in addition to, any such electronic communication.

All notices or communications required to be made to a Holder pursuant to this Indenture must be made in writing and will be deemed to be duly sent or given in writing if mailed by first class mail, certified or registered, return receipt requested, or by overnight air courier guaranteeing next day delivery, to its address shown on the Register; *provided, however*, that a notice or communication to a Holder of a Global Note may, but need not, instead be sent pursuant to the Depository Procedures (in which case, such notice will be deemed to be duly sent or given in

writing). The failure to send a notice or communication to a Holder, or any defect in such notice

- 143 -

or communication, will not affect its sufficiency with respect to any other Holder.

If the Trustee is then acting as the Depositary's custodian for the Notes, then, at the reasonable request of the Company to the Trustee, the Trustee will cause any notice prepared by the Company to be sent to any Holder(s) pursuant to the Depositary Procedures, *provided* such request is evidenced in a Company Order delivered, together with the text of such notice, to the Trustee at least two (2) Business Days before the date such notice is to be so sent. For the avoidance of doubt, such Company Order need not be accompanied by an Officer's Certificate or Opinion of Counsel. The Trustee will not have any liability relating to the contents of any notice that it sends to any Holder pursuant to any such Company Order.

If a notice or communication is mailed or sent in the manner provided above within the time prescribed, it will be deemed to have been duly given, whether or not the addressee receives it.

Notwithstanding anything to the contrary in this Indenture or the Notes, (A) whenever any provision of this Indenture requires a party to send notice to another party, no such notice need be sent if the sending party and the recipient are the same Person acting in different capacities; and (B) whenever any provision of this Indenture requires a party to send notice to more than one receiving party, and each receiving party is the same Person acting in different capacities, then only one such notice need be sent to such Person.

Section 13.02. DELIVERY OF OFFICER'S CERTIFICATE AND OPINION OF COUNSEL AS TO CONDITIONS PRECEDENT.

Upon any request or application by the Company to the Trustee or the Collateral Agent to take any action under this Indenture (other than the initial authentication of Notes under this Indenture), the Company will furnish to the Trustee and the Collateral Agent:

(A) an Officer's Certificate in form and substance reasonably satisfactory to the Trustee that complies with **Section 13.03** and states that, in the opinion of the signatory thereto, all conditions precedent and covenants, if any, provided for in this Indenture and each Notes Document relating to such action have been satisfied; and

(B) an Opinion of Counsel in form and substance reasonably satisfactory to the Trustee that complies with **Section 13.03** and states that, in the opinion of such counsel, all such conditions precedent and covenants, if any, have been satisfied.

Section 13.03. STATEMENTS REQUIRED IN OFFICER'S CERTIFICATE AND OPINION OF COUNSEL.

Each Officer's Certificate (other than an Officer's Certificate pursuant to **Section 3.05**) or Opinion of Counsel with respect to compliance with a covenant or condition provided for in this Indenture will include:

- (A) a statement that the signatory thereto has read such covenant or condition;
- (B) a brief statement as to the nature and scope of the examination or investigation upon

- 144 -

which the statements or opinions contained therein are based;

(C) a statement that, in the opinion of such signatory, he, she or it has made such examination or investigation as is necessary to enable him, her or it to express an informed opinion as to whether or not such covenant or condition has been satisfied; and

(D) a statement as to whether, in the opinion of such signatory, such covenant or condition has been satisfied.

Section 13.04. RULES BY THE TRUSTEE, THE COLLATERAL AGENT, THE REGISTRAR, THE PAYING AGENT AND THE CONVERSION AGENT.

The Trustee may make reasonable rules for action by or at a meeting of Holders. The Collateral Agent, Registrar, Paying Agent and Conversion Agent each may make reasonable rules and set reasonable requirements for its functions.

Section 13.05. NO PERSONAL LIABILITY OF DIRECTORS, OFFICERS, EMPLOYEES AND STOCKHOLDERS.

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

Section 13.06. GOVERNING LAW; WAIVER OF JURY TRIAL.

THIS INDENTURE, THE NOTES AND THE GUARANTEES, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS INDENTURE OR THE NOTES AND THE GUARANTEES, WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. EACH OF THE COMPANY, THE SUBSIDIARY GUARANTORS, THE TRUSTEE, THE NOTE AGENTS, AND THE COLLATERAL AGENT AND EACH HOLDER (BY ACCEPTANCE OF ITS NOTE) 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, THE GUARANTEES OR THE TRANSACTIONS CONTEMPLATED BY THIS INDENTURE OR THE NOTES AND THE GUARANTEES.

Section 13.07. SUBMISSION TO JURISDICTION.

Any legal suit, action or proceeding arising out of or based upon this Indenture or the transactions contemplated by this Indenture may be instituted in the federal courts of the United States of America located in the City of New York or the courts of the State of New York, in each case located in the City of New York (collectively, the “**Specified Courts**”), and each party irrevocably submits to the non-exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of any process, summons, notice or document by mail (to the extent allowed

- 145 -

under any applicable statute or rule of court) to such party’s address set forth in **Section 13.01** will be effective service of process for any such suit, action or proceeding brought in any such court. Each of the Company, the Subsidiary Guarantors, the Trustee, the Note Agents and the Collateral Agent and each Holder (by its acceptance of any Note) irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or other proceeding in the Specified Courts and irrevocably and unconditionally waives and agrees not to plead or claim any such suit, action or other proceeding has been brought in an inconvenient forum.

Section 13.08. NO ADVERSE INTERPRETATION OF OTHER AGREEMENTS.

Neither this Indenture nor the Notes may be used to interpret any other indenture, note, loan or debt agreement of the Company or its Subsidiaries or of any other Person, and no such indenture, note, loan or debt agreement may be used to interpret this Indenture or the Notes.

Section 13.09. SUCCESSORS.

All agreements of the Company and the Subsidiary Guarantors in this Indenture and the Notes will bind their respective successors. All agreements of the Trustee in this Indenture will bind successors.

Section 13.10. FORCE MAJEURE.

The Trustee, the Collateral Agent and each Note Agent will not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility under this Indenture or the Notes by reason of any occurrence beyond its control (including any act or provision of any present or future law or regulation or governmental authority, act of God or war, civil unrest, local or national disturbance or disaster, pandemic, epidemic, act of terrorism or unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility).

Section 13.11. U.S.A. PATRIOT ACT.

Each of the Company and the Subsidiary Guarantors acknowledges that, in accordance with Section 326 of the U.S.A. PATRIOT Act, the Trustee, like all financial institutions, in order to help fight the funding of terrorism and money laundering, is required to obtain, verify and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. Each of the Company and the Subsidiary Guarantors agrees to provide the Trustee with such information as it deems appropriate to enable the Trustee to comply with the U.S.A.

the Trustee with such information as it may request to enable the Trustee to comply with the U.S.A. PATRIOT Act.

Section 13.12. CALCULATIONS.

Except as otherwise expressly provided in this Indenture, the Company will be solely responsible for making all calculations called for under this Indenture or the Notes, including determinations of the Last Reported Sale Price, the Daily Conversion Value, the Daily Cash Amount, the Daily Share Amount, accrued interest on the Notes, including any Additional Interest or Special Interest, the Conversion Rate, any Conversion Rate adjustment, any AHYDO Amount, the Redemption Price, the Make-Whole Premium (including, in each case, any component thereof) and whether the Notes are convertible.

The Company will make all calculations in good faith, and, absent manifest error, its calculations will be final and binding on all Holders. The Company will provide a schedule of its calculations to the Trustee and each Note Agent, and the Trustee and each Note Agent may rely conclusively on the accuracy of the Company's calculations without independent verification. The Trustee will make available a copy of each such schedule to a Holder upon its written request therefor. Neither the Trustee nor any Note Agent shall have any responsibility to verify or determine the accuracy of any calculations or amounts, including those related to any interest, including any Additional Interest or Special Interest, the Conversion Rate, any Conversion Rate adjustment, any AHYDO Amount, and the Redemption Price and Make-Whole Premium (including, in each case, any component thereof).

Section 13.13. SEVERABILITY.

If any provision of this Indenture or the Notes is invalid, illegal or unenforceable, then the validity, legality and enforceability of the remaining provisions of this Indenture or the Notes will not in any way be affected or impaired thereby.

Section 13.14. COUNTERPARTS.

This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes. The words "delivery," "execution," "execute," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Indenture and the transactions contemplated hereby shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Trustee and the Collateral Agent, or 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, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the 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, or any other similar state laws based on the Uniform Electronic Transactions Act. The Note Parties agree to assume all risks arising out of the use of digital signatures and electronic methods, including without limitation the risk of the Trustee or the Collateral Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties. Each of the parties hereto agrees that the transaction consisting of this Indenture may be conducted by electronic means. Each party agrees, and acknowledges that it is such party's intent, that if such party signs this Indenture using an electronic signature, it is signing, adopting, and accepting this Indenture and that signing this Indenture using an electronic signature is the legal equivalent of having placed its handwritten signature on this Indenture on paper. Each party acknowledges that it is being provided with an electronic or paper copy of this Indenture in a usable format. Electronic signatures complying with the ESIGN Act of 2000 or other applicable law (including electronic images of handwritten signatures and digital signatures provided by DocuSign, Orbit, Adobe Sign or any other digital signature provider acceptable to the Trustee and the Company) shall be deemed original signatures for all purposes of this Indenture.

Section 13.15. TABLE OF CONTENTS, HEADINGS, ETC.

The table of contents and the headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part of this Indenture and will in no way modify or restrict any of the terms or provisions of this Indenture.

Section 13.16. INTERCREDITOR AGREEMENT.

Notwithstanding anything herein to the contrary, the lien and security interest granted to the Collateral Agent pursuant to or in connection with this Indenture, the terms of any Collateral Document, and the exercise of any right or remedy by the Collateral Agent thereunder are subject to the provisions of the Intercreditor Agreement. In the event of any conflict between the terms of the Intercreditor Agreement and this Indenture or any Collateral Document, the terms of the Intercreditor Agreement shall control.

[The Remainder of This Page Intentionally Left Blank; Signature Page Follows]

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

COMPANY:

LUMINAR TECHNOLOGIES, INC.

By: /s/ Thomas J. Fennimore
Name: Thomas J. Fennimore
Title: Chief Financial Officer

SUBSIDIARY GUARANTORS:

LUMINAR, LLC,
LUMINAR SEMICONDUCTOR, INC.

By: /s/ Thomas J. Fennimore
Name: Thomas J. Fennimore
Title: Chief Financial Officer

FREEDOM PHOTONICS LLC,
EMFOUR ACQUISITION CO., LLC
BY: LUMINAR SEMICONDUCTOR, INC., THEIR SOLE
MEMBER

By: /s/ Thomas J. Fennimore
Name: Thomas J. Fennimore
Title: Chief Financial Officer

EM4, LLC
BY: EMFOUR ACQUISITION CO., LLC, ITS SOLE
MEMBER
BY: LUMINAR SEMICONDUCTOR, INC., ITS SOLE
MEMBER

By: /s/ Thomas J. Fennimore
Name: Thomas J. Fennimore
Title: Chief Financial Officer

OPTOGRATION, INC.

By: /s/ Mark Itzler

Name: Mark Itzler

Title: President

[Signature Page to Second Lien Indenture]

GLAS TRUST COMPANY LLC, AS TRUSTEE AND
COLLATERAL AGENT

By: /s/ Katie Fischer

Name: Katie Fischer

Title: Vice President

[Signature Page to Second Lien Indenture]

Exhibit A

FORM OF NOTE

[Insert Global Note Legend, if applicable]

[Insert Restricted Note Legend, if applicable]

[Insert Non-Affiliate Legend]

LUMINAR TECHNOLOGIES, INC.

[For Series 1 Notes: 9.0% Convertible Second Lien Senior Secured Note due 2030]

[For Series 2 Notes: 11.5% Convertible Second Lien Senior Secured Note due 2030]

CUSIP No.: [●]

Certificate No. []

ISIN No.: [●]

Luminar Technologies, Inc., a Delaware corporation, for value received, promises to pay to Cede & Co., or its registered assigns, the principal sum of dollars (\$) (as revised by the attached Schedule of Exchanges of Interests in the Global Note) on the Maturity Date (as defined in the Indenture referred to below), and to pay interest and any other amounts due thereon, as provided in the Indenture referred to below, until the principal and all accrued and unpaid interest and other amounts specified in the Indenture are paid or duly provided for.

Interest Payment Dates: January 15, April 15, July 15, and October 15 of each year, commencing on October 15, 2024.

Regular Record Dates: January 1, April 1, July 1 and October 1.

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

[The Remainder of This Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, Luminar Technologies, Inc. has caused this instrument to be duly executed as of the date set forth below.

LUMINAR TECHNOLOGIES, INC.

Date: _____ By: _____

Name:

Title:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

GLAS Trust Company LLC, as Trustee, certifies that this is one of the Notes referred to in the within-mentioned Indenture.

Date: _____ By: _____
Authorized Signatory

LUMINAR TECHNOLOGIES, INC.

**[For Series 1 Notes: 9.0% Convertible Second Lien Senior Secured Note due 2030]
[For Series 2 Notes: 11.5% Convertible Second Lien Senior Secured Note due 2030]**

This Note is one of a duly authorized issue of notes of Luminar Technologies, Inc., a Delaware corporation (the “**Company**”), designated as its [For Series 1 Notes: 9.0][For Series 2 Notes: 11.5] % Convertible Second Lien Senior Secured Notes due 2030 (the “**Notes**”), all issued or to be issued pursuant to an indenture, dated as of August 8, 2024 (as the same may be amended from time to time, the “**Indenture**”), between the Company, the Subsidiary Guarantors from time to time party thereto and GLAS Trust Company, LLC, as trustee and collateral agent. Capitalized terms used in this Note without definition have the respective meanings ascribed to them in the Indenture.

The Indenture sets forth the rights and obligations of the Company, the Subsidiary Guarantors, the Trustee, the Collateral Agent and the Holders and the terms of the Notes. Notwithstanding anything to the contrary in this Note, to the extent that any provision of this Note conflicts with the provisions of the Indenture, the provisions of the Indenture will control.

1. **Interest.** This Note will accrue interest at a rate and in the manner set forth in **Section 2.05** of the Indenture. Stated Interest on this Note will begin to accrue from, and including, [date].

2. **Maturity.** This Note will mature on the Maturity Date, unless earlier repurchased, redeemed or converted.

3. **Method of Payment.** Amounts due on this Note will be paid in the manner set forth in **Section 2.04** of the Indenture.

4. **Persons Deemed Owners.** The Holder of this Note will be treated as the owner of this Note for all purposes.

5. **Denominations; Transfers and Exchanges.** All Notes will be in registered form, without coupons, in principal amounts equal to any Authorized Denominations. Subject to the terms of the Indenture, the Holder of this Note may transfer or exchange this Note by presenting it to the Registrar and delivering any required documentation or other materials.

6. **Right of Holders to Require the Company to Repurchase Notes Upon Certain Events.** Upon the occurrence of certain events, then each Holder will have the right to require the Company to repurchase such Holder's Notes (or any portion thereof in an Authorized Denomination) for cash in the manner, and subject to the terms, set forth in **Section 3.12** and **Section 4.02** of the Indenture.

7. **Right of the Company to Redeem the Notes.** The Company will have the right to redeem the Notes for cash in the manner, and subject to the terms, set forth in **Section 4.03** of the Indenture.

8. **Conversion.** The Holder of this Note may convert this Note into Conversion

Consideration in the manner, and subject to the terms, set forth in **Article 5** of the Indenture.

9. **When the Company May Merge, Etc.** **Article 6** of the Indenture places limited restrictions on the Company's and the Subsidiary Guarantors' ability to engage in certain corporate transactions or certain sales of their assets and property.

10. **Defaults and Remedies.** If an Event of Default occurs, then the principal amount of, and all accrued and unpaid interest and any other amounts due on, all of the Notes then outstanding may (and, in certain circumstances, will automatically) become due and payable in the manner, and subject to the terms, set forth in **Article 7** of the Indenture including, for the avoidance of doubt, any premium included in the Redemption Price.

11. **Amendments, Supplements and Waivers.** The Company and the Trustee may amend or supplement the Indenture or the Notes or waive compliance with any provision of the Indenture or the Notes in the manner, and subject to the terms, set forth in **Section 7.05** and **Article 8** of the Indenture.

12. **No Personal Liability of Directors, Officers, Employees and Stockholders.** No past, present or future director, officer, employee, incorporator or stockholder of the Company or any Subsidiary Guarantor, as such, will have any liability for any obligations of the Company under the Indenture or the Notes or any Guarantee or for any claim based on, in respect of, or by reason of, such obligations or their creation. By accepting any Note, each Holder waives and releases all such liability. Such waiver and release are part of the consideration for the issuance of the Notes.

13. **Authentication.** No Note will be valid until it is authenticated by the Trustee. A Note will be deemed to be duly authenticated only when an authorized signatory of the Trustee (or a duly appointed authenticating agent) manually signs the certificate of authentication of such Note.

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

15. **Governing Law.** THIS NOTE AND THE GUARANTEES AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS NOTE AND THE GUARANTEES, WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

* * *

To request a copy of the Indenture, which the Company will provide to any Holder at no charge, please send a written request to the following address:

Luminar Technologies, Inc.
2603 Discovery Drive, Suite 100
Orlando, FL 32826
Attention: Chief Financial Officer

* Insert for Global Notes only.

A-7

CONVERSION NOTICE

LUMINAR TECHNOLOGIES, INC.

**[For Series 1 Notes: 9.0% Convertible Second Lien Senior Secured Note due 2030]
[For Series 2 Notes: 11.5% Convertible Second Lien Senior Secured Note due 2030]**

Subject to the terms of the Indenture, by executing and delivering this Conversion Notice, the undersigned Holder of the Note identified below directs the Company to convert (check one):

- the entire principal amount of
- \$_____ * aggregate principal amount of

the Note identified by CUSIP No. _____ and Certificate No. _____.

The undersigned acknowledges that if the Conversion Date of a Note to be converted is after a Regular Record Date and before the next Interest Payment Date, then such Note, when surrendered for conversion, must, in certain circumstances, be accompanied with an amount of cash equal to the interest that would have accrued on such Note to, but excluding, such Interest Payment Date.

Date: _____

(Legal Name of Holder)

By: _____
Name:
Title:

Signature Guaranteed:

Participant in a Recognized Signature
Guarantee Medallion Program

By: _____
Authorized Signatory

* Must be an Authorized Denomination.

A-8

REPURCHASE NOTICE

LUMINAR TECHNOLOGIES, INC.

**[For Series 1 Notes: 9.0% Convertible Second Lien Senior Secured Note due 2030]
[For Series 2 Notes: 11.5% Convertible Second Lien Senior Secured Note due 2030]**

Subject to the terms of the Indenture, by executing and delivering this Repurchase Notice, the undersigned Holder of the Note identified below is exercising its Repurchase Right with respect to (check one):

- the entire principal amount of
- \$_____ * aggregate principal amount of

the Note identified by CUSIP No. _____ and Certificate No. _____.

The undersigned acknowledges that this Note, duly endorsed for transfer, must be delivered to the Paying Agent before the Repurchase Price will be paid.

Date: _____
_____ (Legal Name of Holder)

By: _____
Name:
Title:

Signature Guaranteed:

Participant in a Recognized Signature
Guarantee Medallion Program

By: _____
Authorized Signatory

ASSIGNMENT FORM

LUMINAR TECHNOLOGIES, INC.

[For Series 1 Notes: 9.0% Convertible Second Lien Senior Secured Note due 2030]

[For Series 2 Notes: 11.5% Convertible Second Lien Senior Secured Note due 2030]

Subject to the terms of the Indenture, the undersigned Holder of the Notes identified below assigns (check one):

- the entire principal amount of
- \$ _____ * aggregate principal amount of

the Notes identified by CUSIP No. _____ and Certificate No. _____, and all rights thereunder, to:

Name: _____

Address: _____

Social security or tax id. #: _____

and irrevocably appoints: _____

as agent to transfer the within Note on the books of the Company. The agent may substitute another to act for him/her.

Date: _____
_____ (Legal Name of Holder)

By: _____
Name:
Title:

Signature Guaranteed:

Participant in a Recognized Signature
Guarantee Medallion Program

By: _____

* Must be an Authorized Denomination.

A-10

TRANSFEROR ACKNOWLEDGMENT

If the within Note bears a Restricted Note Legend, the undersigned further certifies that (check one):

1. Such Transfer is being made to the Company or a Subsidiary of the Company.
2. Such Transfer is being made pursuant to, and in accordance with, a registration statement that is effective under the Securities Act at the time of the Transfer.
3. Such Transfer is being made pursuant to, and in accordance with, Rule 144A under the Securities Act, and, accordingly, the undersigned further certifies that the within Note is being transferred to a Person that the undersigned reasonably believes is purchasing the within Note for its own account, or for one or more accounts with respect to which such Person exercises sole investment discretion, and such Person and each such account is a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act in a transaction meeting the requirements of Rule 144A. **If this item is checked, then the transferee must complete and execute the acknowledgment contained on the next page.**
4. Such Transfer is being made pursuant to, and in accordance with, any other available exemption from the registration requirements of the Securities Act (including, if available, the exemption provided by Rule 144 under the Securities Act).

Dated: _____

(Legal Name of Holder)

By: _____

Name:

Title:

Signature Guaranteed:

(Participant in a Recognized Signature
Guarantee Medallion Program)

By: _____
Authorized Signatory

A-11

TRANSFeree ACKNOWLEDGMENT

The undersigned represents that it is purchasing the within Note for its own account, or for one or more accounts with respect to which the undersigned exercises sole investment discretion, and that the undersigned and each such account is a “qualified institutional buyer” within the meaning of Rule 144A under the Securities Act. The undersigned acknowledges that the transferor is relying, in transferring the within Note on the exemption from the registration and prospectus-delivery requirements of the Securities Act of 1933, as amended, provided by Rule 144A and that the undersigned has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A.

Dated: _____

(Name of Transferee)

By: _____
Name:
Title:

FORM OF RESTRICTED NOTE LEGEND

(Notes other than Affiliate Notes)

THE OFFER AND SALE OF THIS NOTE AND THE RELATED GUARANTEE AND THE SHARES OF COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS NOTE 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 THEREOF OR OF A BENEFICIAL INTEREST HEREIN OR THEREIN, 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 THE COMPANY THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS NOTE AND THE SHARES OF COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS NOTE OR ANY BENEFICIAL INTEREST HEREIN, EXCEPT ONLY:
 - (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF;
 - (B) PURSUANT TO A REGISTRATION STATEMENT THAT IS EFFECTIVE UNDER THE SECURITIES ACT;
 - (C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT;
 - (D) PURSUANT TO RULE 144 UNDER THE SECURITIES ACT; OR
 - (E) PURSUANT TO ANY OTHER EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

BEFORE THE REGISTRATION OF ANY SALE OR TRANSFER IN ACCORDANCE WITH (2)(C), (D) OR (E) ABOVE, THE COMPANY, THE TRUSTEE AND THE REGISTRAR RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH CERTIFICATES OR OTHER DOCUMENTATION OR EVIDENCE AS THEY MAY REASONABLY REQUIRE IN ORDER FOR THE COMPANY TO DETERMINE THAT THE PROPOSED SALE OR TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS.

