

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

FORM 8-K

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

Date of Report (Date of earliest event reported): May 15, 2026

Faraday Future Intelligent Electric Inc.
(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation)	001-39395 (Commission File Number)	84-4720320 (I.R.S. Employer Identification No.)
1990 E. Grand Avenue El Segundo, CA (Address of principal executive offices)		90245 (Zip Code)

(424) 276-7616
(Registrant's telephone number, including area code)

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

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

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Class A common stock, par value \$0.0001 per share	FFAI	The Nasdaq Stock Market LLC
Redeemable warrants, exercisable for shares of Class A common stock at an exercise price of \$110,400.00 per share	FFAIW	The Nasdaq Stock Market LLC

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

Emerging growth company

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

Item 1.01 Entry into a Material Definitive Agreement.

On May 15, 2026 (the “Signing Date”), Faraday Future Intelligent Electric Inc. (the “Company”) entered into a Securities Purchase Agreement (the “Purchase Agreement”) with certain institutional investors (collectively, the “Investors”). Pursuant to the Purchase Agreement, the Company has agreed to sell, and the Investors have agreed to purchase, for an aggregate purchase price of \$25 million, certain senior convertible notes in the aggregate principal amount of \$25 million (the “Notes”) that are convertible into shares of the Company’s Class A common stock, par value \$0.0001 per share (the “Common Stock”). The closing (the “Closing”) occurred on May 15, 2026 (the “Closing Date”). The Notes and the shares of Common Stock issuable upon conversion of the Notes are collectively referred to as the “Securities”.

Pursuant to the Purchase Agreement, the Company has agreed to file a registration statement (the “Registration Statement”) with the Securities and Exchange Commission (the “Commission”) within 45 calendar days of the Closing Date, to register for resale 200% of the shares of Common Stock issuable pursuant to the Notes, and seek effectiveness within 105 days following the Closing Date, and keep such Registration Statement effective at all times until no Investor owns any Notes or shares of Common Stock issuable upon conversion or exercise thereof.

Notes

Maturity Date; Interest.

Pursuant to the Notes, interest will commence accruing on the date of issuance (the “Issuance Date”) at the interest rate of 8% per annum (the “Interest Rate”) and will be computed on the basis of a 360-day year and twelve 30-day months and will be payable on a Conversion Date (as defined in the Notes) with respect to the Conversion Amount (as defined in the Notes) being converted on such Conversion Date, with any remaining accrued and unpaid interest payable on the one-year anniversary of the issuance date thereof (the “Maturity Date”) (each Conversion Date and Maturity Date, an “Interest Date”).

Interest will be payable to the noteholders on each Interest Date in shares of Common Stock, subject to certain conditions set forth in the Notes. Prior to the payment of interest on an Interest Date, interest on the Notes will accrue at the Interest Rate and will be payable by way of inclusion of the interest in the Conversion Amount on each Conversion Date, or upon any redemption, unless in the event of an event of default, in which case the interest rate of the Notes will automatically be increased to 15% per annum (the “Default Rate”). In the event such default has been cured, the Default Rate will cease to be effective as of the calendar day immediately following the date of such cure; provided that the interest as calculated and unpaid at the Default Rate during the continuance of that certain default will continue to apply to the extent relating to the days after the occurrence of such default through and including the cure date of such default.

The Maturity Date may be extended by the noteholders under circumstances specified therein. On the Maturity Date, the Company must pay the noteholders an amount in cash representing all outstanding principal, accrued and unpaid interest on such principal and interest and accrued and unpaid Late Charges (as defined in the Notes). Other than as specifically permitted by the Notes, the Company may not prepay any portion of the outstanding principal and accrued, unpaid interest or accrued and unpaid Late Charges on principal and interest, if any.

Conversion; Conversion at Option of Holder

Each noteholder may convert all, or any portion, of the Notes, at any time at such noteholder's option, into shares of Common Stock, at an initial conversion price per share as set forth in the form of Note attached as Exhibit 4.1 hereto (the "Conversion Price"), subject to adjustment as provided in the Notes, in an amount equal to 108% of the portion of the (i) principal, (ii) interest, (iii) an amount equal to the amount of additional interest that would accrue under the Note at the Interest Rate then in effect had the Note remained outstanding through and including the Maturity Date, (iv) accrued and unpaid Late Charges with respect to such principal and interest of the Note and (v) other amounts outstanding under the Note to be converted, redeemed or otherwise with respect to which such determination is being made.