THE FOLLOWING INFORMATION IS SUPPLIED SOLELY FOR U.S. FEDERAL INCOME TAX PURPOSES. THIS NOTE WAS ISSUED WITH ORIGINAL ISSUE DISCOUNT ("OID")

B1A-1

WITHIN THE MEANING OF SECTION 1273 OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"), AND THIS LEGEND IS REQUIRED BY SECTION 1275(c) OF THE CODE. HOLDERS MAY OBTAIN INFORMATION REGARDING THE AMOUNT OF ANY OID, THE ISSUE PRICE, THE ISSUE DATE, AND THE YIELD TO MATURITY RELATING TO THIS NOTE BY CONTACTING THE COMPANY AT LUMINAR TECHNOLOGIES, INC., 2603 DISCOVERY DRIVE, SUITE 100, ORLANDO, FL 32826, ATTENTION: CHIEF FINANCIAL OFFICER.

Exhibit B-1-B

FORM OF RESTRICTED NOTE LEGEND
(Affiliate Notes)

THE OFFER AND SALE OF THIS NOTE AND THE RELATED GUARANTEE AND THE SHARES OF COMMON STOCK, IF ANY, ISSUABLE UPON CONVERSION OF THIS NOTE 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 THEREOF OR OF A BENEFICIAL INTEREST HEREIN OR THEREIN, THE ACQUIRER AGREES FOR THE BENEFIT OF THE COMPANY THAT IT WILL NOT OFFER, SELL OR OTHERWISE TRANSFER THIS NOTE OR ANY BENEFICIAL INTEREST HEREIN, EXCEPT ONLY:

- (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF;
- (B) PURSUANT TO A REGISTRATION STATEMENT THAT IS EFFECTIVE UNDER THE SECURITIES ACT;
- (C) TO A QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT;
- (D) PURSUANT TO RULE 144 UNDER THE SECURITIES ACT; OR
- (E) PURSUANT TO ANY OTHER EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

BEFORE THE REGISTRATION OF ANY SALE OR TRANSFER IN ACCORDANCE WITH (C), (D) OR (E) ABOVE, THE COMPANY, THE TRUSTEE AND THE REGISTRAR RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH CERTIFICATES OR OTHER DOCUMENTATION OR EVIDENCE AS THEY MAY REASONABLY REQUIRE IN ORDER FOR THE COMPANY TO DETERMINE THAT THE PROPOSED SALE OR TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS.

THE FOLLOWING INFORMATION IS SUPPLIED SOLELY FOR U.S. FEDERAL INCOME TAX PURPOSES. THIS NOTE WAS ISSUED WITH ORIGINAL ISSUE DISCOUNT ("OID")

WITHIN THE MEANING OF SECTION 1273 OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"), AND THIS LEGEND IS REQUIRED BY SECTION 1275(c) OF THE CODE. HOLDERS MAY OBTAIN INFORMATION REGARDING THE AMOUNT OF ANY OID, THE ISSUE PRICE, THE ISSUE DATE, AND THE YIELD TO MATURITY RELATING TO THIS NOTE BY CONTACTING THE COMPANY AT LUMINAR TECHNOLOGIES, INC., 2603 DISCOVERY DRIVE, SUITE 100, ORLANDO, FL 32826, ATTENTION: CHIEF FINANCIAL OFFICER.

B1B-1

Exhibit B-2

FORM OF GLOBAL NOTE LEGEND

THIS IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITARY OR A NOMINEE OF THE DEPOSITARY, WHICH MAY BE TREATED BY THE COMPANY, THE TRUSTEE AND ANY AGENT THEREOF AS THE OWNER AND HOLDER OF THIS NOTE FOR ALL PURPOSES.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY ("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 HEREON 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 SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL NOTE WILL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC, OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE, AND TRANSFERS OF PORTIONS OF THIS GLOBAL NOTE WILL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN **ARTICLE 2** OF THE INDENTURE HEREINAFTER REFERRED TO.

THE FOLLOWING INFORMATION IS SUPPLIED SOLELY FOR U.S. FEDERAL INCOME TAX PURPOSES. THIS NOTE WAS ISSUED WITH ORIGINAL ISSUE DISCOUNT ("OID") WITHIN THE MEANING OF SECTION 1273 OF THE U.S. INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"), AND THIS LEGEND IS REQUIRED BY SECTION 1275(c) OF THE CODE. HOLDERS MAY OBTAIN INFORMATION REGARDING THE AMOUNT OF ANY OID, THE ISSUE PRICE, THE ISSUE DATE, AND THE YIELD TO MATURITY RELATING TO THIS NOTE BY CONTACTING THE COMPANY AT

LUMINAR TECHNOLOGIES, INC., 2603 DISCOVERY DRIVE, SUITE 100, ORLANDO, FL
32826, ATTENTION: CHIEF FINANCIAL OFFICER.

B-2-1

Exhibit B-3

FORM OF NON-AFFILIATE LEGEND

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT OF 1933, AS AMENDED) OF THE COMPANY OR PERSON THAT HAS BEEN AN AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT OF 1933, AS AMENDED) OF THE COMPANY DURING THE PRECEDING THREE MONTHS MAY PURCHASE, OTHERWISE ACQUIRE OR HOLD THIS SECURITY OR A BENEFICIAL INTEREST HEREIN.

Exhibit C

FORM OF SUPPLEMENTAL INDENTURE

(TO BE DELIVERED BY SUBSEQUENT SUBSIDIARY GUARANTORS)

[] Supplemental Indenture (this “**Supplemental Indenture**”), dated as of [] among Luminar Technologies, Inc. (the “**Company**”), [] (the “**Guaranteeing Subsidiary**”), a subsidiary of the Company, and GLAS Trust Company LLC, as trustee (in such capacity, the “**Trustee**”) and as collateral agent (in such capacity, the “**Collateral Agent**”).

WITNESSETH

WHEREAS, the Company has heretofore executed and delivered to the Trustee and the Collateral Agent an indenture (as amended, modified or supplemented from time to time, the “**Indenture**”), dated as of August 8, 2024, providing for the issuance of 9.0% Convertible Second Lien Senior Secured Notes due 2030 (the “**Series 1 Notes**”) and 11.5% Convertible Second Lien Senior Secured Notes due 2030 (the “**Series 2 Notes**”) and, together with the Series 1 Notes, the “**Notes**”);

WHEREAS, the Indenture provides that under certain circumstances the Guaranting Subsidiary shall execute and deliver to the Trustee and the Collateral Agent a supplemental indenture pursuant to which the Guaranting 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**”); and

WHEREAS, pursuant to **Section 8.01(B)** of the Indenture, the Trustee and the Collateral Agent are authorized to execute and deliver this Supplemental Indenture without the consent of Holders.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties mutually covenant and agree for the equal and ratable benefit of the 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 Guaranting Subsidiary hereby agrees to be a Subsidiary Guarantor under the Indenture and to be bound by the terms of the Indenture applicable to Subsidiary Guarantors, including **Article 12** thereof. By its signature below, the Guaranting Subsidiary becomes (I) a Subsidiary Guarantor under the Indenture with the same force and effect as if originally named therein as a Subsidiary Guarantor and the Guaranting Subsidiary hereby (a) agrees to all the terms and provisions of the Indenture applicable to it as a Subsidiary Guarantor

thereunder and (b) represents and warrants that the representations and warranties made by it as a Subsidiary Guarantor thereunder are true and correct in all material respects on and as of the date hereof and (II) bound under the Indenture as a Subsidiary Guarantor and the Guaranteeing Subsidiary hereby (a) agrees to all the terms and provisions of the Indenture applicable to it as a

C-1

Subsidiary guarantor thereunder and (b) represents and warrants that the representations and warranties made by it as a Subsidiary Guarantor thereunder are true and correct in all material respects on and as of the date hereof), *provided* that in each case of clause (I)(b) and (II)(b), to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date. Each reference to a “Subsidiary Guarantor” in the Indenture shall be deemed to include the Guaranteeing Subsidiary as if originally named therein as a Subsidiary Guarantor.

1. 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.

2. Governing Law. THIS SUPPLEMENTAL INDENTURE WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

3. Counterparts. The parties may sign any number of copies of this Supplemental Indenture. Each signed copy will be an original, and all of them together represent the same agreement. Delivery of an executed counterpart of this Supplemental Indenture by facsimile, electronically in portable document format or in any other format will be effective as delivery of a manually executed counterpart.

4. Effect of Headings. The headings of the Sections of this Supplemental Indenture have been inserted for convenience of reference only, are not to be considered a part of this Supplemental Indenture and will in no way modify or restrict any of the terms or provisions of this Supplemental Indenture.

5. The Trustee and the 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 or for or in respect of the recitals contained herein, all of which recitals are made solely by the Guaranteeing Subsidiary.

6. Ratification of Indenture; Supplemental Indenture Part of Indenture. Except as expressly amended hereby, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. This Supplemental Indenture shall form a part of the Indenture for all purposes, and every Holder heretofore or hereafter authenticated and delivered shall be bound hereby.

7. Representations and Warranties by Guaranteeing Subsidiary. The Guaranteeing Subsidiary hereby represents and warrants to the Trustee and the Collateral Agent that this

Supplemental Indenture has been duly and validly executed and delivered by it and constitutes its valid and binding obligation, enforceable against it in accordance with its terms and the terms of the Indenture.

[Signature pages follow]

C-2

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

LUMINAR TECHNOLOGIES, INC.

By: _____
Name:
Title:

[GUARANTEEING SUBSIDIARY]

By: _____
Name:
Title:

GLAS TRUST COMPANY LLC, AS TRUSTEE AND
COLLATERAL AGENT

By: _____
Name:
Title:

Exhibit D

FORM OF PRE-FUNDED WARRANT

NEITHER THIS SECURITY NOR THE SECURITIES FOR WHICH THIS SECURITY IS EXERCISABLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), AND, ACCORDINGLY, MAY NOT BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS.

COMMON STOCK PURCHASE WARRANT

LUMINAR TECHNOLOGIES, INC.

Warrant Shares: [_____]

Initial Exercise Date: [_____]

THIS COMMON STOCK PURCHASE WARRANT (the “Warrant”) certifies that, for value received, [_____] or its assigns (the “Holder”) is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after the date hereof (the “Initial Exercise Date”) and on or prior to 5:00 p.m. (New York City time) on January 15, 2032 (the “Termination Date”), but not thereafter, to subscribe for and purchase from LUMINAR TECHNOLOGIES, INC., a Delaware corporation (the “Company”), up to [_____] shares (as subject to adjustment hereunder, the “Warrant Shares”) of the Company’s Common Stock (as defined below). The purchase price of one share of Common Stock under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

Section 1. Definitions. In addition to the terms defined elsewhere in this Warrant, the following terms have the meanings indicated in this Section 1:

“Affiliate” means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 under the Securities Act.

“Bid Price” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the bid price of the Common Stock for the time in question (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (“Bloomberg”) (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the Common Stock is then listed or quoted for trading on OTCQB or OTCQX, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX, as applicable, (c) if the Common Stock is not then listed

or quoted for trading on a Trading Market, OTCQB or OTCQX and if prices for the Common Stock are then reported on The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by Board of Directors and reasonably acceptable to the Holder of this Warrant, the fees and expenses of which shall be paid by the Company.

“Board of Directors” means the board of directors of the Company.

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

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

“Common Stock” means the Class A common stock of the Company, par value \$0.0001 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

“Common Stock Equivalents” means any securities of the Company or its subsidiaries which would entitle the holder thereof to acquire at any time shares of Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

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

“Person” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

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

“Trading Day” means a day on which the Common Stock is traded on a Trading Market.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market or the New York Stock Exchange (or any successors to any of the foregoing).

“Transfer Agent” means Equiniti Trust Company, LLC, the current transfer agent of the Company, with a mailing address of 6201 15th Ave, Brooklyn, NY 11219 and email address of

[•], and any successor transfer agent of the Company.

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily

D-2

volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the Common Stock is then listed or quoted for trading on OTCQB or OTCQX, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on a Trading Market, OTCQB or OTCQX and if prices for the Common Stock are then reported on The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Board of Directors and reasonably acceptable to the Holder of this Warrant, the fees and expenses of which shall be paid by the Company.

Section 2. Exercise.

(a) Exercise of Warrant. Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company (with a PDF copy to the Transfer Agent delivered via email at the email address set forth in the definition of Transfer Agent above (or such other office or agency as the Company may designate by notice in writing to the registered Holder in accordance with Section 5(h) herein)) of a duly executed PDF copy submitted by e-mail (or e-mail attachment) of the Notice of Exercise in the form annexed hereto as Exhibit A (the “Notice of Exercise”). Within the later of (i) one (1) Trading Day and (ii) the number of Trading Days comprising the Standard Settlement Period (as defined in Section 2(d)(i) herein) following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the Warrant Shares specified in the applicable Notice of Exercise by wire transfer or cashier’s check drawn on a United States bank unless the cashless exercise procedure specified in Section 2(c) is specified in the applicable Notice of Exercise. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, if an original of this Warrant was delivered to the Holder, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Trading Days of the date on which the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of

such purchases. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

(b) Exercise Price. The exercise price per share of Common Stock under this Warrant shall be \$0.0001, subject to adjustment hereunder (the "Exercise Price").

D-3

(c) Cashless Exercise. This Warrant may also be exercised, in whole or in part, at such time by means of a "cashless exercise" in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

(A) = as applicable: (i) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is (1) both executed and delivered pursuant to Section 2(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 2(a) hereof on a Trading Day prior to the opening of "regular trading hours" (as defined in Rule 600(b) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (y) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise or (z) the Bid Price of the Common Stock on the principal Trading Market as reported by Bloomberg as of the time of the Holder's execution of the applicable Notice of Exercise if such Notice of Exercise is executed during "regular trading hours" on a Trading Day and is delivered within two (2) hours thereafter (including until two (2) hours after the close of "regular trading hours" on a Trading Day) pursuant to Section 2(a) hereof or (iii) the VWAP on the date of the applicable Notice of Exercise if the date of such Notice of Exercise is a Trading Day and such Notice of Exercise is both executed and delivered pursuant to Section 2(a) hereof after the close of "regular trading hours" on such Trading Day;

(B) = the Exercise Price of this Warrant, as adjusted hereunder; and

(X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the holding period of the Warrant Shares being issued may be tacked on to the holding period of the Warrant. The Company agrees not to take any position contrary to this Section 2(c).

Notwithstanding anything herein to the contrary, if the Holder of this Warrant has not elected to

exercise this Warrant on or prior to the Termination Date, then this Warrant shall automatically (without any act on the part of the Holder) be exercised pursuant to this Section 2(c) effective immediately prior to the expiration of this Warrant, unless the Holder shall earlier provide written notice to the Company that the Holder desires that this Warrant expire unexercised. If this Warrant is so automatically exercised, the Company shall notify the Holder of the automatic exercise as soon as reasonably practicable, and, if an original of this Warrant was delivered to the Holder, the Holder shall surrender this Warrant to the Company in accordance with the terms hereof.

(d) Mechanics of Exercise.

(i) Delivery of Warrant Shares Upon Exercise. The Company shall cause the Warrant Shares purchased hereunder to be transmitted by the Transfer Agent to the Holder by (1) crediting the account of the Holder's or its designee's balance account with The Depository Trust Company through its Deposit or Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by the Holder, (B) the Warrant Shares are eligible for resale by the Holder without volume or manner-of-sale limitations pursuant to Rule 144 (assuming cashless exercise of this Warrant) or (C) the Warrant Shares are freely tradable with no restriction by the Holder pursuant to another exemption from registration, or (2) if the Common Stock is not then on the system of The Depository Trust Company or if none of the conditions in (1)(A) through (1)(C) above are satisfied, by physical delivery of a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in the Notice of Exercise by the date that is the later of (A) the later of (i) one (1) Trading Day and (ii) the number of days comprising the Standard Settlement Period, in each case after the delivery to the Company of the Notice of Exercise, and (B) other than in the case of cashless exercise, one (1) Trading Day after delivery of the aggregate Exercise Price to the Company (such date, the "Warrant Share Delivery Date"). Upon delivery of the Notice of Exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the Warrant Shares, provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received by the Warrant Share Delivery Date. If the Company fails for any reason to deliver to the Holder the Warrant Shares subject to a Notice of Exercise by the Warrant Share Delivery Date, the Company shall pay to the Holder, in cash, as liquidated damages and not as a penalty, for each \$1,000 of Warrant Shares subject to such exercise (based on the VWAP of the Common Stock on the date of the applicable Notice of Exercise), \$10 per Trading Day (increasing to \$20 per Trading Day on the fifth Trading Day after the Warrant Share Delivery Date) for each Trading Day after such Warrant Share Delivery Date until such Warrant Shares are delivered or Holder rescinds such exercise. The Company agrees to maintain a transfer agent that is a participant in the FAST program so long as this Warrant remains outstanding and exercisable. As used herein, "Standard Settlement Period" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Exercise.

(ii) Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

(iii) Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares on a timely basis pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise.

(iv) Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise. In addition to any other rights available to the Holder, if the Company fails

to cause the Transfer Agent to transmit to the Holder the Warrant Shares in accordance with the provisions of Section 2(d)(i) above pursuant to an exercise on or before the Warrant Share Delivery Date (other than any such failure that is solely due to any action by the Holder with respect to such exercise), and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a "Buy-In"), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted exercise of shares of Common Stock with an aggregate sale price giving rise to such purchase obligation of \$10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder \$1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

(v) No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share.

(vi) Charges and Taxes. Issuance of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that, in the event that Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto as Exhibit B duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto.

(vii) Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

D-6

(e) Holder's Exercise Limitations. The Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 2 to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the Holder's Affiliates (such Persons, "Attribution Parties")), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other Common Stock Equivalents) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 2(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith. To avoid doubt, the calculation of the Beneficial Ownership Limitation shall take into account the concurrent exercise or conversion, as applicable, of the unexercised or unconverted portion of any other securities of the Company (including, without limitation, any other Common Stock Equivalents) beneficially owned by the Holder or any of its Affiliates and Attribution Parties, as applicable, other than such securities subject to a limitation on conversion or exercise analogous to the limitation contained herein. To the extent that the limitation contained in this Section 2(e) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination (including any determination as to group status pursuant to the next sentence). In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder. For purposes of this Section 2(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of

Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within one (1) Trading Day confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities

D-7

of the Company, including this Warrant, by the Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 9.9% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exercise of this Warrant. The Holder, upon notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 2(e), provided that the Beneficial Ownership Limitation in no event is lower than 9.9% or exceeds 19.9% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon exercise of this Warrant held by the Holder and the provisions of this Section 2(e) shall continue to apply. Any increase in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Company. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 2(e) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Warrant.

Section 3. Certain Adjustments.

(a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues by reclassification of shares of the Common Stock any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification

(b) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 3(a), if at any time the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be

determined for the grant, issue or sale of such Purchase Rights (provided, however, that to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

(c) Pro Rata Distributions. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, that to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

(d) Fundamental Transaction. If, at any time while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company (and all of its subsidiaries, taken as a whole), directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock or 50% or more of the voting power of the equity of the Company, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off, merger or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires 50% or more of the outstanding shares of Common Stock or 50% or more of the voting power of the equity of the Company (each a "Fundamental Transaction") then, upon any subsequent exercise of this Warrant, the Holder shall

have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, at the option of the Holder (without regard to any limitation in Section 2(e) on the exercise of this Warrant), the number of shares of Common Stock of the successor or acquiring corporation or of the Company, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any limitation in Section 2(e) on the exercise of this Warrant). For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Company under this Warrant and the other Transaction Documents in accordance with the provisions of this Section 3(d) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

(e) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date

shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

(f) Notice to Holder.

D-10

(i) Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly deliver to the Holder by facsimile or email a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment.

(ii) Notice to Allow Exercise by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with a Fundamental Transaction or any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be delivered by facsimile or email to the Holder at its last facsimile number or email address as it shall appear upon the Warrant Register of the Company, at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided in this Warrant constitutes, or contains, material, non-public information regarding the Company or any of its subsidiaries (as determined in good faith by the Company), unless the Holder otherwise notifies the Company in writing, the Holder hereby waives its right to receive such notice prior to the public announcement of the record date of such action or the date on which such action is expected to become effective or close (whichever is earlier); provided that (1) the Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice and (2) notwithstanding anything to the contrary contained herein, with respect to any such dividend, distribution, redemption, grant of rights or warrants, approval of stockholders or record date with respect to any of the foregoing, or any

dissolution, liquidation or winding-up of the Company, the Company shall afford the Holder not less than 5 business days between the public announcement, and the occurrence, of any such record date or the effectiveness of any such event, as applicable, to elect to give effect to the exercise rights contained in this Warrant.

Section 4. Transfer of Warrant.

D-11

(a) Transferability. Subject to compliance with any applicable securities laws, this Warrant and all rights hereunder are transferable, in whole or in part, upon surrender of this Warrant to the principal office of the Company or its designated agent, together with (i) a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney, (ii) at the reasonable request of the Company, of an opinion of counsel reasonably satisfactory to the Company to the effect that the transfer of such portion of this Warrant may be made pursuant to an available exemption from the registration requirements of the Securities Act and (iii) funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company unless the Holder has assigned this Warrant in full, in which case, if an original of this Warrant was delivered to the Holder, the Holder shall surrender this Warrant to the Company within three (3) Trading Days of the date on which the Holder delivers an assignment form to the Company assigning this Warrant in full. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

(b) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the Initial Exercise Date of this Warrant and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

(c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "Warrant Register"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

(d) Representation by the Holder. The Holder, by the acceptance hereof, represents and warrants that it is acquiring this Warrant and, upon any exercise hereof, will acquire the Warrant Shares issuable upon such exercise, for its own account and not with a view to or for distributing or reselling such Warrant Shares or any part thereof in violation of the Securities Act or any applicable state securities law, except pursuant to sales registered or exempted under the Securities Act.

Section 5. Miscellaneous.

(a) No Rights as Stockholder Until Exercise; No Settlement in Cash. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder

of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3. Without limiting the rights of a Holder to receive Warrant Shares on a “cashless exercise,” and to receive the cash payments contemplated pursuant to Sections 2(d)(i) and 2(d)(iv), in no event will the Company be required to net cash settle an exercise of this Warrant.

(b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it, and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

(c) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Trading Day, then, such action may be taken or such right may be exercised on the next succeeding Trading Day.

(d) Authorized Shares. The Company covenants that, during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of issuing the necessary Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value (after giving effect to any related adjustment to the Exercise Price in accordance with Section 3 hereof), (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant, (iii) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents

from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant and (iv) not take any action that would result in the Exercise Price of this Warrant being in excess of the then-applicable par value of any Warrant Shares.

Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

(e) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by this Warrant (whether brought against a party hereto or their respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper or is an inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Warrant and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. If either party shall commence an action, suit or proceeding to enforce any provisions of this Warrant, the prevailing party in such action, suit or proceeding shall be reimbursed by the other party for their reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

(f) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, (i) if not registered, and the Holder does not utilize cashless exercise, or (ii) if the Holder is an Affiliate of the Company, will have restrictions upon resale imposed by state and federal securities laws.

(g) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies, notwithstanding the fact that the right to exercise this Warrant terminates on the Termination Date. Without limiting any other provision

of this Warrant, if the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in

D-14

collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

(h) Notices. Any and all notices or other communications or deliveries to be provided by the holders hereunder including, without limitation, any Notice of Exercise, shall be in writing and delivered personally, by facsimile or e-mail, or sent by a nationally recognized overnight courier service, addressed to the Company, at 2603 Discovery Drive, Suite 100, Orlando, FL 32826, Attention: Tom Fennimore, email address: tom@luminartech.com, with a copy (which will not constitute notice) to legal.notices@luminartech.com, or such other telephone number, email address or address as the Company may specify for such purposes by notice to the Holders. Any and all notices or other communications or deliveries to be provided by the Company hereunder shall be in writing and delivered personally, by facsimile or e-mail, or sent by a nationally recognized overnight courier service addressed to each Holder at the facsimile number, e-mail address or address of such Holder appearing on the books of the Company. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the time of transmission, if such notice or communication is delivered via facsimile at the facsimile number or via e-mail at the e-mail address set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the time of transmission, if such notice or communication is delivered via facsimile at the facsimile number or via e-mail at the e-mail address set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Company or any of its subsidiaries, the Holder hereby waives its right to receive such notice prior to the public announcement of such information.

(i) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

(j) Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

(k) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

D-15

(l) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company, on the one hand, and the Holder of this Warrant, on the other hand.

(m) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

(n) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

(Signature Page Follows)

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

COMPANY:

LUMINAR TECHNOLOGIES, INC.

By: _____
Name:
Title:

EXHIBIT A

NOTICE OF EXERCISE

TO: **LUMINAR TECHNOLOGIES, INC.**

The undersigned hereby elects to purchase _____ Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

Payment shall take the form of (check applicable box):

- in lawful money of the United States; or
- the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in Section 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in Section 2(c).

Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below:

The Warrant Shares shall be delivered to the following DWAC Account Number:

[SIGNATURE OF HOLDER]

Name of Investing Entity:

Signature of Authorized Signatory of Investing Entity:

Name of Authorized Signatory:

Title of Authorized Signatory:

Date:

EXHIBIT B

ASSIGNMENT FORM

(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to exercise the Warrant to purchase shares.)

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to:

Name: _____

Address: _____

Phone Number: _____

Email Address: _____

Dated: _____

Holder's Signature: _____

Holder's Address: _____



Orrick, Herrington & Sutcliffe
LLP

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SUITE 2C
SANTA MONICA, CA 90401
+1-310-633-2800

orrick.com

August 8, 2024

Luminar Technologies, Inc.
2603 Discovery Drive, Suite 100
Orlando, Florida 32826

Re: Registration Statement on Form S-3

Ladies and Gentlemen:

We have acted as counsel to Luminar Technologies, Inc., a Delaware corporation (the "Company"), in connection with the offer and sale by the Company of additional shares of the Company's Class A common stock, par value \$0.0001 (the "Shares") with an aggregate offering price of up to \$50,000,000 (the "Additional Shares"), which may be issued and sold from time to time under the Financing Agreement, dated as of May 3, 2024, by and between the Company and Virtu Americas LLC (the "Sales Agreement"). The offer and sale of Shares under Financing Agreement (the "Program") with an aggregate offering price of up to \$150,000,000 (the "Initial Shares") were previously registered under a registration statement on Form S-3ASR (File No. 333-279118) (as amended or supplemented, the "Registration Statement") filed on May 3, 2024 with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), which Registration Statement became effective upon the filing thereof with the Commission and which included a base prospectus (the "Base Prospectus") and a prospectus supplement dated May 3, 2024. The offer and sale of Additional Shares, together with remaining Initial Shares under the Program, will be made pursuant to the Registration Statement, the Base Prospectus, and a prospectus supplement filed with the Commission on the date hereof (the "Prospectus Supplement"). The Base Prospectus and the Prospectus Supplement are collectively referred to as the "Prospectus."

In connection with rendering this opinion, we have examined and relied upon originals or copies, certified or otherwise, identified to our satisfaction, of (i) the Second Amended and Restated Certificate of Incorporation of the Company, as amended through the date hereof, (ii) the Amended and Restated Bylaws of the Company, as amended through the date hereof, (iii) certain resolutions of the Board of Directors of the Company (including any committee thereof) relating to the issuance, sale and registration of the Additional Shares, (iv) the Registration Statement, (v) the Prospectus, (vi) the Sales Agreement, and (vii) such corporate records of the Company, certificates of public officials, officers of the Company and other persons, and such other documents, agreements and instruments as we have deemed relevant and necessary or appropriate as a basis for the opinion set forth below.

In our examination, we have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to original



Luminar Technologies, Inc.
August 8, 2024
Page 2

documents of all documents submitted to us as facsimile, electronic, certified or photostatic copies, and the authenticity of the originals of such copies. In making our examination of documents executed or to be executed, we have assumed that the parties thereto, other than the Company, had or will have the power, corporate or other, to enter into and perform all obligations thereunder and have also assumed the due authorization by all requisite action, corporate or other, and the execution and delivery by such parties of such documents and the validity and binding effect thereof on such parties. As to any facts material to the opinions expressed herein that we did not independently establish or verify, we have relied upon statements and representations of officers and other representatives of the Company and others and of public officials.

Based upon the foregoing and subject to the limitations, qualifications and assumptions set forth herein, we are of the opinion that the Additional Shares have been duly authorized and, upon issuance, delivery and payment therefor in accordance with the Sales Agreement, will be validly issued, fully paid and non-assessable.

The opinion expressed herein is limited to the General Corporation Law of the State of Delaware, and we express no opinion with respect to the applicability thereto, or the effect thereon, of the laws of any other jurisdiction or, in the case of the State of Delaware, any other laws, or as to any matters of municipal law or the laws of any local agencies within any state.

This opinion is being furnished to you for submission to the Commission as an exhibit to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2024 (the "Quarterly Report"), which is incorporated by reference in the Registration Statement. We hereby consent to the filing of this opinion letter as an exhibit to the Quarterly Report and its incorporation by reference and the reference to our firm in that report and to the use of our name under the caption "Legal Matters" in the Prospectus Supplement. In giving such consent, we do not admit that we are included in the category of persons whose consent is required under Section 7 of the Securities Act or the General Rules and Regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ Orrick, Herrington & Sutcliffe LLP

ORRICK, HERRINGTON & SUTCLIFFE LLP

LUMINAR TECHNOLOGIES, INC.
EXCHANGE AGREEMENT

August 6, 2024

The undersigned set forth on Exhibit A hereto (each, a “**Holder**”), enters into this Exchange Agreement (this “**Agreement**”) with Luminar Technologies, Inc. (the “**Company**”) and the subsidiaries of the Company set forth on the signature page hereto as Guarantors (the “**Guarantors**”), as of the date first written above whereby the Holders will exchange outstanding 1.25% convertible senior notes due 2026 issued by the Company (the “**Existing Convertible Notes**”) for (i) the Company’s new (x) 9.0% Convertible Second Lien Senior Secured Notes due 2030 (the “**Series 1 Notes**”) and (y) 11.5% Convertible Second Lien Senior Secured Notes due 2030 (the “**Series 2 Notes**”) and, collectively with the Series 1 Notes, the “**New Notes**”) that will be issued pursuant to the provisions of an indenture to be dated as of the Closing Date (as defined below) (the “**Indenture**”) in substantially the form attached hereto as Exhibit B between the Company, the Guarantors, and GLAS Trust Company LLC, as Trustee (the “**Trustee**”) and Collateral Agent (the “**Collateral Agent**”), which New Notes will be guaranteed (each, a “**Guarantee**” and collectively, the “**Guarantees**”; the Series 1 Notes with the respective Guarantees, the “**Series 1 Securities**”; and the Series 2 Notes with the respective Guarantees, the “**Series 2 Securities**” and, collectively with the Series 1 Securities, the “**Securities**”) by the Guarantors, and secured pursuant to the terms of a security agreement to be dated as of the Closing Date (the “**Security Agreement**”) in substantially the form of Exhibit C and (ii) cash in respect of any accrued and unpaid interest on such exchanged Existing Convertible Notes.

On and subject to the terms hereof, the parties hereto agree as follows:

ARTICLE I
EXCHANGE OF NOTES

Section 1.1 Exchange. Upon and subject to the terms set forth in this Agreement, at the Closing, each Holder shall deliver or cause to be delivered to the Company the aggregate principal amount of Existing Convertible Notes set forth opposite such Holder’s name under the heading “Exchanged Notes for Securities” on Exhibit A hereto (such principal amount of Existing Convertible Notes, the “**Exchanged Notes**”) in exchange for, and the Company and the Guarantors hereby agree to issue and deliver to each Holder (i) the principal amount of each class of Securities, rounded to the nearest integral multiple of \$1,000 in principal amount, if applicable, specified opposite such Holder’s name on Exhibit A under the heading “Series 1 Securities” and “Series 2 Securities,” respectively, and (ii) an amount in cash equal to the accrued and unpaid interest on the Exchanged Notes to but excluding the Closing Date as specified opposite such Holder’s name on Exhibit A under the heading “Cash Payment (Accrued and Unpaid Interest on Exchanged Notes)” (the “**Cash Payment**”). The aggregate principal amount of all classes of Securities issued to each Holder as so rounded and as set forth on Exhibit A shall be herein referred to as the “**Holder Securities**.” The Securities will bear interest from and including the Closing Date. The Holder Securities and Cash Payment (collectively, the “**Consideration**”) shall represent satisfaction in full of all principal and interest on the Exchanged Notes from and after the Closing Date. The transactions contemplated by this Agreement, including without limitation the issuance, delivery

and acceptance of the Consideration in consideration for the exchange of the Exchanged Notes are collectively referred to herein as the “**Transactions.**”

Section 1.2 Closing. Subject to the satisfaction or valid waiver of all closing conditions set forth in Article IV hereto, the closing of the Transactions (the “**Closing**”) shall occur on or before 9:00 a.m. (New York City time) on or before August 8, 2024, or such other date as the parties may mutually agree (the “**Closing Date**”). At the Closing, (a) each Holder (i) shall deliver or cause to be delivered to the Company all right, title and interest in and to its Exchanged Notes as specified on Exhibit A hereto, free and clear of any mortgage, lien, pledge, charge, security interest, encumbrance, title retention agreement, option, equity or other adverse claim thereto (collectively, “**Liens**”), together with any documents of conveyance or transfer that the Company may reasonably determine to be necessary to transfer to and confirm in the Company all right, title and interest in and to the Exchanged Notes, free and clear of any Liens, and (ii) waives any and all other rights with respect to such Exchanged Notes, and releases and discharges the Company from any and all claims such Holder may now have, or may have in the future, arising out of, or related to, such Exchanged Notes, including, without limitation, any claims arising from any existing or past defaults, or any claims that such Holder is entitled to receive additional interest with respect to the Exchanged Notes, and (b) the Company and the Guarantors shall deliver to each Holder the Consideration as specified on Exhibit A hereto. Concurrently with the Transaction, the Company and the Guarantors are entering into purchase agreements (the “**Purchase Agreements**”) relating to the issuance and sale by the Company and the Guarantors of new senior secured notes due 2028 guaranteed by the Guarantors (the “**2028 Notes**”) (collectively, the “**Other Transactions**”). The cancellation of the Exchanged Notes and delivery of the Consideration shall be effected by the electronic exchange of documents at the Closing. At the Closing, (A) each Holder shall deliver the Exchanged Notes to the trustee for the Existing Convertible Notes via DWAC for the benefit of the Company and (B) the Company shall deliver to each Holder (i) the Holder Securities specified on Exhibit A hereto in global form through the Depository Trust Company (“**DTC**”) and (ii) the Cash Payment by wire transfer to the account as instructed by such Holder (or, if indicated on Exhibit A, by offset against other amounts due or owing to the Company from such Holder as of the Closing Date).

Section 1.3 No Joint Liability. The obligations of each Holder under this Agreement are several and not joint, and no Holder shall have liability to any person for the performance or non-performance of any obligation of any other Holder hereunder. Notwithstanding that this is a single agreement amongst multiple Holders, the Company covenants and agrees, for the benefit of each Holder, that it will not share or otherwise make available to any other Holder, any banking or DWAC-related information provided by such Holder to the Company.

ARTICLE II **COVENANTS, REPRESENTATIONS AND WARRANTIES OF THE HOLDERS**

Each Holder, severally and not jointly, hereby covenants as follows, and makes the following representations and warranties, each of which is and shall be true and correct on the date

hereof and at the Closing, to the Company and the Guarantors, and all such covenants, representations and warranties shall survive the Closing.

Section 2.1 Power and Authorization. Such Holder is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation, and has the power, authority and capacity to execute and deliver this Agreement, to perform its obligations hereunder, and to consummate the Transactions. Exhibit A hereto includes the true, correct and complete name and address of such Holder.

Section 2.2 Valid and Enforceable Agreement; No Violations. This Agreement has been duly executed and delivered by such Holder and constitutes a legal, valid and binding obligation of such Holder, enforceable against such Holder in accordance with its terms, except as such enforcement may be subject to (a) bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally, or (b) general principles of equity, whether such enforceability is considered in a proceeding at law or in equity (the "**Enforceability Exceptions**"). Upon execution and delivery, each other Transaction Document (as defined below) to which it is a party will constitute a legal, valid and binding obligation of such Holder, enforceable against such Holder in accordance with their terms, except as such enforcement may be subject to the Enforceability Exceptions. The execution and delivery of this Agreement and each other Transaction Document to which it is a party and the consummation of the Transactions will not violate, conflict with or result in a breach of or default under (i) such Holder's organizational documents, (ii) any agreement or instrument to which such Holder is a party or by which such Holder or any of its assets are bound, or (iii) any laws, regulations or governmental or judicial decrees, injunctions or orders applicable to such Holder, except in the case of clauses (ii) or (iii), where such violations, conflicts, breaches or defaults would not affect such Holder's ability to consummate the Transactions in any material respect.

Section 2.3 Title to the Exchanged Notes. Except for any Exchanged Notes specified on Exhibit A hereto as being held as of the date hereof on swap, (a) such Holder is the sole or direct legal and beneficial owner of the Exchanged Notes set forth opposite its name on Exhibit A hereto; (b) such Holder has good, valid and marketable title to its Exchanged Notes, free and clear of any Liens (other than pledges or security interests that such Holder may have created in favor of a prime broker under and in accordance with its prime brokerage agreement with such broker and any restrictions on transfer arising by operation of applicable securities laws); and (c) such Holder has not, in whole or in part, except as described in the preceding clause (b), (i) assigned, transferred, hypothecated, pledged, exchanged or otherwise disposed of any of its Exchanged Notes or its rights, title or interest in and to its Exchanged Notes or (ii) given any person or entity, except for its investment advisor, agents and affiliates, any transfer order, power of attorney or other authority of any nature whatsoever with respect to its Exchanged Notes; provided that, with respect to any such Exchanged Notes specified on Exhibit A hereto as being held on swap, upon such Holder's delivery of such Exchanged Notes to the Company pursuant to the Transactions, such Holder will be such legal and beneficial owner. have such title and have not transferred such

such Holder will be such legal and beneficial owner, have such title and have not transferred such Exchanged Notes, in each case as set forth in clauses (a) through (c) above. For any such Exchanged Notes specified on Exhibit A hereto as being held by a Holder on swap, such Holder shall use its best efforts to deliver such Exchanged Notes to the Company pursuant to the Transactions as soon as practicable, and hereby acknowledges that such Holder shall not be entitled to receive additional interest with respect to any such Exchanged Notes on or after the Closing Date. Upon such Holder's delivery of its Exchanged Notes to the Company pursuant to the

Transactions, such Exchanged Notes shall be free and clear of all Liens created by the Holder or any other person acting for the Holder.

Section 2.4 Institutional Accredited Investor or Qualified Institutional Buyer.

Such Holder is either: (a) an institutional "accredited investor" within the meaning of Rule 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act of 1933, as amended (the "**Securities Act**") or (b) a "qualified institutional buyer" within the meaning of Rule 144A promulgated under the Securities Act.

Section 2.5 No Affiliates.

The Holder is not, and has not been at any time during the consecutive three-month period preceding the date hereof, a director, officer or "affiliate" within the meaning of Rule 144 promulgated under the Securities Act (an "**Affiliate**") of the Company. A period of at least one year (calculated in the manner provided in Rule 144(d) under the Securities Act) has lapsed since the Exchanged Notes set forth opposite its name on Exhibit A hereto were acquired from the Company or from a person known by the Holder to be an Affiliate of the Company.

Section 2.6 No Prohibited Transactions.

Such Holder has not, directly or indirectly, and no person acting on behalf of or pursuant to any understanding with it has, disclosed to a third party (other than (i) its advisors or as required by Applicable Law (as defined below) or (ii) with the Company's prior approval or consent) any information regarding the Transactions, engaged in any transactions in the securities of the Company (including, without limitation, any Short Sales (as defined below) involving any of the Company's securities) since the time that investment professionals affiliated with such Holder (i.e., persons other than compliance personnel affiliated with such Holder) were first contacted by either the Company, Matthews South, LLC (the "**Placement Agent**") or any other person acting on the Company's behalf regarding the Transactions or this Agreement, and such Holder shall not engage in any such activities until the Disclosure Time (as defined below). "**Short Sales**" include, without limitation, all "short sales" as defined in Rule 200 of Regulation SHO promulgated under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and all types of direct and indirect stock pledges, forward sale contracts, options, puts, calls, short sales, swaps, derivatives and similar arrangements (including, without limitation, on a total return basis), and sales and other transactions through non-U.S. broker-dealers or foreign regulated brokers. Solely for purposes of this Section 2.6, subject to such Holder's compliance with its obligations under the U.S. federal securities laws and such Holder's internal policies, (a) "Holder" shall not be deemed to include any employees, subsidiaries, desks, groups or affiliates of such Holder that are effectively walled off by appropriate "fire wall"

information barriers approved by such Holder's legal or compliance department (and thus such walled off parties have not been privy to any information concerning the Transactions), and (b) the foregoing representations and covenants of this Section 2.6 shall not apply to any transaction by or on behalf of an affiliate of a Holder that was effected without the advice or participation of, or such affiliate's receipt of information regarding the Transactions provided by, such Holder.

Section 2.7 Adequate Information; No Reliance. Such Holder acknowledges and agrees that (a) such Holder has been furnished with all materials it considers relevant to making an investment decision to enter into the Transactions and has had the opportunity to review the Company's filings and submissions with the Securities and Exchange Commission (the "SEC"),

including, without limitation, all information filed or furnished pursuant to the Exchange Act on or prior to the date hereof (collectively, the “**Public Filings**”), (b) such Holder has had the opportunity to ask questions of the Company concerning the Company, its business, operations, financial performance, financial condition and prospects and the terms and conditions of the Transactions, (c) such Holder has had the opportunity to consult with its accounting, tax, financial and legal advisors to be able to evaluate the risks involved in the Transactions and to make an informed investment decision with respect to such Transactions, (d) such Holder has evaluated the tax and other consequences of the Transactions and receipt and ownership of the Consideration with its tax, accounting or legal advisors, (e) the Company and the Placement Agent are not acting as a fiduciary or financial or investment advisor to such Holder and (f) such Holder is not relying, and has not relied, upon any statement, advice (whether accounting, tax, financial, legal or other), representation or warranty made by the Company, the Placement Agent or any of their affiliates or representatives except for (i) the Public Filings and (ii) the representations and warranties made by the Company and the Guarantors in this Agreement. Such Holder (w) is able to fend for itself in the Transactions; (x) has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its prospective investment in the Holder Securities; (y) has the ability to bear the economic risks of its prospective investment and can afford the complete loss of such investment; and (z) acknowledges that investment in the Holder Securities involves a high degree of risk.

Section 2.8 Acknowledgements. Such Holder acknowledges and agrees that there is no assurance that a public market will exist or continue to exist for the Securities. Such Holder acknowledges that (a) neither the issuance of the Securities pursuant to the Transactions nor the issuance of any shares of the Company’s Class A common stock, par value \$0.0001 per share (the “**Common Stock**”), upon conversion of or any payment of a Make-Whole Premium (as defined in the Indenture) on any of the Securities (the “**Conversion Shares**”) has been registered or qualified under the Securities Act or any state securities laws, and the Securities and any Conversion Shares are being offered and sold in reliance upon exemptions provided in the Securities Act and state securities laws for transactions not involving any public offering and, therefore, cannot be sold, transferred, offered for sale, pledged, hypothecated or otherwise disposed of unless they are subsequently registered and qualified under the Securities Act and applicable state laws or unless an exemption from such registration and qualification is available, and (b) it is acquiring the Securities for investment purposes only for its own account and not with any view toward a distribution thereof or with any intention of selling, distributing or otherwise disposing of the Securities or any Conversion Shares in a manner that would violate the registration requirements of the Securities Act. Such Holder further acknowledges and agrees that (x) such Holder’s Holder Securities will be acquired from the Company solely in exchange for such Holder’s Exchanged Notes and the Cash Payment due for any accrued and unpaid interest thereon; and (y) such Holder’s participation in the Transactions was not conditioned by the Company on such Holder’s (i) exchange of a minimum principal amount of Existing Convertible Notes or (ii) purchase of a minimum amount of any other securities of the Company or any of its affiliates. Such Holder understands that the Company is relying upon the representations and agreements contained in this Agreement for the purpose of determining whether such Holder’s participation in the Transactions meets the requirements for the exemptions referenced in this Section 2.8.

Section 2.9 Taxpayer Information. Such Holder will deliver to the Company a complete and accurate IRS Form W-9 or IRS Form W-8BEN, W-8BEN E or W-8ECI, as appropriate.

Section 2.10 Sanctions. The operations of such Holder have been conducted in material compliance with the rules and regulations administered or conducted by OFAC (as defined below) applicable to such Holder. Such Holder has performed due diligence necessary to reasonably determine that its beneficial owners are not named on the lists of denied parties or blocked persons administered by OFAC, resident in or organized under the laws of a country that is the subject of Sanctions (as defined below), or otherwise the subject of Sanctions, except as permitted under Sanctions.

Section 2.11 Financial Adviser Fee. Each Holder understands that the Company intends to pay the Placement Agent a fee in respect of the Transactions.

Section 2.12 No Reliance on the Placement Agent. Each Holder acknowledges and agrees that the Placement Agent has not acted as a financial advisor or fiduciary to the Holder and that the Placement Agent and its directors, officers, employees, representatives and controlling persons have no responsibility for making, and have not made, any independent investigation of the information contained herein or in the Company's SEC filings and make no representation or warranty to such Holder, express or implied, with respect to the Company, the Existing Convertible Notes, the New Notes, the Consideration or the 2028 Notes or the accuracy, completeness or adequacy of the information provided to each Holder or any other publicly available information, including the Public Filings, nor will any of the foregoing persons be liable for any loss or damages of any kind resulting from the use of the information contained therein or otherwise supplied to each Holder.

Section 2.13 Further Action. Such Holder agrees that it will, upon request, execute and deliver any additional documents reasonably determined to be necessary by the Company, the Placement Agent, the Trustee or the Company's transfer agent to complete the Transactions.

ARTICLE III

COVENANTS, REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND THE GUARANTORS

Each of the Company and the Guarantors hereby covenants as follows, and makes the following representations and warranties, each of which is and shall be true and correct on the date hereof and at the Closing, to the Holders, and all such covenants, representations and warranties shall survive the Closing.