Adjustments of the Conversion Price

If on or after the date the Notes are issued (the "Subscription Date"), the Company issues or sells any shares of Common Stock, subject to certain exclusions, for consideration per share that is less than the Conversion Price then in effect, the Conversion Price will be adjusted downward to the applicable New Issuance Price (as defined in the Notes). The Conversion Price will also be proportionately adjusted for stock splits, stock dividends, stock combinations, recapitalizations and similar transactions affecting the Common Stock. In addition, if the Company issues Variable Price Securities (as defined in the Notes) after the Subscription Date, the Holder may substitute the applicable Variable Price (as defined in the Notes) for the Conversion Price upon conversion of the Notes. Subject to the rules and regulations of the Nasdaq Stock Market LLC ("Nasdaq") and the prior written consent of the noteholder, the Company may voluntarily reduce the then-current Conversion Price to any amount and for any period of time deemed appropriate by the Company's board of directors.

Floor Price

The Floor Price of the Notes is \$0.15528 per share of Common Stock, subject to the Company's right to reduce, from time to time, to a price per share not contrary to the rules and regulations promulgated by Nasdaq (and other adjustments for stock splits, stock dividends, stock combinations, recapitalizations and similar events).

Alternate Conversion

Each noteholder may alternatively elect to convert the Notes, at any time at such noteholder's option, into shares of Common Stock at the "Alternate Conversion Price" equal to the lower of:

- the Conversion Price then in effect; and
- the greater of:
 - the Floor Price; and
 - the lowest volume weighted average price ("VWAP") of the Common Stock during the five consecutive trading days ending and including the trading day immediately preceding the delivery or deemed delivery of the applicable conversion notice.

Floor Breach Event

If on any Conversion Date, the Conversion Price then in effect would have otherwise been lower than the Floor Price then in effect, the Company is required to pay to each noteholder an amount in cash equal to the product obtained by multiplying (A) the higher of (1) the highest price of the Common Stock on the trading day immediately preceding the applicable Conversion Date and (2) the applicable Alternate Conversion Price, and (B) the difference between (1) the number of shares the noteholder would have received at the Conversion Price as it would have been adjusted notwithstanding the Floor Price and (2) the Floor Price. Alternatively, the Company may, at its option, increase the then outstanding principal amount of the applicable Note by such amount.

If, during any period of ten consecutive trading days, the daily VWAP (as defined in the Notes) of the Common Stock is less than the Floor Price on five or more Trading Days, a “Floor Breach Event” shall occur, upon which the Company shall have a period of 30 calendar days (and 20 calendar days for each subsequent Floor Breach Event) to, if permitted by Nasdaq, cure such Floor Breach Event by resetting the Floor Price to a level such that the daily VWAP of the Common Stock equals or exceeds such reset Floor Price for at least ten consecutive trading days. A Floor Breach Event will also be deemed cured if the daily VWAP equals or exceeds the Floor Price for ten consecutive trading days without any reset. If the Company fails to cure a Floor Breach Event within the applicable cure period, the noteholder may require the Company to redeem all or any portion of the Conversion Amount for cash at a price equal to the Conversion Amount of the Notes, which amount is due and payable within five trading days after the Company’s receipt of the applicable redemption notice; provided that the noteholder retains all rights to effect conversions during the continuance of such Floor Breach Event and until the Floor Redemption Price is paid in full.

Limitations on Conversion

Beneficial Ownership Limitation. A noteholder does not have the right to convert any portion of a Note to the extent that, after giving effect to such conversion, the noteholder (together with certain related parties) would beneficially own in excess of 9.99% (the “Maximum Percentage”), of shares of Common Stock outstanding immediately after giving effect to such conversion. The Maximum Percentage may be raised or lowered to any other percentage not in excess of 9.99%, at the option of the noteholder, except that any increase will only be effective upon 61 days’ prior notice to the Company.

Exchange Cap Limitation. Unless the Company obtains the approval of its stockholders in accordance with Nasdaq Listing Rules 5635(d) (19.99% of the outstanding shares of Common Stock on the Signing Date) will be issuable upon conversion or exercise, as applicable, or otherwise pursuant to the terms of the Notes.

Redemption Rights

Company Optional Redemption. The Company has the option to redeem the Notes at an 8% redemption premium to the greater of (i) the shares of Common Stock then outstanding under the Notes and (ii) the equity value of Common Stock underlying the Notes. The equity value of Common Stock underlying the Notes is calculated using the greatest closing sale price of the Common Stock during the period commencing on the date immediately preceding notice of such redemption and ending on the trading day immediately prior to the date the Company makes the entire payment required to be made for such redemption.