Section 3.1 Power and Authorization; Enforceability. The Company and each Guarantor have been duly organized, validly existing as a corporation and in good standing under the laws of their respective jurisdictions of organization. The Company and each Guarantor are duly licensed or qualified as a foreign corporation for transaction of business and in good standing

under the laws of each other jurisdiction in which their respective ownership or lease of property or the conduct of their respective businesses requires such license or qualification, and have all corporate power and authority necessary to own or hold their respective properties and to conduct their respective businesses as described in the Public Filings, except where the failure to be so

qualified or in good standing or have such power or authority would not, individually or in the aggregate, have a Material Adverse Effect (as defined below). The Company and each of the Guarantors has full legal right, power and authority to enter into this Agreement and the other Transaction Documents and perform the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by the Company and the Guarantors and constitutes a legal, valid and binding obligation of the Company and the Guarantors, enforceable against the Company and the Guarantors in accordance with its terms, except as such enforcement may be subject to the Enforceability Exceptions and except to the extent that the indemnification and contribution provisions of Article V hereof may be limited by federal or state securities laws and public policy considerations in respect thereof. Upon execution and delivery, each of the Indenture, the Securities and the Security Agreement (this Agreement, together with the Indenture, the Securities and the Security Agreement, collectively, the “**Transaction Documents**”) will constitute a legal, valid and binding agreement of the Company and the Guarantors party thereto, enforceable against each of them in accordance with its terms, except as such enforcement may be subject to the Enforceability Exceptions.

Section 3.2 No Consents; No Violations; No Conflicts. Assuming the accuracy of each Holder’s representations and warranties hereunder, no consent, approval, authorization, order, registration or qualification of or with any court or arbitrator or any governmental or regulatory authority is required for the execution, delivery and performance by the Company of this Agreement and the other Transaction Documents and the consummation by the Company and the Guarantors of the transactions contemplated by the Transaction Documents, except for such consents, approvals, authorizations, orders and registrations or qualifications (i) as may be required under applicable state securities laws, (ii) as may be required under the Securities Act and (iii) as have been previously obtained by the Company. None of the Company, the Guarantors, or any subsidiary that is a significant subsidiary (as such term is defined in Rule 1-02 of Regulation S-X promulgated by the SEC (as defined below)) (each, a “**Significant Subsidiary**” and, collectively, the “**Significant Subsidiaries**”) is (i) in violation of its charter or by-laws or similar organizational documents; (ii) in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement or other similar agreement or instrument to which the Company, such Guarantor or such Significant Subsidiary is a party or by which the Company, such Guarantor or such Significant Subsidiary is bound or to which any of the property or assets of the Company, such Guarantor or such Significant Subsidiary is subject; or (iii) in violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of each of clauses (ii) and (iii) above, for any such violation or default that would not, individually or in the aggregate, have a Material Adverse Effect. To the Company’s and the Guarantors’ knowledge, no other party under any material contract or other agreement to which the Company or any Guarantor

or Significant Subsidiary is a party is in default in any respect thereunder where such default would have a Material Adverse Effect. Neither the execution of this Agreement or the other Transaction Documents, nor the issuance, offering or sale of the Securities, nor the consummation of any of the Transactions, nor the compliance by the Company and the Guarantors with the terms and provisions of the Transaction Documents will conflict with, or will result in a breach of, any of the terms and provisions of, or has constituted or will constitute a default under, or has resulted in or will result in the creation or imposition of any lien, charge or encumbrance upon any property or

assets of the Company pursuant to the terms of any contract or other agreement to which the Company may be bound or to which any of the property or assets of the Company is subject, except (i) such conflicts, breaches or defaults as may have been waived, (ii) such conflicts, breaches and defaults that would not have a Material Adverse Effect and (iii) Permitted Liens (as defined in the Indenture); nor will such action result (x) in any violation of the provisions of the organizational or governing documents of the Company or any Guarantor, or (y) in any material violation of the provisions of any statute or any order, rule or regulation applicable to the Company or any Guarantor or of any court or of any federal, state or other regulatory authority or other government body having jurisdiction over the Company or any Guarantor, except, in the case of this clause (y), where such violation would not have a Material Adverse Effect. Assuming the accuracy of each Holder's representations and warranties hereunder, the Indenture is not required to be qualified under the Trust Indenture Act of 1939, as amended.

Section 3.3 Validity of Holder Securities. The issuance of the New Notes and the Guarantees has been duly authorized by the Company and the Guarantors, respectively, and, when executed and authenticated in accordance with the provisions of the Indenture (in the case of the New Notes) and delivered to the applicable Holder pursuant to the Transactions against delivery of the Exchanged Notes therefor in accordance with the terms of this Agreement, the New Notes and the Guarantees will be valid and binding obligations of the Company and the Guarantors, respectively, enforceable in accordance with their terms, except as such enforcement may be subject to the Enforceability Exceptions, and will be free of any Liens created by the Company and the Guarantors, except for Permitted Liens, and the issuance of the Holder Securities will not be subject to any preemptive, participation, rights of first refusal or other similar rights.

Section 3.4 Capitalization; Validity of Conversion Shares. The issued and outstanding shares of capital stock of the Company have been validly issued, are fully paid and non-assessable and, other than as disclosed in the Public Filings, are not subject to any preemptive rights, rights of first refusal or similar rights. The Company has an authorized, issued and outstanding capitalization as set forth in the Public Filings as of the dates referred to therein (other than (i) the grant of additional equity awards, or the exercise, settlement or forfeiture of outstanding equity awards, under the Company's existing equity compensation plans, (ii) changes in the number of outstanding Common Stock of the Company due to the issuance of shares upon the exercise or conversion of securities exercisable for, or convertible into, Common Stock outstanding on the date hereof, (iii) as a result of the issuance of shares of Common Stock pursuant to that certain financing agreement, dated as of May 3, 2024, between the Company and Virtu

Americas LLC (the “**Financing Agreement**”), or (iv) any repurchases of capital stock of the Company) and such authorized capital stock conforms to the description thereof set forth in the Public Filings. Except as disclosed in or contemplated by the Public Filings, the Company did not have outstanding any options to purchase, or any rights or warrants to subscribe for, or any securities or obligations convertible into, or exchangeable for, or any contracts or commitments to issue or sell, any shares of capital stock or other securities. The maximum number of Conversion Shares initially issuable upon conversion of the Securities (assuming (x) the Company elects Physical Settlement (as defined in the Indenture) for each such conversion and (y) the maximum Conversion Rate (as defined in the Indenture) for each series of Securities as it may be increased upon conversion in connection with a Make-Whole Fundamental Change (as defined in the Indenture)) or on account of a Make-Whole Premium (as defined in the Indenture) (the

“**Maximum Number of Conversion Shares**”) has been duly authorized and reserved by the Company for issuance upon conversion of the Securities and, when issued upon conversion of the Securities in accordance with the terms thereof and the Indenture, will be validly issued, fully paid and non-assessable and free of any Liens created by the Company, and the issuance of any such Conversion Shares will not be subject to any preemptive, participation, rights of first refusal or other similar rights.

Section 3.5 Private Placement. Assuming the accuracy of each Holder’s representations and warranties hereunder, the Holder Securities and, upon the issuance thereof in accordance with the terms of the Indenture, the Conversion Shares (a) will be issued in transactions exempt from the registration requirements of the Securities Act, (b) will be issued in compliance with all applicable state and federal laws and (c) will, at the Closing, be free of any restrictions on resale by such Holder pursuant to Rule 144 promulgated under the Securities Act and will not be subject to any restricted or similar legend unless, at the time of issuance, the Holder, or the holder of the Holder Securities at the time they are converted, is an Affiliate of the Company. For the purposes of Rule 144 promulgated under the Securities Act, the Company acknowledges that, assuming the accuracy of each Holder’s representations and warranties hereunder, the holding period of the Exchanged Notes of such Holder as of the Closing Date may be tacked onto the holding period of such Holder’s Holder Securities and Conversion Shares, and the Company and the Guarantors agree not to take a position contrary thereto.

Section 3.6 Listing. At the Closing, the Company shall have submitted to The Nasdaq Global Market (the “**Nasdaq**”) a Listing of Additional Shares Notification Form in respect of the Maximum Number of Conversion Shares, if required, and shall have received no objection thereto from Nasdaq. At the Closing, the Common Stock is listed on the Nasdaq, and the Company has taken no action designed to, or likely to have the effect of, delisting the Common Stock from the Nasdaq nor, except as disclosed to the Holders, has the Company received any notification that the Nasdaq is contemplating terminating such listing.

Section 3.7 Disclosure. On or before 9:00 a.m. (New York City time) on the first business day following the date of this Agreement (the “**Disclosure Time**”), the Company shall file with the SEC a Current Report on Form 8-K disclosing the material terms of the Transactions (to the extent not previously publicly disclosed) (the “**Closing 8-K**”). From and after the filing of the Closing 8-K, the Company represents to each Holder that such Holder shall not be in possession of any material, nonpublic information provided by the Company, the Guarantors or any of their respective officers, directors, employees or agents, with respect to or in connection with the Transactions, that is not disclosed in the Closing 8-K. In addition, effective upon the earlier of (i) the filing of such Closing 8-K and (ii) the Disclosure Time, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral, between the Company, the Guarantors or any of their respective officers, directors, employees or agents, on the one hand, and such Holder or any of its affiliates, on the other hand, shall terminate and be of no further force or effect. The Company and the Guarantors understand and confirm that the Holders and their affiliates will rely on the foregoing representations in effecting transactions in securities of the Company and the Guarantors. Without the prior written consent of a Holder, neither the Company nor the Guarantors shall disclose the name of such Holder in any filing or announcement, unless such disclosure is in accordance with Section 6.5 below.

Section 3.8 No Litigation. There are no legal or governmental proceedings pending or threatened to which the Company, the Guarantors, or any of their respective subsidiaries is a party or to which any of their respective properties is subject (i) other than proceedings accurately described in all material respects in the Public Filings and proceedings that would not, singly or in the aggregate, have a Material Adverse Effect or (ii) that are required to be described in the Public Filings and are not so described.

Section 3.9 SEC Filings; Disclosure. The Company has filed with the SEC all reports, schedules and statements required to be filed by it under the Exchange Act on a timely basis for the most recent twelve-month period. As of their respective filing dates, the Public Filings filed since January 1, 2024, complied in all material respects with applicable requirements of the Exchange Act and the rules and regulations of the SEC promulgated thereunder applicable to such Public Filings; and there are no contracts or other documents that are required to be described in the Public Filings that are not described or filed as required. The consolidated financial statements of the Company included or incorporated by reference in the Public Filings, together with the related notes and schedules, present fairly, in all material respects, the financial position of the Company and its consolidated subsidiaries as of the dates indicated and the consolidated results of operations, cash flows and changes in stockholders' equity of the Company and its consolidated subsidiaries for the periods specified (subject, in the case of unaudited statements, to normal year-end audit adjustments which will not be material, either individually or in the aggregate) and have been prepared in compliance with the published requirements of the Securities Act and Exchange Act, as applicable, and in conformity with generally accepted accounting principles in the United States ("GAAP") applied on a consistent basis (except (i) for such adjustments to accounting standards and practices as are noted therein and (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) during the periods involved; the other financial and statistical data with respect to the Company and its consolidated subsidiaries contained or incorporated by reference in the Public Filings are accurately and fairly presented and prepared on a basis consistent with the financial statements and books and records of the Company; there are no financial statements (historical or pro forma) that are required to be included or incorporated by reference in the Public Filings that are not included or incorporated by reference as required; the Company and its consolidated subsidiaries do not have any material liabilities or obligations, direct or contingent (including any off balance sheet obligations), not described in the Public Filings which are required to be described therein. None of such Public Filings, at the time they were filed with the SEC or, if amended or restated, as of the date of such amendment or restatement, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Other than the Transactions and the Other Transactions, as of the date hereof, no material event or circumstance has occurred which would be required to be publicly disclosed or announced by the Company pursuant to the provisions of the SEC's Form 8-K which has not been so publicly disclosed or announced on Form 8-K.

Section 3.10 Other Transactions. The Company has provided to each Holder true

Section 3.10 Other Transactions. The Company has provided to each Holder true, correct and complete executed copies or, if prior to the Closing Date, substantially final forms, of all documentation relating to the Other Transactions, which documentation has not been amended, modified or waived in any material respect since such execution or delivery.

Section 3.11 No Preferential Rights; Certain Approvals. (i) No person, as such term is defined in Rule 1-02 of Regulation S-X promulgated under the Securities Act (each, a “Person”), has the right, contractual or otherwise, to cause the Company to issue or sell to such Person any Common Stock or shares of any other capital stock or other securities of the Company (other than upon the exercise or settlement of equity awards that may be granted from time to time under the Company’s equity compensation plans or upon the exercise or conversion of securities exercisable for, or convertible into, Common Stock outstanding on the date hereof, in each case as set forth in the Public Filings), (ii) no Person has any preemptive rights, rights of first refusal, or any other rights (whether pursuant to a “poison pill” provision or otherwise) to purchase any Common Stock or shares of any other capital stock or other securities of the Company from the Company which have not been duly waived with respect to the Transactions, and (iii) except as set forth in the Public Filings, no Person has the right, contractual or otherwise, to require the Company to register under the Securities Act any Common Stock or shares of any other capital stock or other securities of the Company as a result of the Transactions, except in each case for such rights as have been waived on or prior to the date hereof. The Company and the Board of Directors have taken all necessary action, if any, in order to render inapplicable any control share acquisition, business combination, poison pill (including without limitation any distribution under a rights agreement) or other similar anti-takeover provision under the Company’s constituent documents or the laws of the State of Delaware that are or could become applicable to any Holder as a result of any Holder or the Company fulfilling their respective obligations or exercising their rights under the Transaction Documents, including without limitation as a result of the Company’s issuance of the Holder Securities or the Conversion Shares, as the case may be. In light of Section 2.20 of the Indenture, there are no change of control, severance, bonus or similar payments due and payable by the Company as a result of the Company fulfilling its obligations or exercising its rights under the Transaction Documents, including without limitation as a result of the Company’s issuance of the Holder Securities or the Conversion Shares, as the case may be.

Section 3.12 Further Action. The Company agrees that (i) it will cancel all Existing Convertible Notes acquired in connection with the Transactions, and (ii) it will, upon request, execute and deliver any additional documents reasonably deemed necessary or desirable by the Holders, the Trustee or the Company’s transfer agent to complete the Transactions.

Section 3.13 Solvency. After giving effect to the Transactions, (a) the fair saleable value of each of the Company’s and the Guarantors’ respective consolidated assets exceeds the fair value of each of the Company’s and the Guarantors’ respective liabilities, (b) each of the Company and the Guarantors will not be left with unreasonably small capital and (c) each of the Company and the Guarantors will be able to pay their respective debts (including trade debts) as they become due (whether at maturity or otherwise) (without taking into account any forbearance or extensions related thereto).

Section 3.14 No Material Adverse Effect. Since March 31, 2024, except as disclosed in the Public Filings, the Company, the Guarantors and their respective subsidiaries, considered as a single enterprise, have conducted their business in the ordinary course, and there has not been (i) any material adverse change in, or any development that would reasonably be expected to have, individually or in the aggregate, a material adverse effect on, the legality, validity or enforceability of this Agreement or the other Transaction Documents or the ability of the Company or the Guarantors to perform their respective obligations hereunder or thereunder or under the

Transactions on a full and timely basis in all material respects, or in or on the assets, business, operations, earnings, properties, condition (financial or otherwise), prospects, stockholders' equity or results of operations of the Company, the Guarantors, and their respective subsidiaries, taken as a whole (collectively, a "**Material Adverse Effect**"), (ii) entry into any transaction or agreement which is material to the Company, the Guarantors, and their respective subsidiaries, taken as a whole, (iii) any obligation or liability, direct or contingent (including any off-balance sheet obligations), incurred by the Company, the Guarantors, or their respective subsidiaries, which is material to the Company, the Guarantors, and their respective subsidiaries, taken as a whole, (iv) any material change in the capital stock of the Company (other than (A) the grant of additional equity awards, or the exercise, settlement or forfeiture of outstanding equity awards, under the Company's existing equity compensation plans, (B) changes in the number of outstanding Common Stock of the Company due to the issuance of shares upon the exercise or conversion of securities exercisable for, or convertible into, Common Stock outstanding on the date hereof, (C) as a result of the issuance and sales under the Financing Agreement, (D) any repurchases of capital stock of the Company, (E) as described in a proxy statement filed on Schedule 14A or a registration statement on Form S-4, or (F) otherwise publicly announced) or outstanding long-term indebtedness of the Company, any Guarantor, or any of their respective subsidiaries, or (v) any dividend or distribution of any kind declared, paid or made on the capital stock of the Company, any Guarantor, or any of their respective subsidiaries, other than in each case above in the ordinary course of business or as otherwise disclosed in the Public Filings (including any document incorporated by reference therein), and none of the Company or any Guarantor or Significant Subsidiary has sustained any loss or interference with their respective business or operations from fire, explosion, flood, earthquake or other natural disaster or calamity, regardless of whether covered by insurance, or from any labor dispute or disturbance or court or governmental action, order or decree, except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

Section 3.15 Investment Company Act. None of the Company or any Guarantor or any of their respective subsidiaries is or, after giving effect to the Transactions and the Other Transactions, will be required to register as, an "investment company" or an entity "controlled" by an "investment company," as such terms are defined in the Investment Company Act of 1940, as amended.

Section 3.16 Brokers. None of the Company or any Guarantor has incurred any liability for any finder's fees, brokerage commissions or similar payments in connection with the

Transactions for which any Holder may be liable.

Section 3.17 Subsidiaries. The Company and the Guarantors own, directly or indirectly, all of the equity interests of their respective subsidiaries free and clear of any lien, charge, security interest, encumbrance, right of first refusal or other restriction, other than Permitted Liens, and all the equity interests of the subsidiaries are validly issued and are fully paid, nonassessable and free of preemptive and similar rights. The Company and the Guarantors do not own or control, directly or indirectly, any corporation, association or other entity other than the subsidiaries listed in Schedule 1.

Section 3.18 Collateral. The representations and warranties of the Company included in Article IV of the Security Agreement are deemed to be incorporated herein and part hereof.

Section 3.19 Environmental Laws. The Company, the Guarantors, and their respective subsidiaries (i) are in compliance with any and all applicable federal, state, local and foreign laws, rules, regulations, decisions and orders relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants (collectively, "Environmental Laws"); (ii) have received and are in compliance with all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses as described in the Public Filings; and (iii) have not received notice of any actual or potential liability for the investigation or remediation of any disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants, except, in the case of any of clauses (i), (ii) or (iii) above, for any such failure to comply or failure to receive required permits, licenses, other approvals or liability as would not, individually or in the aggregate, have a Material Adverse Effect.

Section 3.20 No Improper Practices. (i) None of the Company, the Guarantors or any of their respective subsidiaries, nor, to the Company's or any Guarantor's knowledge, any of their respective affiliates or executive officers has, in the past five years, made any unlawful contributions to any candidate for any political office (or failed fully to disclose any contribution in violation of law) or made any contribution or other payment to any official of, or candidate for, any federal, state, municipal, or foreign office or other person charged with similar public or quasi-public duty in violation of any law or of the character required to be disclosed in the Company's Public Filings; (ii) no relationship, direct or indirect, exists between or among the Company, the Guarantors or, to the Company's or each Guarantor's knowledge, their respective subsidiaries or any affiliate of any of them, on the one hand, and the directors, officers and stockholders of the Company or the Guarantors or, to the Company's and the Guarantors' knowledge, their respective subsidiaries, on the other hand, that is required by the Exchange Act to be disclosed in the Public Filings that is not so described; (iii) there are no material outstanding loans or advances or material guarantees of indebtedness by the Company, the Guarantors or, to the Company's or each Guarantor's knowledge, their respective subsidiaries to or for the benefit of any of their respective officers or directors or any of the members of the families of any of them; (iv) the Company and the Guarantors have not offered, or caused any placement agent to offer, Common Stock to any person with the intent to influence unlawfully (A) a customer or supplier of the Company, the Guarantors or their respective subsidiaries to alter the customer's or supplier's level or type of business with the Company, the Guarantors or their respective subsidiaries or (B) a trade journalist or publication to write or publish favorable information about the Company, the Guarantors or their respective subsidiaries or any of their respective products or services; and, (v) none of the Company, the Guarantors nor their respective subsidiaries nor, to the Company's or to each Guarantor's knowledge, any employee or agent of the Company, the Guarantors or their respective subsidiaries has made any payment of funds of the Company, the Guarantors or their respective subsidiaries or received or retained any funds in violation of any law, rule or regulation (including, without limitation, the Foreign Corrupt Practices Act of 1977), which payment, receipt or retention of funds is of a character required to be disclosed in the Company's Public Filings.

Section 3.21 Anti-Money Laundering Laws. The operations of the Company, the Guarantors and their respective subsidiaries are and have been conducted at all times in compliance with applicable financial record keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions to which the Company, the Guarantors and each of their respective subsidiaries are subject, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency having jurisdiction over the Company, the Guarantors and each of their respective subsidiaries (collectively, the “**Anti-Money Laundering Laws**”), except where the failure to be in such compliance would not result in a Material Adverse Effect; and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company, the Guarantors or any of their respective subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the knowledge of the Company or the Guarantors, threatened.

Section 3.22 Sanctions; OFAC. (i) None of the Company, the Guarantors nor any of their respective subsidiaries (collectively, the “**Entity**”) nor, to the Company’s or any Guarantor’s knowledge, any director, officer, employee, agent, affiliate or representative of the Entity, is a government, individual, or entity (in this paragraph 3.22, “**Person**”) that is, or is owned or controlled by a Person that is:

A. the subject of any sanctions administered or enforced by the U.S. Department of Treasury’s Office of Foreign Assets Control (“**OFAC**”), the United Nations Security Council, the European Union, His Majesty’s Treasury, or other relevant sanctions authority (collectively, “**Sanctions**”), nor

B. located, organized or resident in a country or territory that is the subject of Sanctions.

(ii) The Entity will not, directly or indirectly, knowingly use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person:

a. to fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions; or

b. in any other manner that will result in a violation of Sanctions by any Person (including any Person participating in the offering, whether as underwriter, advisor, investor or otherwise)

(iii) The Entity represents and covenants that, except as detailed in the Company’s Public Filings, for the past 5 years, it has not knowingly engaged in and is not now knowingly engaged in any dealing or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.

Section 3.23 Property. The Company and each of the Guarantors and the Significant Subsidiaries have good and marketable title to all real property and good and valid title to all personal property (other than Intellectual Property, which is addressed exclusively in Section 3.24)

personal property (other than intellectual property, which is addressed exclusively in Section 3.27) described in the Public Filings as being owned by them which is material to the businesses of the Company, the Guarantors and the Significant Subsidiaries, taken as a whole, in each case free and clear of all liens, encumbrances, claims and defects except (i) such as do not affect the value of

such property and do not materially interfere with the use made and proposed to be made of such property by the Company or such Guarantor or Significant Subsidiary, (ii) such as would not, singly or in the aggregate, have a Material Adverse Effect or (iii) Permitted Liens. Any real property described in the Public Filings as being leased by the Company or any Guarantor or Significant Subsidiary is held by them under valid, subsisting and enforceable leases with such exceptions as (i) do not materially interfere with the use made and proposed to be made of such property and buildings by the Company or such Guarantor or Significant Subsidiary or (ii) would not, singly or in the aggregate, have a Material Adverse Effect.

Section 3.24 Intellectual Property. The Company, the Guarantors and the Significant Subsidiaries own or possess adequate enforceable rights to use all patents, patent applications, trademarks (both registered and unregistered), trade names, trademark registrations, service marks, service mark registrations, Internet domain name registrations, copyrights, copyright registrations, licenses and know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures) (collectively, the “**Intellectual Property**”), necessary for the conduct of their respective businesses as conducted as of the date hereof, except to the extent that the failure to own or possess adequate rights to use such Intellectual Property would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company, the Guarantors and the Significant Subsidiaries have not received any written notice of any claim of infringement or conflict which asserted Intellectual Property rights of others, which infringement or conflict, if the subject of an unfavorable decision, would result in a Material Adverse Effect. There are no pending, or to the Company’s or to each Guarantor’s knowledge, threatened judicial proceedings or interference proceedings challenging the Company’s or any Guarantor’s or Significant Subsidiary’s rights in or to or the validity of the scope of any of the Company’s or the Guarantors’ or Significant Subsidiaries’ patents, patent applications or proprietary information. To the Company’s and to each Guarantor’s knowledge, there are no third parties who have established rights or have any claim in any of the Company’s or the Guarantors’ or Significant Subsidiaries’ patents, patent applications or any patent to be issued therefrom by virtue of any contract, license or other agreement entered into between such entity or individual and the Company or any Guarantor Significant Subsidiary or by any non-contractual obligation, other than by written licenses granted by the Company or the Guarantors or Significant Subsidiaries. None of the Company, the Guarantors or the Significant Subsidiaries has received any written notice of any claim challenging the rights of the Company or the Guarantors or the Significant Subsidiaries in or to any Intellectual Property owned, licensed or optioned by the Company or any Guarantor or Significant Subsidiary which claim, if the subject of an unfavorable decision, would result in a Material Adverse Effect.

Section 3.25 IT Systems. (i)(x) To the knowledge of Company and the Guarantors, there have been no security breach or other compromise of any Company’s or any Guarantor’s

information technology and computer systems, networks, hardware, software, data (including the data of their respective customers, employees, suppliers, vendors and any third party data maintained by or on behalf of them), equipment or technology (collectively, “**IT Systems and Data**”) and (y) the Company and the Guarantors have not been notified of, and have no knowledge of any event or condition that would reasonably be expected to result in, any security breach or other compromise to their IT Systems and Data; (ii) the Company and the Guarantors are presently in material compliance with all applicable laws or statutes and all judgments, orders, rules and

regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Data and to the protection of such IT Systems and Data from unauthorized use, access, misappropriation or modification, except as would not, in the case of this clause (ii), individually or in the aggregate, have a Material Adverse Effect; and (iii) the Company and the Guarantors have implemented backup and disaster recovery technology consistent with industry standards and practices.

Section 3.26 Labor Disputes. No labor disturbance by or dispute with employees of the Company or any Guarantor or Significant Subsidiary exists or, to the knowledge of the Company or any Guarantor, is threatened which would result in a Material Adverse Effect.

Section 3.27 Insurance. The Company, the Guarantors and the Significant Subsidiaries carry, or are covered by, insurance in such amounts and covering such risks as the Company, the Guarantors and the Significant Subsidiaries reasonably believe are adequate for the conduct of their business.

Section 3.28 Licenses and Permits. The Company, the Guarantors and the Significant Subsidiaries possess or have obtained, all licenses, certificates, consents, orders, approvals, permits and other authorizations issued by, and have made all declarations and filings with, the appropriate federal, state, local or foreign governmental or regulatory authorities that are necessary for the ownership or lease of their respective properties or the conduct of their respective businesses as currently conducted, as described in the Public Filings (the “**Permits**”), except where the failure to possess, obtain or make the same would not, individually or in the aggregate, have a Material Adverse Effect. None of the Company, the Guarantors or the Significant Subsidiaries have received written notice of any proceeding relating to revocation or modification of any such Permit or has any reason to believe that such Permit will not be renewed in the ordinary course, except where the failure to obtain any such renewal would not, individually or in the aggregate, have a Material Adverse Effect.

Section 3.29 Taxes. The Company, the Guarantors, and their respective subsidiaries have filed all federal, state, local and foreign tax returns which have been required to be filed and paid all taxes shown thereon through the date hereof, to the extent that such taxes have become due and are not being contested in good faith, except where the failure to do so would not have a Material Adverse Effect. Except as disclosed in the Public Filings, no tax deficiency has been determined adversely to the Company or any Guarantor, or any of their respective subsidiaries, which has had,

or would have, individually or in the aggregate, a Material Adverse Effect. Neither the Company nor any Guarantor has knowledge of any federal, state or other governmental tax deficiency, penalty or assessment which has been or might be asserted or threatened against it or any of its subsidiaries which would have a Material Adverse Effect.

Section 3.30 Compliance with Applicable Laws. The Company and the Guarantors have not been advised, and have no reason to believe, that they and each of their respective subsidiaries are not conducting business in compliance with all applicable laws, rules and regulations of the jurisdictions in which they are conducting business, except where failure to be so in compliance would not result in a Material Adverse Effect.

Section 3.31 Compliance Program. The Company has established and administers a compliance program applicable to the Company, to assist the Company and its directors, officers and employees in complying with applicable regulatory guidelines (including, without limitation, if applicable, those administered by the FDA, the EMA, and any other foreign, federal, state or local governmental or regulatory authority performing functions similar to those performed by the FDA or EMA), except where such noncompliance would not reasonably be expected to have a Material Adverse Effect.

Section 3.32 Disclosure Controls. The Company maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company is not aware of any material weaknesses in its internal control over financial reporting (other than as set forth in the Public Filings). Since December 31, 2023, there has been no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting (other than as set forth in the Public Filings). The Company has established disclosure controls and procedures (as defined in Exchange Act Rules 13a-15 and 15d-15) that comply with the requirements of the Exchange Act. The Company's certifying officers have evaluated the effectiveness of the Company's controls and procedures as of a date within 90 days prior to the filing date of the Form 10-K for the fiscal year most recently ended (such date, the "**Evaluation Date**"). The Company presented in its Form 10-K for the fiscal year most recently ended the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the most recent Evaluation Date.

Section 3.33 Sarbanes-Oxley Act. There is and has been no failure on the part of the Company or, to the knowledge of the Company, any of the Company's directors or officers, in their capacities as such, to comply in all material respects with any applicable provisions of the Sarbanes-Oxley Act and the rules and regulations promulgated thereunder. Each of the principal executive officer and the principal financial officer of the Company (or each former principal executive officer of the Company and each former principal financial officer of the Company as applicable) have made all certifications required by Sections 302 and 906 of the Sarbanes-Oxley Act with respect to all reports, schedules, forms, statements and other documents required to be filed by it or furnished by it to the Commission during the past 12 months. For purposes of the preceding sentence, "principal executive officer" and "principal financial officer" shall have the meanings given to such terms in the Exchange Act Rules 13a-15 and 15d-15.

Section 3.34 Off-Balance Sheet Arrangements. There are no transactions, arrangements and other relationships between and/or among the Company, the Guarantors and/or, to the knowledge of the Company and the Guarantors, any of their affiliates and any unconsolidated entity, including, but not limited to, any structured finance, special purpose or limited purpose entity (each, an "**Off Balance Sheet Transaction**") that would affect materially the Company's liquidity or the availability of or requirements for its capital resources, including

those Off Balance Sheet Transactions described in the SEC's Statement about Management's Discussion and Analysis of Financial Conditions and Results of Operations (Release Nos. 33-8056; 34-45321; FR-61), required to be described in the Public Filings which have not been described as required.

Section 3.35 ERISA. To the knowledge of the Company and the Guarantors, (i) each material employee benefit plan, within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") that is maintained, administered or contributed to by the Company, the Guarantors or any of their affiliates for employees or former employees of the Company, the Guarantors and their respective subsidiaries has been maintained in material compliance with its terms and the requirements of any applicable statutes, orders, rules and regulations, including but not limited to ERISA and the Internal Revenue Code of 1986, as amended (the "Code"); (ii) no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred which would result in a material liability to the Company and the Guarantors with respect to any such plan excluding transactions effected pursuant to a statutory or administrative exemption; and (iii) for each such plan that is subject to the funding rules of Section 412 of the Code or Section 302 of ERISA, no "accumulated funding deficiency" as defined in Section 412 of the Code has been incurred, whether or not waived, and the fair market value of the assets of each such plan (excluding for these purposes accrued but unpaid contributions) equals or exceeds the present value of all benefits accrued under such plan determined using reasonable actuarial assumptions, other than, in the case of (i), (ii) and (iii) above, as would not have a Material Adverse Effect.

Section 3.36 Liquidity Conditions. To the extent the New Notes or the Conversion Shares are no longer "Freely Tradable" (as defined in the Indenture) by a Holder (or any affiliate transferee thereof) at any time following the Closing Date, then, at the request of any such Holder, the Company shall use its commercially reasonable efforts to, as promptly as commercially reasonable following such request, (i) notify each Holder of the unavailability of Rule 144 to effectuate sales of the New Notes and the Conversion Shares, (ii) offer such Holders the opportunity to have their Conversion Shares (including Conversion Shares issuable upon conversion of their then-outstanding New Notes) included on a resale shelf registration statement, (iii) prepare and file a resale shelf registration statement with the SEC covering the resale of such Conversion Shares held by, or issuable upon the conversion of such New Notes held by, any such Holder who requests such inclusion in a reasonably timely manner, and (iv) use its commercially reasonable efforts to maintain the effectiveness of such registration statement until the earlier of (a) the date as of which the New Notes and Conversion Shares are Freely Tradable, and (b) the sale of all Conversion Shares covered by such registration statement. Notwithstanding the foregoing, the Company shall not be so required to notify or include the securities of any Holder pursuant to this section who, to the Company's knowledge, no longer beneficially owns any New Notes or Conversion Shares, and the obligations under this section shall be suspended at any time when the New Notes and Conversion Shares are Freely Tradable.

Section 3.37 Enforceability of Agreements. All agreements between the Company and the Guarantors and third parties expressly referenced in the Public Filings, other than such

agreements that have expired by their terms or whose termination is disclosed in the Public Filings, are legal, valid and binding obligations of the Company or such Guarantor and, to the Company's or such Guarantor's knowledge, enforceable in accordance with their respective terms, except to the extent that (i) enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general equitable principles and (ii) the indemnification provisions of certain agreements may be limited by federal or state securities laws or public policy considerations in respect thereof, and except for any unenforceability that, individually or in the aggregate, would not have a Material Adverse Effect.

ARTICLE IV
CLOSING CONDITIONS & NOTIFICATION

Section 4.1 Conditions to Obligations of each Holder, the Company and the Guarantors. The obligations of each Holder to deliver the Exchanged Notes and of the Company and the Guarantors to deliver the Consideration are subject to the satisfaction at or prior to the Closing of the following conditions:

- (a) no governmental authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, judgment, decree, injunction or other order (whether temporary, preliminary or permanent) that is in effect and precludes, enjoins or otherwise prohibits the consummation of the Transactions or the other transactions contemplated by the Transaction Documents, and no statute, rule, regulation, judgment, decree, injunction or other order (whether temporary, preliminary or permanent) shall have been enacted, entered, promulgated or enforced by any governmental authority that prohibits or makes illegal this Agreement, the Transaction Documents or the transactions contemplated hereby or thereby;
- (b) there shall be no action, lawsuit, arbitration, claim or proceeding pending that enjoins the consummation of this Agreement, the Transaction Documents or the transactions contemplated hereby or thereby;
- (c) solely with regard to the obligations of each Holder to deliver the Exchanged Notes, (i) the representations and warranties of the Company and the Guarantors contained in Article III shall be true and correct as of the Closing in all material respects (except for those representations and warranties that are qualified by materiality or material adverse effect, which shall be true and correct in all respects) with the same effect as though such representations and warranties had been made as of the Closing, and, unless notice is given pursuant to Section 4.2 below, each of the

representations and warranties contained therein shall be deemed to have been reaffirmed and confirmed as of the Closing Date and (ii) the Company and the Guarantors shall have complied, in all material respects, with all covenants and other agreements in this Agreement required to be performed by the Company and the Guarantors at or prior to Closing;

- (d) solely with regard to the obligation of the Company and the Guarantors to deliver the Consideration, (i) the representations and warranties of each Holder contained

in Article II shall be true and correct as of the Closing in all material respects (except for those representations and warranties that are qualified by materiality or material adverse effect, which shall be true and correct in all respects) with the same effect as though such representations and warranties had been made as of the Closing, and, unless notice is given pursuant to Section 4.2 below, each of the representations and warranties contained therein shall be deemed to have been reaffirmed and confirmed as of the Closing Date and (ii) each Holder shall have complied, in all material respects, with all covenants and other agreements in this Agreement required to be performed by them at or prior to Closing;

- (e) the Company, the Guarantors and the Trustee shall have entered into the Indenture;
- (f) the Company, the Guarantors and the Trustee shall have entered into the Security Agreement;
- (g) solely with regard to the obligations of each Holder to deliver the Exchanged Notes, the Company and the Guarantors shall have executed and delivered to the Holders a perfection certificate dated as of the Closing Date in form and substance reasonably satisfactory to the Collateral Agent;
- (h) solely with regard to the obligations of each Holder to deliver the Exchanged Notes, except as otherwise provided for in the Collateral Documents (as defined in the Indenture), the Indenture or the other documents entered into in connection with the Transactions, on the Closing Date, the Collateral Agent shall have received the Collateral Documents and other certificates, agreements or instruments necessary to create a valid security interest in favor of the Collateral Agent, for its benefit and the benefit of the Trustee and the holders of the Securities, in all of the Collateral described in the Security Agreement substantially in form and substance reasonably satisfactory to the Collateral Agent, together with, subject to the requirements of the Collateral Documents, stock certificates and promissory notes required to be delivered pursuant to the Collateral Documents, in each case accompanied by instruments of transfer and stock powers undated and endorsed in blank, Uniform Commercial Code financing statements in appropriate form for filing, filings with the United States Patent and Trademark Office and United States Copyright Office in appropriate form for filing where applicable and each such document, instrument or filing shall, unless expressly not required by the Indenture, the Collateral

of this shall, unless expressly not required by the indenture, the Consents Documents or applicable law, be executed by the Company and the Guarantors, as applicable, and each such document shall be in full force and effect;

- (i) the Other Transactions shall be consummated concurrently with the Closing of the Transactions, in accordance with the terms of the documents related thereto in the form entered into on the date hereof, and, no amendments, modifications or waivers of any documentation relating to the Other Transactions shall have been made since the versions of such documentation provided to the Holders pursuant to Section 3.10 hereof;

- (j) solely with regard to the obligations of each Holder to deliver the Exchanged Notes, the Company shall have delivered to each Holder (i) an opinion of Orrick, Herrington & Sutcliffe LLP, counsel to the Company and the Guarantors, addressed to such Holder, in form and substance reasonably acceptable to such Holder, and (ii) such other customary documentation as such Holder shall reasonably request;
- (k) solely with regard to the obligations of each Holder to deliver the Exchanged Notes, the Company shall have furnished or caused to be furnished to the Holders, dated as of the Closing Date, a certificate of the Chief Executive Officer or Chief Financial Officer of the Company and each Guarantor, or other officer satisfactory to the Holders, stating that (i) the representations and warranties of the Company and the Guarantors set forth in Article III of this Agreement are true and correct with the same force and effect as though expressly made on and as of such date; (ii) the Company and the Guarantors have complied with all the agreements and covenants hereunder and satisfied all the conditions on their part to be performed or satisfied hereunder at or prior to such date;
- (l) solely with regard to the obligations of each Holder to deliver the Exchanged Notes, the Company shall have furnished or caused to be furnished to the Holders, dated as of the Closing Date, a certificate of each of the Company and the Guarantors, executed by a secretary or assistant secretary (or equivalent officer) thereof, which shall (A) certify that (i) attached thereto is a true and complete copy of the certificate or articles of incorporation, formation or organization of the Company or the applicable Guarantor certified by the relevant authority of its jurisdiction or organization, (ii) the certificate or articles of incorporation, formation or organization of the Company or the applicable Guarantor attached thereto has not been amended (except as attached thereto) since the date reflected thereon, (iii) attached thereto is a true and correct copy of the by-laws or operating, management, partnership or similar agreement of the Company or the applicable Guarantor together with all amendments thereto since the initial effectiveness of such document or the last amendment and restatement, as applicable, and such by-laws or operating, management, partnership or similar agreement is in full force and effect and (iv) attached thereto is a true and complete copy of the resolutions or written consent, as applicable, of the board of directors or managing members or other governing body of the Company or the applicable Guarantor authorizing the execution and delivery of this Agreement and the performance of this Agreement and any of the other Transaction Documents to which the Company or such Guarantor is a party and the Transactions, which resolutions or consent have not been modified, rescinded or amended (other than as attached thereto) and are in full force and effect, and (B) identify by name and title and bear the signatures of the officers, managers, directors or other authorized signatories of the Company or the applicable Guarantor who are authorized to sign this Agreement and the other Transaction Documents to which the Company or such Guarantor is a party; and
- (m) the Holder Securities shall be eligible for clearance and settlement through DTC under an unrestricted CUSIP.

Section 4.2 Notification. Each Holder hereby covenants and agrees to promptly notify the Company upon the occurrence of any event prior to the Closing that would cause any representation, warranty, or covenant contained in Article II to be false or incorrect in any material respect (or, with respect to those representations and warranties that are qualified by materiality or material adverse effect, in any respects). The Company hereby covenants and agrees to notify the Holders upon the occurrence of any event prior to the Closing that would cause any representation, warranty, or covenant contained in Article III to be false or incorrect in any material respect (or, with respect to those representations and warranties that are qualified by materiality or material adverse effect, in any respects).

ARTICLE V **INDEMNIFICATION**

Section 5.1 Indemnification. Each of the Company and the Guarantors, jointly and severally, agrees to indemnify each of the Holders and their respective affiliates, and their respective equityholders, directors, officers, employees, agents, members, partners, managers, advisors (and any other persons with a functionally equivalent role notwithstanding a lack of such title or any other title) and each person, if any, who controls a Holder within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each, a “**Indemnified Party**” and, collectively, the “**Indemnified Parties**”) from and against any losses, claims, damages, costs, expenses or liabilities, and hold each of them harmless against, any and all actions, suits, proceedings (including any investigations, litigation or inquiries), demands, and causes of action, and, in connection therewith, and promptly upon demand, pay or reimburse each of them for all costs, losses, claims, damages, settlement costs or liabilities of any kind or nature whatsoever (including the reasonable and documented fees and disbursements of counsel, subject to redaction to preserve privilege, and all other documented expenses reasonably incurred in connection with investigating, defending or preparing to defend any such matter that may be incurred by them or asserted against or involve any of them) (collectively, “**Losses**”), as a result of, relating to, arising out of, or resulting from any Third-Party Claim (as defined herein) asserted against such Indemnified Party arising from or in any way related to, or as a result of any action taken or purported to have been taken by any person in connection with the consummation of, the transactions contemplated by this Agreement or any of the other Transaction Documents. Each of the Company and the Guarantors, jointly and severally, also agrees to indemnify the Indemnified Parties for any action arising out of any breach of representations and warranties in any of the Transaction Documents or any other claim arising in connection with the Transactions.

Section 5.2 Indemnification Procedures. Promptly after any Indemnified Party has received notice of any indemnifiable claim hereunder, or the commencement of any action, suit or proceeding by a third person (other than the Company, the Guarantors and their respective affiliates or any other Holder or its affiliates, but including any derivative action, suit or proceeding) (each a “**Third-Party Claim**”), which the Indemnified Party believes in good faith is an indemnifiable claim under this Agreement, the Indemnified Party shall give the Company and the Guarantors prompt written notice of such Third-Party Claim or the commencement of such

the Guarantors prompt written notice of such Third-Party Claim or the commencement of such action, suit or proceeding, but failure to so notify the Company and the Guarantors will not relieve the Indemnifying Party from any liability it may have to such Indemnified Party hereunder except to the extent that the Company and the Guarantors are prejudiced by such failure, and then only to

the extent of such prejudice. Such notice shall state the nature and the basis of such Third-Party Claim to the extent then known. The Company and the Guarantors shall have the right to defend and settle, at their own expense and by their own counsel who shall be reasonably acceptable to the Indemnified Party, any such matter as long as the Company and the Guarantors pursue the same diligently and in good faith. After the Company and the Guarantors have notified the Indemnified Party of its intention to undertake to defend or settle any such asserted liability, and for so long as the Company and the Guarantors diligently pursue such defense, the Company and the Guarantors shall not be liable for any additional legal expenses incurred by the Indemnified Party in connection with any defense or settlement of such asserted liability; *provided, however*, that the Indemnified Party shall be entitled (i) at its expense, to participate in the defense of such asserted liability and the negotiations of the settlement thereof and (ii) if the Company and the Guarantors have failed after a reasonable period of time to assume the defense or employ counsel reasonably acceptable to the Indemnified Party, or if the Indemnified Party has, in the reasonable opinion of counsel, a material conflict on any material issue between the position of such Indemnified Party and any other party being represented by such counsel selected by the Company and the Guarantors, then the Indemnified Party shall have the right to select its own counsel and to assume such legal defense and otherwise to participate in the defense of such action, with the reasonable and documented expenses and fees of one such counsel (in addition to any necessary local counsel) and other reasonable and documented expenses related to such participation to be reimbursed by the Company and the Guarantors as incurred. Notwithstanding any other provision of this Agreement, (x) the Company and the Guarantors shall not settle any Third-Party Claim under which indemnification may be sought hereunder without the consent of the applicable Indemnified Parties, unless the settlement thereof imposes no liability or obligation on, and includes a complete, unconditional and irrevocable release from liability of, and does not include any statement or admission of fault, culpability, wrongdoing or malfeasance by, the Indemnified Party and (y) the Company and the Guarantors shall not be liable for any settlement entered into by an Indemnified Party without the consent of the Company and the Guarantors (which consent shall not be unreasonably withheld, conditioned or delayed).

If the indemnification provided in the preceding paragraph is insufficient, not permitted by applicable law or is judicially determined to be unavailable, then in lieu of indemnifying such Indemnified Person hereunder, the Company and the Guarantors shall contribute to the amount paid or payable by such Indemnified Person as a result of any applicable losses and expenses.

Section 5.3 Limitation on Liability. Notwithstanding anything to the contrary in this Agreement, none of the Company, the Guarantors nor their respective affiliates shall be required to indemnify or hold harmless any Indemnified Party to the extent of any Losses that are finally determined by a court of competent jurisdiction to have resulted from the bad faith, fraud, gross negligence or willful misconduct of such Indemnified Party, or a settlement is entered into by such

Indemnified Party admitting to such bad faith, fraud, gross negligence or willful misconduct, or from a claim solely among the Indemnified Parties. To the extent that the Company, the Guarantors or their respective affiliates have provided indemnification pursuant to this Article V prior to any such determination by a court of competent jurisdiction or such settlement, each Indemnified Party so determined to have suffered such non-indemnifiable Losses shall promptly refund to the Company or the Guarantors, by wire transfer of immediately available funds, any amounts so advanced by the Company, the Guarantors or their respective affiliates.

Section 5.4 Release. In consideration for the agreements and covenants set forth in this Agreement, the Company and the Guarantors, on behalf of themselves and each of their respective affiliates, knowingly, voluntarily and unconditionally release and forever discharge from and for, and covenant not to sue, each Indemnified Party for any and all actions or inactions arising out of, relating to, or resulting from the Transactions that the Company and the Guarantors have or may have, now or in the future; provided, however, that this Section 5.4 will not apply to any claims against any Holder with respect to a breach of this Agreement or any other Transaction Document or any rights of the Company or the Guarantors under this Agreement or any other Transaction Document.

ARTICLE VI **MISCELLANEOUS**

Section 6.1 Entire Agreement. This Agreement and any documents and agreements executed in connection with the Transactions embody the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersede all prior and contemporaneous oral or written agreements, representations, warranties, contracts, correspondence, conversations, memoranda and understandings between or among the parties or any of their agents, representatives or affiliates relative to such subject matter, including, without limitation, any term sheets, emails or draft documents.

Section 6.2 Construction. References in the singular shall include the plural, and vice versa, unless the context otherwise requires. References in the masculine shall include the feminine and neuter, and vice versa, unless the context otherwise requires. Headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meanings of the provisions hereof. Neither party, nor its respective counsel, shall be deemed the drafter of this Agreement for purposes of construing the provisions of this Agreement, and all language in all parts of this Agreement shall be construed in accordance with its fair meaning, and not strictly for or against either party.

Section 6.3 Governing Law; Waiver of Jury Trial. This Agreement shall in all respects be construed in accordance with and governed by the substantive laws of the State of New York, without reference to its choice of law rules. Each of the Company, the Guarantors and the Holders, irrevocably waives any and all right to trial by jury with respect to any legal proceeding arising out of the Transactions contemplated by this Agreement.

Section 6.4 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Any counterpart or other signature hereon delivered by facsimile or any standard form of telecommunication or e-mail shall be deemed for all purposes as constituting good and valid execution and delivery of this Agreement by such party.

Section 6.5 Use of Holder Names. None of the Company, the Guarantors nor any of their respective affiliates and subsidiaries (if any) (collectively, the “**Company Group**”) shall identify, or permit any of its employees, agents or representatives to identify, any Holder (whether in connection with the Company or the Guarantors or in the Holder’s capacity as an investor in the

Company or the Guarantors) in any written or oral public communications or issue any press release or other disclosure of the Holder's name or the name of any of its affiliates, or any derivative of any of the foregoing names (collectively, the "**Holder Names**"), in each case except (i) as authorized in writing in advance by the Holder in each such instance (electronic mail to suffice) or (ii) as required by applicable law, legal process or regulatory request ("**Applicable Law**"); provided, that prior to any such disclosure such disclosing member of the Company Group as soon as practicable notifies the Holder of such requirement (except where prohibited by Applicable Law) so that the Holder (or its applicable affiliate) may seek a protective order or other appropriate remedy prior to such disclosure. Notwithstanding the foregoing, the Company may make disclosures to an auditor or governmental or regulatory authority pursuant to any routine investigation, inspection, examination or inquiry without providing the Holder with any notification thereof, unless the Holder is the subject of any such investigation, inspection, examination or inquiry (in which case the preceding sentence shall govern).

Section 6.6 Expenses. The Company shall reimburse the Holders for all reasonable and documented fees and out-of-pocket expenses incurred in connection with the Transactions promptly and, to the extent such documented fees and expenses are invoiced to the Company at least one business day prior to Closing, on the Closing Date; *provided*, that the maximum amount of fees and expenses that the Company shall be obligated to reimburse to the Holders pursuant to this Section 6.6 shall not exceed \$425,000 in the aggregate.

Section 6.7 Severability. The invalidity or unenforceability of any provision hereof will in no way affect the validity or enforceability of any other provision or the validity and enforceability of this Agreement.

Section 6.8 Assignment; Binding Effect. No Holder shall convey, assign or otherwise transfer any of its rights or obligations under this Agreement without the express written consent of the Company, except to an affiliate of such Holder who assumes its obligations hereunder pursuant to a joinder or similar agreement reasonably acceptable to the Company, and the Company and the Guarantors shall not convey, assign or otherwise transfer any of their respective rights and obligations under this Agreement without the express written consent of each Holder. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 6.9 Reliance by the Placement Agent. The Placement Agent, acting as financial advisor to the Company, may rely on each representation and warranty of the Company and of each Holder, made on behalf of itself, herein or pursuant to the terms hereof with the same force and effect as if such representation or warranty were made directly to the Placement Agent. The Placement Agent will be a third-party beneficiary of this Agreement to the extent provided in this Section 6.9.

Section 6.10 Waiver; Remedies. No delay on the part of any Holder, the Company or the Guarantors in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any waiver on the part of any Holder, the Company or the Guarantors of any right, power or privilege under this Agreement operate as a waiver of any other right, power or privilege of such party under this Agreement, nor shall any single or partial exercise of any

right, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power or privilege under this Agreement. All waivers under this Agreement shall be in writing and signed by the party against whom such waiver is to be enforced.

Section 6.10 Amendment. This Agreement may be modified or amended only by written agreement of each of the parties to this Agreement.

Section 6.11 Survival. The provisions of Article II, Article III, Section 4.2, Article V and Article VI shall survive the Closing.

Section 6.12 Notice. Any notice or communications hereunder shall be in writing and will be deemed to have been given if delivered in person or by electronic transmission or by registered or certified first-class mail or courier service to the following addresses, or such other addresses as may be furnished hereafter by notice in writing:

if to the Company or the Guarantors:

Luminar Technologies, Inc.
2603 Discovery Drive
Suite 100
Orlando, FL 32826
Attention: Al Prescott, CLO
Telephone: (407) 900-5259
Email: al@luminartech.com

with a copy to:

Orrick, Herrington & Sutcliffe LLP
631 Wilshire Boulevard
Santa Monica, CA 90401
Attention: Daniel S. Kim
Telephone: (310) 633-2803
Email: dan.kim@orrick.com

if to the Holders, as set forth on Exhibit A hereto.

Section 6.13 Termination. The Company and the Guarantors may terminate this Agreement if there has occurred any breach or withdrawal by a Holder of any covenant, representation or warranty set forth in Article II in any material respect (or, with respect to those representations and warranties that are qualified by materiality or material adverse effect, in any respect). A Holder may terminate this Agreement if (i) there has occurred any breach or withdrawal by the Company or the Guarantors of any covenant, representation or warranty set forth in Article III in any material respect (or, with respect to those representations and warranties that are qualified

iii in any material respect (or, with respect to those representations and warranties that are qualified by materiality or material adverse effect, in any respect) or (ii) the Closing has not occurred by 5:00 p.m. (New York City time) on the fifth (5th) business day following the date hereof.

Section 6.14 Other Transactions. Nothing contained herein or in any other Transaction Document or other document related to the Transactions, and no action taken by any Holder pursuant hereto or thereto or by any other party pursuant to such other documents, shall be deemed to constitute a Holder and any other Holder or any other party hereunder or under such other documents as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that such entities are in any way acting in concert or as a group with respect to their obligations hereunder or thereunder or with respect to the transactions contemplated hereby or thereby.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed as of the date first above written.

LUMINAR TECHNOLOGIES, INC.

By: _____
Name:
Title:

LUMINAR, LLC, as Guarantor

By: _____
Name:
Title:

LUMINAR SEMICONDUCTOR, INC., as
Guarantor

By: _____
Name:
Title:

FREEDOM PHOTONICS LLC, as Guarantor

By: _____
Name:
Title:

EMFOUR ACQUISITION CO., LLC, as
Guarantor

By: _____
Name:
Title:

EM4, LLC, as Guarantor

By: _____

Name:

Title:

OPTOGRATION, INC., as Guarantor

By: _____

Name:

Title:

SIGNATURE PAGE TO
EXCHANGE AGREEMENT

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed as of the date first above written.

HOLDERS:

By: _____
Name:
Title:

SIGNATURE PAGE TO
EXCHANGE AGREEMENT

**LUMINAR TECHNOLOGIES, INC.
PURCHASE AGREEMENT**

August 6, 2024

The undersigned set forth on Exhibit A hereto (each, a “**Purchaser**”), enters into this Purchase Agreement (this “**Agreement**”) with Luminar Technologies, Inc. (the “**Company**”) and the subsidiaries of the Company set forth on the signature page hereto as Guarantors (the “**Guarantors**”), as of the date first written above, whereby the Purchasers will purchase the Company’s new Senior Secured Notes due 2028 (the “**New Notes**”) that will be issued pursuant to the provisions of an indenture to be dated as of the Closing Date (as defined below) (the “**Indenture**”) in substantially the form attached hereto as Exhibit B between the Company, the Guarantors, and GLAS Trust Company LLC, as Trustee (the “**Trustee**”) and Collateral Agent (the “**Collateral Agent**”), which New Notes will be guaranteed (the “**Guarantees**”) and, together with the New Notes, the “**Securities**”) by the Guarantors, and secured pursuant to the terms of a security agreement to be dated as of the Closing Date (the “**Security Agreement**”) in substantially the form attached hereto as Exhibit C.

On and subject to the terms hereof, the parties hereto agree as follows:

**ARTICLE I
PURCHASE OF SECURITIES**

Section 1.1 Purchase and Sale. Upon and subject to the terms set forth in this Agreement, at the Closing, (a) each Purchaser shall deliver or cause to be delivered to the Company an amount in cash, in immediately available funds, as set forth under the heading “Purchase Price” on Exhibit A hereto (the “**Purchase Price**”) and (b) upon receipt of the Purchase Price, the Company and the Guarantors hereby agree to issue and deliver to each Purchaser the principal amount of the Securities specified on Exhibit A under the heading “Purchaser Securities.” The aggregate principal amount of Securities issued to each Purchaser as set forth on Exhibit A shall be herein referred to as the “**Purchaser Securities.**” The Securities will bear interest from and including the Closing Date. The transactions contemplated by this Agreement, including without limitation the issuance, delivery and acceptance of the Securities and the payment of the Purchase Price to the Company, are collectively referred to herein as the “**Transactions.**”

Section 1.2 Closing. Subject to the satisfaction or valid waiver of all closing conditions set forth in Article IV hereto, the closing of the Transactions (the “**Closing**”) shall occur on or before 9:00 a.m. (New York City time) on or before August 8, 2024, or such other date as the parties may mutually agree (the “**Closing Date**”). At the Closing, (a) each Purchaser shall deliver or cause to be delivered to the Company the Purchase Price as specified on Exhibit A hereto and (b) the Company and the Guarantors shall deliver to each Purchaser the aggregate principal amount of Purchaser Securities as specified on Exhibit A hereto. Concurrently with the Transaction, the Company and the Guarantors are entering into exchange agreements relating to the Company’s outstanding 1.25% convertible senior notes due 2026 (the “**Existing Convertible Notes**”) (collectively, the “**Other Transactions**”). At the Closing, (A) each Purchaser shall deliver the Purchase Price via wire transfer to the account designated by the Company and (B) the Company

shall deliver to each Purchaser the Purchaser Securities specified on Exhibit A hereto in global form through the Depository Trust Company (“DTC”).

Section 1.3 No Joint Liability. The obligations of each Purchaser under this Agreement are several and not joint, and no Purchaser shall have liability to any person for the performance or non-performance of any obligation of any other Purchaser hereunder. Notwithstanding that this is a single agreement amongst multiple Purchasers, the Company covenants and agrees, for the benefit of each Purchaser, that it will not share or otherwise make available to any other Purchaser, any banking or DWAC-related information provided by such Purchaser to the Company.

ARTICLE II **COVENANTS, REPRESENTATIONS AND WARRANTIES OF THE PURCHASERS**

Each Purchaser, severally and not jointly, hereby covenants as follows, and makes the following representations and warranties, each of which is and shall be true and correct on the date hereof and at the Closing, to the Company and the Guarantors, and all such covenants, representations and warranties shall survive the Closing.

Section 2.1 Power and Authorization. Such Purchaser is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation, and has the power, authority and capacity to execute and deliver this Agreement, to perform its obligations hereunder, and to consummate the Transactions. Exhibit A hereto includes the true, correct and complete name and address of such Purchaser.

Section 2.2 Valid and Enforceable Agreement; No Violations. This Agreement has been duly executed and delivered by such Purchaser and constitutes a legal, valid and binding obligation of such Purchaser, enforceable against such Purchaser in accordance with its terms, except as such enforcement may be subject to (a) bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar laws affecting or relating to enforcement of creditors’ rights generally, or (b) general principles of equity, whether such enforceability is considered in a proceeding at law or in equity (the “**Enforceability Exceptions**”). Upon execution and delivery, each other Transaction Document (as defined below) to which it is a party will constitute a legal, valid and binding obligation of such Purchaser, enforceable against such Purchaser in accordance with their terms, except as such enforcement may be subject to the Enforceability Exceptions. The execution and delivery of this Agreement and each other Transaction Document to which it is a party and the consummation of the Transactions will not violate, conflict with or result in a breach of or default under (i) such Purchaser’s organizational documents, (ii) any agreement or instrument to which such Purchaser is a party or by which such Purchaser or any of its assets are bound, or (iii) any laws, regulations or governmental or judicial decrees, injunctions or orders applicable to such Purchaser, except in the case of clauses (ii) or (iii), where such violations, conflicts, breaches or defaults would not affect such Purchaser’s ability to consummate the Transactions in any material respect.

Section 2.3 Institutional Accredited Investor or Qualified Institutional Buyer. Such Purchaser is either: (a) an institutional “accredited investor” within the meaning of Rule

2

501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act of 1933, as amended (the “**Securities Act**”) or (b) a “qualified institutional buyer” within the meaning of Rule 144A promulgated under the Securities Act.

Section 2.4 No Affiliates. The Purchaser is not, and has not been at any time during the consecutive three-month period preceding the date hereof, a director, officer or “affiliate” within the meaning of Rule 144 promulgated under the Securities Act of the Company.

Section 2.5 No Prohibited Transactions. Such Purchaser has not, directly or indirectly, and no person acting on behalf of or pursuant to any understanding with it has, disclosed to a third party (other than (i) its advisors or as required by Applicable Law (as defined below) or (ii) with the Company’s prior approval or consent) any information regarding the Transactions, engaged in any transactions in the securities of the Company (including, without limitation, any Short Sales (as defined below) involving any of the Company’s securities) since the time that investment professionals affiliated with such Purchaser (i.e., persons other than compliance personnel affiliated with such Purchaser) were first contacted by either the Company, Matthews South, LLC (the “**Placement Agent**”) or any other person acting on the Company’s behalf regarding the Transactions, this Agreement or an investment in the Securities, and such Purchaser shall not engage in any such activities until the Disclosure Time (as defined below). “**Short Sales**” include, without limitation, all “short sales” as defined in Rule 200 of Regulation SHO promulgated under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), and all types of direct and indirect stock pledges, forward sale contracts, options, puts, calls, short sales, swaps, derivatives and similar arrangements (including, without limitation, on a total return basis), and sales and other transactions through non-U.S. broker-dealers or foreign regulated brokers. Solely for purposes of this Section 2.5, subject to such Purchaser’s compliance with its obligations under the U.S. federal securities laws and such Purchaser’s internal policies, (a) “Purchaser” shall not be deemed to include any employees, subsidiaries, desks, groups or affiliates of such Purchaser that are effectively walled off by appropriate “fire wall” information barriers approved by such Purchaser’s legal or compliance department (and thus such walled off parties have not been privy to any information concerning the Transactions), and (b) the foregoing representations and covenants of this Section 2.5 shall not apply to any transaction by or on behalf of an affiliate of a Purchaser that was effected without the advice or participation of, or such affiliate’s receipt of information regarding the Transactions provided by, such Purchaser.

Section 2.6 Adequate Information; No Reliance. Such Purchaser acknowledges and agrees that (a) such Purchaser has been furnished with all materials it considers relevant to making an investment decision to enter into the Transactions and has had the opportunity to review the Company’s filings and submissions with the Securities and Exchange Commission (the “**SEC**”), including, without limitation, all information filed or furnished pursuant to the Exchange Act on or prior to the date hereof (collectively the “**Public Filings**”) (b) such Purchaser has had the

of prior to the date hereof (collectively, the "Public Filings"); (c) such Purchaser has had the opportunity to ask questions of the Company concerning the Company, its business, operations, financial performance, financial condition and prospects and the terms and conditions of the Transactions, (c) such Purchaser has had the opportunity to consult with its accounting, tax, financial and legal advisors to be able to evaluate the risks involved in the Transactions and to make an informed investment decision with respect to such Transactions, (d) such Purchaser has evaluated the tax and other consequences of the Transactions and receipt and ownership of the

Purchaser Securities with its tax, accounting or legal advisors, (e) the Company and the Placement Agent are not acting as a fiduciary or financial or investment advisor to such Purchaser and (f) such Purchaser is not relying, and has not relied, upon any statement, advice (whether accounting, tax, financial, legal or other), representation or warranty made by the Company, the Placement Agent or any of their affiliates or representatives except for (i) the Public Filings and (ii) the representations and warranties made by the Company and the Guarantors in this Agreement. Such Purchaser (w) is able to fend for itself in the Transactions; (x) has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its prospective investment in the Purchaser Securities; (y) has the ability to bear the economic risks of its prospective investment and can afford the complete loss of such investment; and (z) acknowledges that investment in the Purchaser Securities involves a high degree of risk.

Section 2.7 Acknowledgements. Such Purchaser acknowledges and agrees that there is no assurance that a public market will exist or continue to exist for the Securities. Such Purchaser acknowledges that (a) the issuance of the Securities pursuant to the Transactions has not been registered or qualified under the Securities Act or any state securities laws, and the Securities are being offered and sold in reliance upon exemptions provided in the Securities Act and state securities laws for transactions not involving any public offering and, therefore, cannot be sold, transferred, offered for sale, pledged, hypothecated or otherwise disposed of unless they are subsequently registered and qualified under the Securities Act and applicable state laws or unless an exemption from such registration and qualification is available, and (b) it is purchasing the Securities for investment purposes only for its own account and not with any view toward a distribution thereof or with any intention of selling, distributing or otherwise disposing of the Securities in a manner that would violate the registration requirements of the Securities Act. Such Purchaser acknowledges that the Securities will bear a legend to the effect that the Purchaser may not transfer any Securities except (i) to a "qualified institutional buyer" within the meaning of and in accordance with Rule 144A, (ii) under any other available exemption from the registration requirements of the Securities Act, (iii) pursuant to a registration statement that has become effective under the Securities Act or (iv) as otherwise specified in such legend. Such Purchaser understands that the Company is relying upon the representations and agreements contained in this Agreement for the purpose of determining whether such Purchaser's participation in the Transactions meets the requirements for the exemptions referenced in this Section 2.7.

Section 2.8 Taxpayer Information. Such Purchaser will deliver to the Company a complete and accurate IRS Form W-9 or IRS Form W-8BEN, W-8BEN E or W-8ECI, as appropriate.

Section 2.9 Sanctions. The operations of such Purchaser have been conducted in material compliance with the rules and regulations administered or conducted by OFAC (as defined below) applicable to such Purchaser. Such Purchaser has performed due diligence necessary to reasonably determine that its beneficial owners are not named on the lists of denied parties or blocked persons administered by OFAC, resident in or organized under the laws of a country that is the subject of Sanctions (as defined below), or otherwise the subject of Sanctions, except as permitted under Sanctions.

Section 2.10 Financial Adviser Fee. Each Purchaser understands that the Company intends to pay the Placement Agent a fee in respect of the Transactions.

Section 2.11 No Reliance on the Placement Agent. Each Purchaser acknowledges and agrees that the Placement Agent has not acted as a financial advisor or fiduciary to the Purchaser and that the Placement Agent and its directors, officers, employees, representatives and controlling persons have no responsibility for making, and have not made, any independent investigation of the information contained herein or in the Company's SEC filings and make no representation or warranty to such Purchaser, express or implied, with respect to the Company, the Existing Convertible Notes or the New Notes or the accuracy, completeness or adequacy of the information provided to each Purchaser or any other publicly available information, including the Public Filings, nor will any of the foregoing persons be liable for any loss or damages of any kind resulting from the use of the information contained therein or otherwise supplied to each Purchaser.

Section 2.12 Further Action. Such Purchaser agrees that it will, upon request, execute and deliver any additional documents reasonably determined to be necessary by the Company, the Placement Agent or the Trustee to complete the Transactions.

ARTICLE III

COVENANTS, REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND THE GUARANTORS

Each of the Company and the Guarantors hereby covenants as follows, and makes the following representations and warranties, each of which is and shall be true and correct on the date hereof and at the Closing, to the Purchasers, and all such covenants, representations and warranties shall survive the Closing.

Section 3.1 Power and Authorization; Enforceability. The Company and each Guarantor have been duly organized, validly existing as a corporation and in good standing under the laws of their respective jurisdictions of organization. The Company and each Guarantor are duly licensed or qualified as a foreign corporation for transaction of business and in good standing under the laws of each other jurisdiction in which their respective ownership or lease of property or the conduct of their respective businesses requires such license or qualification, and have all corporate power and authority necessary to own or hold their respective properties and to conduct their respective businesses as described in the Public Filings, except where the failure to be so qualified or in good standing or have such power or authority would not, individually or in the aggregate, have a Material Adverse Effect (as defined below). The Company and each of the Guarantors has full legal right, power and authority to enter into this Agreement and the other Transaction Documents and perform the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by the Company and the Guarantors and constitutes a legal, valid and binding obligation of the Company and the Guarantors, enforceable against the Company and the Guarantors in accordance with its terms, except as such enforcement may be subject to the Enforceability Exceptions and except to the extent that the indemnification and contribution provisions of Article V hereof may be limited by federal or state securities laws and public policy considerations in respect thereof. Upon execution and delivery, each of the Indenture, the Securities and the Security Agreement (this Agreement, together with the Indenture, the Securities and the Security Agreement, collectively, the "**Transaction Documents**") will constitute a legal, valid and binding agreement of the Company and the Guarantors party thereto, enforceable against each of them in accordance with its terms, except as such enforcement may be subject to the Enforceability Exceptions.

Section 3.2 No Consents; No Violations; No Conflicts. Assuming the accuracy of each Purchaser's representations and warranties hereunder, no consent, approval, authorization, order, registration or qualification of or with any court or arbitrator or any governmental or regulatory authority is required for the execution, delivery and performance by the Company of this Agreement and the other Transaction Documents and the consummation by the Company and the Guarantors of the transactions contemplated by the Transaction Documents, except for such consents, approvals, authorizations, orders and registrations or qualifications (i) as may be required under applicable state securities laws, (ii) as may be required under the Securities Act and (iii) as have been previously obtained by the Company. None of the Company, the Guarantors, or any subsidiary that is a significant subsidiary (as such term is defined in Rule 1-02 of Regulation S-X promulgated by the SEC (as defined below)) (each, a "**Significant Subsidiary**" and, collectively, the "**Significant Subsidiaries**") is (i) in violation of its charter or by-laws or similar organizational documents; (ii) in default, and no event has occurred that, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any indenture, mortgage, deed of trust, loan agreement or other similar agreement or instrument to which the Company, such Guarantor or such Significant Subsidiary is a party or by which the Company, such Guarantor or such Significant Subsidiary is bound or to which any of the property or assets of the Company, such Guarantor or such Significant Subsidiary is subject; or (iii) in violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of each of clauses (ii) and (iii) above, for any such violation or default that would not, individually or in the aggregate, have a Material Adverse Effect. To the Company's and the Guarantors' knowledge, no other party under any material contract or other agreement to which the Company or any Guarantor or Significant Subsidiary is a party is in default in any respect thereunder where such default would have a Material Adverse Effect. Neither the execution of this Agreement or the other Transaction Documents, nor the issuance, offering or sale of the Securities, nor the consummation of any of the Transactions, nor the compliance by the Company and the Guarantors with the terms and provisions of the Transaction Documents will conflict with, or will result in a breach of, any of the terms and provisions of, or has constituted or will constitute a default under, or has resulted in or will result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company pursuant to the terms of any contract or other agreement to which the Company may be bound or to which any of the property or assets of the Company is subject, except (i) such conflicts, breaches or defaults as may have been waived, (ii) such conflicts, breaches and defaults that would not have a Material Adverse Effect and (iii) Permitted Liens (as defined in the Indenture); nor will such action result (x) in any violation of the provisions of the organizational or governing documents of the Company or any Guarantor, or (y) in any material violation of the provisions of any statute or any order, rule or regulation applicable to the Company or any Guarantor or of any court or of any federal, state or other regulatory authority or other government body having jurisdiction over the Company or any Guarantor, except, in the case of this clause (y), where such violation would not have a Material Adverse Effect. Assuming the accuracy of each Purchaser's representations and warranties hereunder, the Indenture is not required to be qualified under the Trust Indenture Act of 1939, as amended.

Section 3.3 Validity of Purchaser Securities. The issuance of the New Notes and the Guarantees has been duly authorized by the Company and the Guarantors, respectively, and, when executed and authenticated in accordance with the provisions of the Indenture (in the case of the

New Notes) and delivered to the applicable Purchaser pursuant to the Transactions against delivery of the Purchase Price therefor in accordance with the terms of this Agreement, the New Notes and the Guarantees will be valid and binding obligations of the Company and the Guarantors, respectively, enforceable in accordance with their terms, except as such enforcement may be subject to the Enforceability Exceptions, and will be free of any Liens created by the Company and the Guarantors, except for Permitted Liens, and the issuance of the Purchaser Securities will not be subject to any preemptive, participation, rights of first refusal or other similar rights. Assuming the accuracy of each Purchaser's representations and warranties hereunder, the Purchaser Securities (a) will be issued in transactions exempt from the registration requirements of the Securities Act pursuant to Section 4(a)(2) of the Securities Act and (b) will be issued in compliance with all applicable state and federal laws.

Section 3.4 Disclosure. On or before 9:00 a.m. (New York City time) on the first business day following the date of this Agreement (the "**Disclosure Time**"), the Company shall file with the SEC a Current Report on Form 8-K disclosing the material terms of the Transactions (to the extent not previously publicly disclosed) (the "**Closing 8-K**"). From and after the filing of the Closing 8-K, the Company represents to each Purchaser that such Purchaser shall not be in possession of any material, nonpublic information provided by the Company, the Guarantors or any of their respective officers, directors, employees or agents, with respect to or in connection with the Transactions, that is not disclosed in the Closing 8-K. In addition, effective upon the earlier of (i) the filing of such Closing 8-K and (ii) the Disclosure Time, the Company acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral, between the Company, the Guarantors or any of their respective officers, directors, employees or agents, on the one hand, and such Purchaser or any of its affiliates, on the other hand, shall terminate and be of no further force or effect. The Company and the Guarantors understand and confirm that the Purchasers and their affiliates will rely on the foregoing representations in effecting transactions in securities of the Company and the Guarantors. Without the prior written consent of a Purchaser, neither the Company nor the Guarantors shall disclose the name of such Purchaser in any filing or announcement, unless such disclosure is in accordance with Section 6.5 below.

Section 3.5 No Litigation. There are no legal or governmental proceedings pending or threatened to which the Company, the Guarantors, or any of their respective subsidiaries is a party or to which any of their respective properties is subject (i) other than proceedings accurately described in all material respects in the Public Filings and proceedings that would not, singly or in the aggregate, have a Material Adverse Effect or (ii) that are required to be described in the Public Filings and are not so described.

Section 3.6 SEC Filings; Disclosure. The Company has filed with the SEC all reports,

schedules and statements required to be filed by it under the Exchange Act on a timely basis for the most recent twelve-month period. As of their respective filing dates, the Public Filings filed since January 1, 2024, complied in all material respects with applicable requirements of the Exchange Act and the rules and regulations of the SEC promulgated thereunder applicable to such Public Filings; and there are no contracts or other documents that are required to be described in the Public Filings that are not described or filed as required. The consolidated financial statements of the Company included or incorporated by reference in the Public Filings, together with the

related notes and schedules, present fairly, in all material respects, the financial position of the Company and its consolidated subsidiaries as of the dates indicated and the consolidated results of operations, cash flows and changes in stockholders' equity of the Company and its consolidated subsidiaries for the periods specified (subject, in the case of unaudited statements, to normal year-end audit adjustments which will not be material, either individually or in the aggregate) and have been prepared in compliance with the published requirements of the Securities Act and Exchange Act, as applicable, and in conformity with generally accepted accounting principles in the United States ("GAAP") applied on a consistent basis (except (i) for such adjustments to accounting standards and practices as are noted therein and (ii) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) during the periods involved; the other financial and statistical data with respect to the Company and its consolidated subsidiaries contained or incorporated by reference in the Public Filings are accurately and fairly presented and prepared on a basis consistent with the financial statements and books and records of the Company; there are no financial statements (historical or pro forma) that are required to be included or incorporated by reference in the Public Filings that are not included or incorporated by reference as required; the Company and its consolidated subsidiaries do not have any material liabilities or obligations, direct or contingent (including any off balance sheet obligations), not described in the Public Filings which are required to be described therein. None of such Public Filings, at the time they were filed with the SEC or, if amended or restated, as of the date of such amendment or restatement, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Other than the Transactions and the Other Transactions, as of the date hereof, no material event or circumstance has occurred which would be required to be publicly disclosed or announced by the Company pursuant to the provisions of the SEC's Form 8-K which has not been so publicly disclosed or announced on Form 8-K.

Section 3.7 Other Transactions. The Company has provided to each Purchaser true, correct and complete executed copies or, if prior to the Closing Date, substantially final forms, of all documentation relating to the Other Transactions, which documentation has not been amended, modified or waived in any material respect since such execution or delivery.

Section 3.8 New Class. The Securities, when issued, will not be of the same class as securities listed on a national securities exchange registered under Section 6 of the Exchange Act or quoted in a U.S. automated inter-dealer quotation system, within the meaning of Rule

144A(d)(3)(i) under the Securities Act.

Section 3.9 Further Action. The Company agrees that it will, upon request, execute and deliver any additional documents reasonably deemed necessary or desirable by the Purchasers or the Trustee to complete the Transactions.

Section 3.10 Solvency. After giving effect to the Transactions, (a) the fair saleable value of each of the Company's and the Guarantors' respective consolidated assets exceeds the fair value of each of the Company's and the Guarantors' respective liabilities, (b) each of the Company and the Guarantors will not be left with unreasonably small capital and (c) each of the Company and the Guarantors will be able to pay their respective debts (including trade debts) as they become

due (whether at maturity or otherwise) (without taking into account any forbearance or extensions related thereto).

Section 3.11 No Material Adverse Effect. Since March 31, 2024, except as disclosed in the Public Filings, the Company, the Guarantors and their respective subsidiaries, considered as a single enterprise, have conducted their business in the ordinary course, and there has not been (i) any material adverse change in, or any development that would reasonably be expected to have, individually or in the aggregate, a material adverse effect on, the legality, validity or enforceability of this Agreement or the other Transaction Documents or the ability of the Company or the Guarantors to perform their respective obligations hereunder or thereunder or under the Transactions on a full and timely basis in all material respects, or in or on the assets, business, operations, earnings, properties, condition (financial or otherwise), prospects, stockholders' equity or results of operations of the Company, the Guarantors, and their respective subsidiaries, taken as a whole (collectively, a "**Material Adverse Effect**"), (ii) entry into any transaction or agreement which is material to the Company, the Guarantors, and their respective subsidiaries, taken as a whole, (iii) any obligation or liability, direct or contingent (including any off-balance sheet obligations), incurred by the Company, the Guarantors, or their respective subsidiaries, which is material to the Company, the Guarantors, and their respective subsidiaries, taken as a whole, (iv) any material change in the capital stock of the Company (other than (A) the grant of additional equity awards, or the exercise, settlement or forfeiture of outstanding equity awards, under the Company's existing equity compensation plans, (B) changes in the number of outstanding Common Stock of the Company due to the issuance of shares upon the exercise or conversion of securities exercisable for, or convertible into, Common Stock outstanding on the date hereof, (C) as a result of the issuance and sales under that certain financing agreement, dated as May 3, 2024, between the Company and Virtu Americas LLC (the "**Financing Agreement**"), (D) any repurchases of capital stock of the Company, (E) as described in a proxy statement filed on Schedule 14A or a registration statement on Form S-4, or (F) otherwise publicly announced) or outstanding long-term indebtedness of the Company, any Guarantor, or any of their respective subsidiaries, or (v) any dividend or distribution of any kind declared, paid or made on the capital stock of the Company, any Guarantor, or any of their respective subsidiaries, other than in each case above in the ordinary course of business or as otherwise disclosed in the Public Filings (including any document incorporated by reference therein), and none of the Company or any Guarantor or Significant Subsidiary has sustained any loss or interference with their respective business or operations from fire, explosion, flood, earthquake or other natural disaster or calamity, regardless of whether covered by insurance, or from any labor dispute or disturbance or court or governmental action, order or decree, except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

Section 3.12 Investment Company Act. None of the Company or any Guarantor or any of their respective subsidiaries is or, after giving effect to the Transactions and the Other Transactions, will be required to register as, an "investment company" or an entity "controlled" by an "investment company," as such terms are defined in the Investment Company Act of 1940, as amended.

Section 3.13 Brokers. None of the Company or any Guarantor has incurred any liability for any finder's fees, brokerage commissions or similar payments in connection with the Transactions for which any Purchaser may be liable.

Section 3.14 Subsidiaries. The Company and the Guarantors own, directly or indirectly, all of the equity interests of their respective subsidiaries free and clear of any lien, charge, security interest, encumbrance, right of first refusal or other restriction, other than Permitted Liens, and all the equity interests of the subsidiaries are validly issued and are fully paid, nonassessable and free of preemptive and similar rights. The Company and the Guarantors do not own or control, directly or indirectly, any corporation, association or other entity other than the subsidiaries listed in Schedule 1.

Section 3.15 Collateral. The representations and warranties of the Company included in Article IV of the Security Agreement are deemed to be incorporated herein and part hereof.

Section 3.16 Environmental Laws. The Company, the Guarantors, and their respective subsidiaries (i) are in compliance with any and all applicable federal, state, local and foreign laws, rules, regulations, decisions and orders relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants (collectively, "Environmental Laws"); (ii) have received and are in compliance with all permits, licenses or other approvals required of them under applicable Environmental Laws to conduct their respective businesses as described in the Public Filings; and (iii) have not received notice of any actual or potential liability for the investigation or remediation of any disposal or release of hazardous or toxic substances or wastes, pollutants or contaminants, except, in the case of any of clauses (i), (ii) or (iii) above, for any such failure to comply or failure to receive required permits, licenses, other approvals or liability as would not, individually or in the aggregate, have a Material Adverse Effect.

Section 3.17 No Improper Practices. (i) None of the Company, the Guarantors or any of their respective subsidiaries, nor, to the Company's or any Guarantor's knowledge, any of their respective affiliates or executive officers has, in the past five years, made any unlawful contributions to any candidate for any political office (or failed fully to disclose any contribution in violation of law) or made any contribution or other payment to any official of, or candidate for, any federal, state, municipal, or foreign office or other person charged with similar public or quasi-public duty in violation of any law or of the character required to be disclosed in the Company's Public Filings; (ii) no relationship, direct or indirect, exists between or among the Company, the Guarantors or, to the Company's or each Guarantor's knowledge, their respective subsidiaries or any affiliate of any of them, on the one hand, and the directors, officers and stockholders of the Company or the Guarantors or, to the Company's and the Guarantors' knowledge, their respective subsidiaries, on the other hand, that is required by the Exchange Act to be disclosed in the Public Filings that is not so described; (iii) there are no material outstanding loans or advances or material guarantees of indebtedness by the Company, the Guarantors or, to the Company's or each Guarantor's knowledge, their respective subsidiaries to or for the benefit of any of their respective

Guarantor's knowledge, their respective subsidiaries to or for the benefit of any of their respective officers or directors or any of the members of the families of any of them; (iv) the Company and the Guarantors have not offered, or caused any placement agent to offer, Common Stock to any person with the intent to influence unlawfully (A) a customer or supplier of the Company, the

Guarantors or their respective subsidiaries to alter the customer's or supplier's level or type of business with the Company, the Guarantors or their respective subsidiaries or (B) a trade journalist or publication to write or publish favorable information about the Company, the Guarantors or their respective subsidiaries or any of their respective products or services; and, (v) none of the Company, the Guarantors nor their respective subsidiaries nor, to the Company's or to each Guarantor's knowledge, any employee or agent of the Company, the Guarantors or their respective subsidiaries has made any payment of funds of the Company, the Guarantors or their respective subsidiaries or received or retained any funds in violation of any law, rule or regulation (including, without limitation, the Foreign Corrupt Practices Act of 1977), which payment, receipt or retention of funds is of a character required to be disclosed in the Company's Public Filings.

Section 3.18 Anti-Money Laundering Laws. The operations of the Company, the Guarantors and their respective subsidiaries are and have been conducted at all times in compliance with applicable financial record keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions to which the Company, the Guarantors and each of their respective subsidiaries are subject, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency having jurisdiction over the Company, the Guarantors and each of their respective subsidiaries (collectively, the "**Anti-Money Laundering Laws**"), except where the failure to be in such compliance would not result in a Material Adverse Effect; and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company, the Guarantors or any of their respective subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the knowledge of the Company or the Guarantors, threatened.

Section 3.19 Sanctions; OFAC. (i) None of the Company, the Guarantors nor any of their respective subsidiaries (collectively, the "**Entity**") nor, to the Company's or any Guarantor's knowledge, any director, officer, employee, agent, affiliate or representative of the Entity, is a government, individual, or entity (in this paragraph 3.19, "**Person**") that is, or is owned or controlled by a Person that is:

- a. the subject of any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control ("**OFAC**"), the United Nations Security Council, the European Union, His Majesty's Treasury, or other relevant sanctions authority (collectively, "**Sanctions**"), nor
- b. located, organized or resident in a country or territory that is the subject of Sanctions.

(ii) The Entity will not, directly or indirectly, knowingly use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person:

- a. to fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions; or
 - b. in any other manner that will result in a violation of Sanctions by any Person (including any Person participating in the offering, whether as underwriter, advisor, investor or otherwise)
- (iii) The Entity represents and covenants that, except as detailed in the Company's Public Filings, for the past 5 years, it has not knowingly engaged in and is not now knowingly

engaged in any dealing or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.

Section 3.20 Property. The Company and each of the Guarantors and the Significant Subsidiaries have good and marketable title to all real property and good and valid title to all personal property (other than Intellectual Property, which is addressed exclusively in Section 3.21) described in the Public Filings as being owned by them which is material to the businesses of the Company, the Guarantors and the Significant Subsidiaries, taken as a whole, in each case free and clear of all liens, encumbrances, claims and defects except (i) such as do not affect the value of such property and do not materially interfere with the use made and proposed to be made of such property by the Company or such Guarantor or Significant Subsidiary, (ii) such as would not, singly or in the aggregate, have a Material Adverse Effect or (iii) Permitted Liens. Any real property described in the Public Filings as being leased by the Company or any Guarantor or Significant Subsidiary is held by them under valid, subsisting and enforceable leases with such exceptions as (i) do not materially interfere with the use made and proposed to be made of such property and buildings by the Company or such Guarantor or Significant Subsidiary or (ii) would not, singly or in the aggregate, have a Material Adverse Effect.

Section 3.21 Intellectual Property. The Company, the Guarantors and the Significant Subsidiaries own or possess adequate enforceable rights to use all patents, patent applications, trademarks (both registered and unregistered), trade names, trademark registrations, service marks, service mark registrations, Internet domain name registrations, copyrights, copyright registrations, licenses and know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures) (collectively, the "**Intellectual Property**"), necessary for the conduct of their respective businesses as conducted as of the date hereof, except to the extent that the failure to own or possess adequate rights to use such Intellectual Property would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company, the Guarantors and the Significant Subsidiaries have not received any written notice of any claim of infringement or conflict which asserted Intellectual Property rights of others, which infringement or conflict, if the subject of an unfavorable decision, would result in a Material Adverse Effect. There are no pending, or to the Company's or to each Guarantor's knowledge, threatened judicial proceedings or interference proceedings challenging the Company's or any Guarantor's or Significant Subsidiary's rights in or to or the validity of the scope of any of the Company's or the Guarantors' or Significant Subsidiaries' patents, patent applications or proprietary information. To the Company's and to

each Guarantor's knowledge, there are no third parties who have established rights or have any claim in any of the Company's or the Guarantors' or Significant Subsidiaries' patents, patent applications or any patent to be issued therefrom by virtue of any contract, license or other agreement entered into between such entity or individual and the Company or any Guarantor Significant Subsidiary or by any non-contractual obligation, other than by written licenses granted by the Company or the Guarantors or Significant Subsidiaries. None of the Company, the Guarantors or the Significant Subsidiaries has received any written notice of any claim challenging the rights of the Company or the Guarantors or the Significant Subsidiaries in or to any Intellectual Property owned, licensed or optioned by the Company or any Guarantor or Significant Subsidiary which claim, if the subject of an unfavorable decision, would result in a Material Adverse Effect.

Section 3.22 IT Systems. (i)(x) To the knowledge of Company and the Guarantors, there have been no security breach or other compromise of any Company's or any Guarantor's information technology and computer systems, networks, hardware, software, data (including the data of their respective customers, employees, suppliers, vendors and any third party data maintained by or on behalf of them), equipment or technology (collectively, "**IT Systems and Data**") and (y) the Company and the Guarantors have not been notified of, and have no knowledge of any event or condition that would reasonably be expected to result in, any security breach or other compromise to their IT Systems and Data; (ii) the Company and the Guarantors are presently in material compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Data and to the protection of such IT Systems and Data from unauthorized use, access, misappropriation or modification, except as would not, in the case of this clause (ii), individually or in the aggregate, have a Material Adverse Effect; and (iii) the Company and the Guarantors have implemented backup and disaster recovery technology consistent with industry standards and practices.

Section 3.23 Labor Disputes. No labor disturbance by or dispute with employees of the Company or any Guarantor or Significant Subsidiary exists or, to the knowledge of the Company or any Guarantor, is threatened which would result in a Material Adverse Effect.

Section 3.24 Insurance. The Company, the Guarantors and the Significant Subsidiaries carry, or are covered by, insurance in such amounts and covering such risks as the Company, the Guarantors and the Significant Subsidiaries reasonably believe are adequate for the conduct of their business.

Section 3.25 Licenses and Permits. The Company, the Guarantors and the Significant Subsidiaries possess or have obtained, all licenses, certificates, consents, orders, approvals, permits and other authorizations issued by, and have made all declarations and filings with, the appropriate federal, state, local or foreign governmental or regulatory authorities that are necessary for the ownership or lease of their respective properties or the conduct of their respective businesses as currently conducted, as described in the Public Filings (the "**Permits**"), except where the failure to possess, obtain or make the same would not, individually or in the aggregate, have a Material Adverse Effect. None of the Company, the Guarantors or the Significant Subsidiaries have received written notice of any proceeding relating to revocation or modification of any such Permit or has any reason to believe that such Permit will not be renewed in the ordinary course, except where the failure to obtain any such renewal would not, individually or in the aggregate, have a Material Adverse Effect.

Section 3.26 Taxes. The Company, the Guarantors, and their respective subsidiaries have filed all federal, state, local and foreign tax returns which have been required to be filed and paid all taxes shown thereon through the date hereof, to the extent that such taxes have become due and are not being contested in good faith, except where the failure to do so would not have a Material Adverse Effect. Except as disclosed in the Public Filings, no tax deficiency has been determined adversely to the Company or any Guarantor, or any of their respective subsidiaries, which has had, or would have, individually or in the aggregate, a Material Adverse Effect. Neither the Company nor any Guarantor has knowledge of any federal, state or other governmental tax deficiency,

penalty or assessment which has been or might be asserted or threatened against it or any of its subsidiaries which would have a Material Adverse Effect.

Section 3.27 Compliance with Applicable Laws. The Company and the Guarantors have not been advised, and have no reason to believe, that they and each of their respective subsidiaries are not conducting business in compliance with all applicable laws, rules and regulations of the jurisdictions in which they are conducting business, except where failure to be so in compliance would not result in a Material Adverse Effect.

Section 3.28 Compliance Program. The Company has established and administers a compliance program applicable to the Company, to assist the Company and its directors, officers and employees in complying with applicable regulatory guidelines (including, without limitation, if applicable, those administered by the FDA, the EMA, and any other foreign, federal, state or local governmental or regulatory authority performing functions similar to those performed by the FDA or EMA); except where such noncompliance would not reasonably be expected to have a Material Adverse Effect.

Section 3.29 Disclosure Controls. The Company maintains a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company is not aware of any material weaknesses in its internal control over financial reporting (other than as set forth in the Public Filings). Since December 31, 2023, there has been no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting (other than as set forth in the Public Filings). The Company has established disclosure controls and procedures (as defined in Exchange Act Rules 13a-15 and 15d-15) that comply with the requirements of the Exchange Act. The Company's certifying officers have evaluated the effectiveness of the Company's controls and procedures as of a date within 90 days prior to the filing date of the Form 10-K for the fiscal year most recently ended (such date, the "**Evaluation Date**"). The Company presented in its Form 10-K for the fiscal year most recently ended the conclusions of the certifying officers about the effectiveness of the disclosure controls and procedures based on their evaluations as of the most recent Evaluation Date.

Section 3.30 Sarbanes-Oxley Act. There is and has been no failure on the part of the Company or, to the knowledge of the Company, any of the Company's directors or officers, in their capacities as such, to comply in all material respects with any applicable provisions of the Sarbanes-Oxley Act and the rules and regulations promulgated thereunder. Each of the principal executive officer and the principal financial officer of the Company (or each former principal executive officer of the Company and each former principal financial officer of the Company as

executive officer of the Company and each former principal financial officer of the Company as applicable) have made all certifications required by Sections 302 and 906 of the Sarbanes-Oxley Act with respect to all reports, schedules, forms, statements and other documents required to be filed by it or furnished by it to the Commission during the past 12 months. For purposes of the

preceding sentence, “principal executive officer” and “principal financial officer” shall have the meanings given to such terms in the Exchange Act Rules 13a-15 and 15d-15.

Section 3.31 Off-Balance Sheet Arrangements. There are no transactions, arrangements and other relationships between and/or among the Company, the Guarantors and/or, to the knowledge of the Company and the Guarantors, any of their affiliates and any unconsolidated entity, including, but not limited to, any structured finance, special purpose or limited purpose entity (each, an “Off Balance Sheet Transaction”) that would affect materially the Company’s liquidity or the availability of or requirements for its capital resources, including those Off Balance Sheet Transactions described in the SEC’s Statement about Management’s Discussion and Analysis of Financial Conditions and Results of Operations (Release Nos. 33-8056; 34-45321; FR-61), required to be described in the Public Filings which have not been described as required.

Section 3.32 ERISA. To the knowledge of the Company and the Guarantors, (i) each material employee benefit plan, within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) that is maintained, administered or contributed to by the Company, the Guarantors or any of their affiliates for employees or former employees of the Company, the Guarantors and their respective subsidiaries has been maintained in material compliance with its terms and the requirements of any applicable statutes, orders, rules and regulations, including but not limited to ERISA and the Internal Revenue Code of 1986, as amended (the “Code”); (ii) no prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, has occurred which would result in a material liability to the Company and the Guarantors with respect to any such plan excluding transactions effected pursuant to a statutory or administrative exemption; and (iii) for each such plan that is subject to the funding rules of Section 412 of the Code or Section 302 of ERISA, no “accumulated funding deficiency” as defined in Section 412 of the Code has been incurred, whether or not waived, and the fair market value of the assets of each such plan (excluding for these purposes accrued but unpaid contributions) equals or exceeds the present value of all benefits accrued under such plan determined using reasonable actuarial assumptions, other than, in the case of (i), (ii) and (iii) above, as would not have a Material Adverse Effect.

Section 3.33 Enforceability of Agreements. All agreements between the Company and the Guarantors and third parties expressly referenced in the Public Filings, other than such agreements that have expired by their terms or whose termination is disclosed in the Public Filings, are legal, valid and binding obligations of the Company or such Guarantor and, to the Company’s or such Guarantor’s knowledge, enforceable in accordance with their respective terms, except to the extent that (i) enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors’ rights generally and by general equitable principles and (ii) the indemnification provisions of certain agreements may be limited by federal or state

securities laws or public policy considerations in respect thereof, and except for any unenforceability that, individually or in the aggregate, would not have a Material Adverse Effect.

ARTICLE IV
CLOSING CONDITIONS & NOTIFICATION

15

Section 4.1 Conditions to Obligations of each Purchaser, the Company and the Guarantors. The obligations of each Purchaser to deliver the Purchase Price and of the Company and the Guarantors to deliver the Securities are subject to the satisfaction at or prior to the Closing of the following conditions:

- (a) no governmental authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, judgment, decree, injunction or other order (whether temporary, preliminary or permanent) that is in effect and precludes, enjoins or otherwise prohibits the consummation of the Transactions or the other transactions contemplated by the Transaction Documents, and no statute, rule, regulation, judgment, decree, injunction or other order (whether temporary, preliminary or permanent) shall have been enacted, entered, promulgated or enforced by any governmental authority that prohibits or makes illegal this Agreement, the Transaction Documents or the transactions contemplated hereby or thereby;
- (b) there shall be no action, lawsuit, arbitration, claim or proceeding pending that enjoins the consummation of this Agreement, the Transaction Documents or the transactions contemplated hereby or thereby;
- (c) solely with regard to the obligations of each Purchaser to deliver the Purchase Price, (i) the representations and warranties of the Company and the Guarantors contained in Article III shall be true and correct as of the Closing in all material respects (except for those representations and warranties that are qualified by materiality or material adverse effect, which shall be true and correct in all respects) with the same effect as though such representations and warranties had been made as of the Closing, and unless notice is given pursuant to Section 4.2 below, each of the representations and warranties contained therein shall be deemed to have been reaffirmed and confirmed as of the Closing Date and (ii) the Company and the Guarantors shall have complied, in all material respects, with all covenants and other agreements in this Agreement required to be performed by the Company and the Guarantors at or prior to Closing;
- (d) solely with regard to the obligation of the Company and the Guarantors to deliver the Purchaser Securities, (i) the representations and warranties of each Purchaser contained in Article II shall be true and correct as of the Closing in all material

contained in Article II shall be true and correct as of the Closing in all material respects (except for those representations and warranties that are qualified by materiality or material adverse effect, which shall be true and correct in all respects) with the same effect as though such representations and warranties had been made as of the Closing, and unless notice is given pursuant to Section 4.2 below, each of the representations and warranties contained therein shall be deemed to have been reaffirmed and confirmed as of the Closing Date and (ii) each Purchaser shall have complied, in all material respects, with all covenants and other agreements in this Agreement required to be performed by them at or prior to Closing;

- (e) the Company, the Guarantors and the Trustee shall have entered into the Indenture;

- (f) the Company, the Guarantors and the Trustee shall have entered into the Security Agreement;
- (g) solely with regard to the obligations of each Purchaser to deliver the Purchase Price, the Company and the Guarantors shall have executed and delivered to the Purchasers a perfection certificate dated as of the Closing Date in form and substance reasonably satisfactory to the Collateral Agent;
- (h) solely with regard to the obligations of each Purchaser to deliver the Purchase Price, except as otherwise provided for in the Collateral Documents (as defined in the Indenture), the Indenture or the other documents entered into in connection with the Transactions, on the Closing Date, the Collateral Agent shall have received the Collateral Documents and other certificates, agreements or instruments necessary to create a valid security interest in favor of the Collateral Agent, for its benefit and the benefit of the Trustee and the holders of the Securities, in all of the Collateral described in the Security Agreement substantially in form and substance reasonably satisfactory to the Collateral Agent, together with, subject to the requirements of the Collateral Documents, stock certificates and promissory notes required to be delivered pursuant to the Collateral Documents, in each case accompanied by instruments of transfer and stock powers undated and endorsed in blank, Uniform Commercial Code financing statements in appropriate form for filing, filings with the United States Patent and Trademark Office and United States Copyright Office in appropriate form for filing where applicable and each such document, instrument or filing shall, unless expressly not required by the Indenture, the Collateral Documents or applicable law, be executed by the Company and the Guarantors, as applicable, and each such document shall be in full force and effect;
- (i) the Other Transactions shall be consummated concurrently with the Closing of the Transactions in accordance with the terms of the documents related thereto in the form entered into on the date hereof, and no amendments, modifications or waivers of any documentation relating to the Other Transactions shall have been made since the versions of such documentation provided to the Purchasers pursuant to Section 3.7 hereof;
- (j) solely with regard to the obligations of each Purchaser to deliver the Purchase Price, the Company shall have delivered to each Purchaser (i) an opinion of Orrick, Herrington & Sutcliffe LLP, counsel to the Company and the Guarantors, addressed to such Purchaser, in form and substance reasonably acceptable to such Purchaser, and (ii) such other customary documentation as such Purchaser shall reasonably request;
- (k) solely with regard to the obligations of each Purchaser to deliver the Purchase Price, the Company shall have furnished or caused to be furnished to the Purchasers, dated as of the Closing Date, a certificate of the Chief Executive Officer or Chief Financial Officer of the Company and each Guarantor, or other officer satisfactory to the Purchasers, stating that (i) the representations and warranties of the Company and the Guarantors set forth in Article III of this Agreement are true and correct

with the same force and effect as though expressly made on and as of such date; (ii) the Company and the Guarantors have complied with all the agreements and covenants hereunder and satisfied all the conditions on their part to be performed or satisfied hereunder at or prior to such date;

- (l) solely with regard to the obligations of each Purchaser to deliver the Purchase Price, the Company shall have furnished or caused to be furnished to the Purchasers, dated as of the Closing Date, a certificate of each of the Company and the Guarantors, executed by a secretary or assistant secretary (or equivalent officer) thereof, which shall (A) certify that (i) attached thereto is a true and complete copy of the certificate or articles of incorporation, formation or organization of the Company or the applicable Guarantor certified by the relevant authority of its jurisdiction or organization, (ii) the certificate or articles of incorporation, formation or organization of the Company or the applicable Guarantor attached thereto has not been amended (except as attached thereto) since the date reflected thereon, (iii) attached thereto is a true and correct copy of the by-laws or operating, management, partnership or similar agreement of the Company or the applicable Guarantor together with all amendments thereto since the initial effectiveness of such document or the last amendment and restatement, as applicable, and such by-laws or operating, management, partnership or similar agreement is in full force and effect and (iv) attached thereto is a true and complete copy of the resolutions or written consent, as applicable, of the board of directors or managing members or other governing body of the Company or the applicable Guarantor authorizing the execution and delivery of this Agreement and the performance of this Agreement and any of the other Transaction Documents to which the Company or such Guarantor is a party and the Transactions, which resolutions or consent have not been modified, rescinded or amended (other than as attached thereto) and are in full force and effect, and (B) identify by name and title and bear the signatures of the officers, managers, directors or other authorized signatories of the Company or the applicable Guarantor who are authorized to sign this Agreement and the other Transaction Documents to which the Company or such Guarantor is a party; and
- (m) the Purchaser Securities shall be eligible for clearance and settlement through DTC under a 144A CUSIP.

Section 4.2 Notification. Each Purchaser hereby covenants and agrees to promptly notify the Company upon the occurrence of any event prior to the Closing that would cause any representation, warranty, or covenant contained in Article II to be false or incorrect in any material respect (or, with respect to those representations and warranties that are qualified by materiality or material adverse effect, in any respects). The Company hereby covenants and agrees to notify the Purchasers upon the occurrence of any event prior to the Closing that would cause any representation, warranty, or covenant contained in Article III to be false or incorrect in any material respect (or, with respect to those representations and warranties that are qualified by materiality or

material adverse effect, in any respects).

ARTICLE V
INDEMNIFICATION

Section 5.1 Indemnification. Each of the Company and the Guarantors, jointly and severally, agrees to indemnify each of the Purchasers and their respective affiliates, and their respective equityholders, directors, officers, employees, agents, members, partners, managers, advisors (and any other persons with a functionally equivalent role notwithstanding a lack of such title or any other title) and each person, if any, who controls a Purchaser within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act (each, a “**Indemnified Party**” and, collectively, the “**Indemnified Parties**”) from and against any losses, claims, damages, costs, expenses or liabilities, and hold each of them harmless against, any and all actions, suits, proceedings (including any investigations, litigation or inquiries), demands, and causes of action, and, in connection therewith, and promptly upon demand, pay or reimburse each of them for all costs, losses, claims, damages, settlement costs or liabilities of any kind or nature whatsoever (including the reasonable and documented fees and disbursements of counsel, subject to redaction to preserve privilege, and all other documented expenses reasonably incurred in connection with investigating, defending or preparing to defend any such matter that may be incurred by them or asserted against or involve any of them) (collectively, “**Losses**”), as a result of, relating to, arising out of, or resulting from any Third-Party Claim (as defined herein) asserted against such Indemnified Party arising from or in any way related to, or as a result of any action taken or purported to have been taken by any person in connection with the consummation of, the transactions contemplated by this Agreement or any of the other Transaction Documents. Each of the Company and the Guarantors, jointly and severally, also agrees to indemnify the Indemnified Parties for any action arising out of any breach of representations and warranties in any of the Transaction Documents or any other claim arising in connection with the Transactions.

Section 5.2 Indemnification Procedures. Promptly after any Indemnified Party has received notice of any indemnifiable claim hereunder, or the commencement of any action, suit or proceeding by a third person (other than the Company, the Guarantors and their respective affiliates or any other Purchaser or its affiliates, but including any derivative action, suit or proceeding) (each a “**Third-Party Claim**”), which the Indemnified Party believes in good faith is an indemnifiable claim under this Agreement, the Indemnified Party shall give the Company and the Guarantors prompt written notice of such Third-Party Claim or the commencement of such action, suit or proceeding, but failure to so notify the Company and the Guarantors will not relieve the Indemnifying Party from any liability it may have to such Indemnified Party hereunder except to the extent that the Company and the Guarantors are prejudiced by such failure, and then only to the extent of such prejudice. Such notice shall state the nature and the basis of such Third-Party Claim to the extent then known. The Company and the Guarantors shall have the right to defend and settle, at their own expense and by their own counsel who shall be reasonably acceptable to

the Indemnified Party, any such matter as long as the Company and the Guarantors pursue the same diligently and in good faith. After the Company and the Guarantors have notified the Indemnified Party of its intention to undertake to defend or settle any such asserted liability, and for so long as the Company and the Guarantors diligently pursue such defense, the Company and the Guarantors shall not be liable for any additional legal expenses incurred by the Indemnified Party in connection with any defense or settlement of such asserted liability; *provided, however*, that the Indemnified Party shall be entitled (i) at its expense, to participate in the defense of such

asserted liability and the negotiations of the settlement thereof and (ii) if the Company and the Guarantors have failed after a reasonable period of time to assume the defense or employ counsel reasonably acceptable to the Indemnified Party, or if the Indemnified Party has, in the reasonable opinion of counsel, a material conflict on any material issue between the position of such Indemnified Party and any other party being represented by such counsel selected by the Company and the Guarantors, then the Indemnified Party shall have the right to select its own counsel and to assume such legal defense and otherwise to participate in the defense of such action, with the reasonable and documented expenses and fees of one such counsel (in addition to any necessary local counsel) and other reasonable and documented expenses related to such participation to be reimbursed by the Company and the Guarantors as incurred. Notwithstanding any other provision of this Agreement, (x) the Company and the Guarantors shall not settle any Third-Party Claim under which indemnification may be sought hereunder without the consent of the applicable Indemnified Parties, unless the settlement thereof imposes no liability or obligation on, and includes a complete, unconditional and irrevocable release from liability of, and does not include any statement or admission of fault, culpability, wrongdoing or malfeasance by, the Indemnified Party and (y) the Company and the Guarantors shall not be liable for any settlement entered into by an Indemnified Party without the consent of the Company and the Guarantors (which consent shall not be unreasonably withheld, conditioned or delayed).

If the indemnification provided in the preceding paragraph is insufficient, not permitted by applicable law or is judicially determined to be unavailable, then in lieu of indemnifying such Indemnified Person hereunder, the Company and the Guarantors shall contribute to the amount paid or payable by such Indemnified Person as a result of any applicable losses and expenses.

Section 5.3 Limitation on Liability. Notwithstanding anything to the contrary in this Agreement, none of the Company, the Guarantors nor their respective affiliates shall be required to indemnify or hold harmless any Indemnified Party to the extent of any Losses that are finally determined by a court of competent jurisdiction to have resulted from the bad faith, fraud, gross negligence or willful misconduct of such Indemnified Party, or a settlement is entered into by such Indemnified Party admitting to such bad faith, fraud, gross negligence or willful misconduct, or from a claim solely among the Indemnified Parties. To the extent that the Company, the Guarantors or their respective affiliates have provided indemnification pursuant to this Article V prior to any such determination by a court of competent jurisdiction or such settlement, each Indemnified Party so determined to have suffered such non-indemnifiable Losses shall promptly refund to the Company or the Guarantors, by wire transfer of immediately available funds, any amounts so

advanced by the Company, the Guarantors or their respective affiliates.

Section 5.4 Release. In consideration for the agreements and covenants set forth in this Agreement, the Company and the Guarantors, on behalf of themselves and each of their respective affiliates, knowingly, voluntarily and unconditionally release and forever discharge from and for, and covenant not to sue, each Indemnified Party for any and all actions or inactions arising out of, relating to, or resulting from the Transactions that the Company and the Guarantors have or may have, now or in the future; provided, however, that this Section 5.4 will not apply to any claims against any Purchaser with respect to a breach of this Agreement or any other Transaction Document or any rights of the Company or the Guarantors under this Agreement or any other Transaction Document.

ARTICLE VI
MISCELLANEOUS

Section 6.1 Entire Agreement. This Agreement and any documents and agreements executed in connection with the Transactions embody the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersede all prior and contemporaneous oral or written agreements, representations, warranties, contracts, correspondence, conversations, memoranda and understandings between or among the parties or any of their agents, representatives or affiliates relative to such subject matter, including, without limitation, any term sheets, emails or draft documents.

Section 6.2 Construction. References in the singular shall include the plural, and vice versa, unless the context otherwise requires. References in the masculine shall include the feminine and neuter, and vice versa, unless the context otherwise requires. Headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meanings of the provisions hereof. Neither party, nor its respective counsel, shall be deemed the drafter of this Agreement for purposes of construing the provisions of this Agreement, and all language in all parts of this Agreement shall be construed in accordance with its fair meaning, and not strictly for or against either party.

Section 6.3 Governing Law; Waiver of Jury Trial. This Agreement shall in all respects be construed in accordance with and governed by the substantive laws of the State of New York, without reference to its choice of law rules. Each of the Company, the Guarantors and the Purchasers, irrevocably waives any and all right to trial by jury with respect to any legal proceeding arising out of the Transactions contemplated by this Agreement.

Section 6.4 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. Any counterpart or other signature hereon delivered by facsimile or any standard form of telecommunication or e-mail shall be deemed for all purposes as constituting good and valid execution and delivery of this Agreement by such party.

Section 6.5 Use of Purchaser Names. None of the Company, the Guarantors, nor any of their respective affiliates and subsidiaries (if any) (collectively, the “**Company Group**”) shall identify, or permit any of its employees, agents or representatives to identify, any Purchaser (whether in connection with the Company or the Guarantors or in the Purchaser’s capacity as an investor in the Company or the Guarantors) in any written or oral public communications or issue any press release or other disclosure of the Purchaser’s name or the name of any of its affiliates, or any derivative of any of the foregoing names (collectively, the “**Purchaser Names**”), in each case except (i) as authorized in writing in advance by the Purchaser in each such instance (electronic mail to suffice) or (ii) as required by applicable law, legal process or regulatory request (“**Applicable Law**”); provided, that prior to any such disclosure such disclosing member of the Company Group as soon as practicable notifies the Purchaser of such requirement (except where prohibited by Applicable Law) so that the Purchaser (or its applicable affiliate) may seek a protective order or other appropriate remedy prior to such disclosure. Notwithstanding the foregoing, the Company may make disclosures to an auditor or governmental or regulatory

authority pursuant to any routine investigation, inspection, examination or inquiry without providing the Purchaser with any notification thereof, unless the Purchaser is the subject of any such investigation, inspection, examination or inquiry (in which case the preceding sentence shall govern).

Section 6.6 Expenses. The Company shall reimburse the Purchasers for all reasonable and documented fees and out-of-pocket expenses incurred in connection with the Transactions promptly and, to the extent such documented fees and expenses are invoiced to the Company at least one business day prior to Closing, on the Closing Date; *provided*, that the maximum amount of fees and expenses that the Company shall be obligated to reimburse to the Purchasers pursuant to this Section 6.6 shall not exceed \$425,000 in the aggregate.

Section 6.7 Severability. The invalidity or unenforceability of any provision hereof will in no way affect the validity or enforceability of any other provision or the validity and enforceability of this Agreement.

Section 6.8 Assignment; Binding Effect. No Purchaser shall convey, assign or otherwise transfer any of its rights or obligations under this Agreement without the express written consent of the Company, except to an affiliate of such Purchaser who assumes its obligations hereunder pursuant to a joinder or similar agreement reasonably acceptable to the Company, and the Company and the Guarantors shall not convey, assign or otherwise transfer any of their respective rights and obligations under this Agreement without the express written consent of each Purchaser. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 6.9 Reliance by the Placement Agent. The Placement Agent, acting as financial advisor to the Company, may rely on each representation and warranty of the Company and of each Purchaser, made on behalf of itself, herein or pursuant to the terms hereof with the same force and effect as if such representation or warranty were made directly to the Placement Agent. The Placement Agent will be a third-party beneficiary of this Agreement to the extent provided in this Section 6.9.

Section 6.10 Waiver; Remedies. No delay on the part of any Purchaser, the Company or the Guarantors in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any waiver on the part of any Purchaser, the Company or the Guarantors of any right, power or privilege under this Agreement operate as a waiver of any other right, power or privilege of such party under this Agreement, nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power or privilege under this Agreement. All waivers under this Agreement shall be in writing and signed by the party against whom such waiver is to be enforced.

Section 6.10 Amendment. This Agreement may be modified or amended only by written agreement of each of the parties to this Agreement.

written agreement of each of the parties to this Agreement.

Section 6.11 Survival. The provisions of Article II, Article III, Section 4.2, Article V and Article VI shall survive the Closing.

22

Section 6.12 Notice. Any notice or communications hereunder shall be in writing and will be deemed to have been given if delivered in person or by electronic transmission or by registered or certified first-class mail or courier service to the following addresses, or such other addresses as may be furnished hereafter by notice in writing:

if to the Company or the Guarantors:

Luminar Technologies, Inc.
2603 Discovery Drive
Suite 100
Orlando, FL 32826
Attention: Al Prescott, CLO
Telephone: (407) 900-5259
Email: al@luminartech.com

with a copy to:

Orrick, Herrington & Sutcliffe LLP
631 Wilshire Boulevard
Santa Monica, CA 90401
Attention: Daniel S. Kim
Telephone: (310) 633-2803
Email: dan.kim@orrick.com

if to the Purchasers, as set forth on Exhibit A hereto.

Section 6.13 Termination. The Company and the Guarantors may terminate this Agreement if there has occurred any breach or withdrawal by a Purchaser of any covenant, representation or warranty set forth in Article II in any material respect (or, with respect to those representations and warranties that are qualified by materiality or material adverse effect, in any respect). A Purchaser may terminate this Agreement if (i) there has occurred any breach or withdrawal by the Company or the Guarantors of any covenant, representation or warranty set forth in Article III in any material respect (or, with respect to those representations and warranties that are qualified by materiality or material adverse effect, in any respect) or (ii) the Closing has not occurred by 5:00 p.m. (New York City time) on the fifth (5th) business day following the date hereof.

Section 6.14 Other Transactions. Nothing contained herein or in any other Transaction Document or other document related to the Transactions, and no action taken by any Purchaser

pursuant hereto or thereto or by any other party pursuant to such other documents, shall be deemed to constitute a Purchaser and any other Purchaser or any other party hereunder or under such other documents as a partnership, an association, a joint venture or any other kind of entity, or create a presumption that such entities are in any way acting in concert or as a group with respect to their obligations hereunder or thereunder or with respect to the transactions contemplated hereby or thereby.

[Signature Page Follows]

23

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed as of the date first above written.

LUMINAR TECHNOLOGIES, INC.

By: _____

Name:

Title:

LUMINAR, LLC, as Guarantor

By: _____

Name:

Title:

LUMINAR SEMICONDUCTOR, INC., as
Guarantor

By: _____

Name:

Title:

FREEDOM PHOTONICS LLC, as Guarantor

By: _____

Name:

Title:

EMFOUR ACQUISITION CO., LLC, as
Guarantor

By: _____

Name:

Title:

EM4, LLC, as Guarantor

By: _____

Name:

Title:

OPTOGRATION, INC., as Guarantor

By: _____

Name:

Title:

SIGNATURE PAGE TO
PURCHASE AGREEMENT

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed as of the date first above written.

PURCHASERS:

By: _____

Name: _____

Title: _____

SIGNATURE PAGE TO
PURCHASE AGREEMENT

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER**PURSUANT TO RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Austin Russell, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Luminar Technologies, Inc. for the quarter ended June 30, 2024;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 8, 2024

By: _____

/s/ Austin Russell
Austin Russell
Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

PURSUANT TO RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Thomas J. Fennimore, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Luminar Technologies, Inc. for the quarter ended June 30, 2024;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 8, 2024

By:

/s/ Thomas J. Fennimore

Thomas J. Fennimore

Chief Financial Officer

(Principal Financial and Accounting Officer)