Bankruptcy Event of Default Mandatory Redemption. Upon any bankruptcy event of default, the Company must immediately redeem in cash all amounts due under the Notes at an 8% premium unless the noteholder waives such right to receive such payment.

Deposit Account Control Agreement

The Company's obligations under each Note are secured by a Deposit Account Control Agreement (each, a "DACA") with respect to the Accounts (as defined in the DACA). The Company acknowledges and agrees that the Investor is authorized to send instructions to the Deposit Holder (as defined in the DACA) directing the disposition of the funds held in the Accounts.

Placement Agency Agreement

On the Signing Date, the Company also entered into a placement agency agreement (the "PAA") with Univest Securities, LLC, the placement agent for the offering (the "Placement Agent"), in connection with the transactions contemplated under the Purchase Agreement. Pursuant the PAA, the Company agreed to pay to the Placement Agent (i) a cash fee equal to a percentage of (A) the gross proceeds received by the Company from the sale of the Notes and (B) any actual amounts released to the Company from the Accounts; and (ii) a \$125,000 out-of-pocket expenses to cover the reasonable fees and expenses of Placement Agent's counsel and due diligence analysis.

The foregoing summaries of the Purchase Agreement, the form of Note, the DACA, the PAA, and the transactions contemplated thereby do not purport to be complete and are qualified in their entirety by reference to the full text of such documents, copies of which are filed herewith as Exhibits 10.1, 4.1, 10.2 and 10.3, respectively, to this Current Report on Form 8-K and each of which is incorporated herein by reference.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation Under an Off Balance Sheet Arrangement of a Registrant

The disclosure included in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

The disclosure included in Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference.

Item 7.01 Regulation FD Disclosure

On May 15, 2026, the Company issued a press release with respect to the transactions set forth in Item 1.01 of this Current Report on Form 8-K. A copy of such press release is furnished hereto as Exhibit 99.1 and incorporated herein by reference.

The information in this Item 7.01 of this Current Report on Form 8-K (including Exhibit 99.1) shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liabilities of that section, and shall not be incorporated by reference into any registration statement or other document filed under the Securities Act or the Exchange Act, except as shall be expressly set forth by specific reference in such filing.

Item 9.01. Financial Statements and Exhibits

(d) Exhibits.

Exhibit No.	Description
4.1*	Form of Note.
10.1*	Securities Purchase Agreement, dated May 15, 2026, by and among Faraday Future Intelligent Electric Inc. and the parties thereto.
10.2*	Form of Deposit Account Control Agreement, dated May 15, 2026, by and among Faraday Future Intelligent Electric Inc. and the parties thereto.
10.3*	Placement Agency Agreement, dated May 15, 2026, by and between Faraday Future Intelligent Electric Inc. and Univest Securities, LLC.
99.1*	Press release dated May 15, 2026.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

* Filed herewith.

SIGNATURE

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

FARADAY FUTURE INTELLIGENT ELECTRIC INC.

Date: May 15, 2026

By: /s/ Koti Meka

Name: Koti Meka

Title: Chief Financial Officer

FORM OF SENIOR CONVERTIBLE NOTE

NEITHER THE ISSUANCE AND SALE OF THE SECURITY REPRESENTED BY THIS CERTIFICATE NOR THE SECURITIES INTO WHICH THIS SECURITY ARE CONVERTIBLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL TO THE HOLDER (IF REQUESTED BY THE COMPANY), IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD OR ELIGIBLE TO BE SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES. ANY TRANSFEREE OF THIS NOTE SHOULD CAREFULLY REVIEW THE TERMS OF THIS NOTE, INCLUDING SECTIONS 3(c)(iii) AND 19(a) HEREOF. THE PRINCIPAL AMOUNT REPRESENTED BY THIS NOTE AND, ACCORDINGLY, THE SECURITIES ISSUABLE UPON CONVERSION HEREOF MAY BE LESS THAN THE AMOUNTS SET FORTH ON THE FACE HEREOF PURSUANT TO SECTION 3(c)(iii) OF THIS NOTE.

FARADAY FUTURE INTELLIGENT ELECTRIC, INC.

SENIOR CONVERTIBLE NOTE

Issuance Date: May 15, 2026

Original Principal Amount: U.S. \$[]

FOR VALUE RECEIVED, Faraday Future Intelligent Electric, Inc., a Delaware corporation (the “**Company**”), hereby promises to pay to the order of [PURCHASER] or its registered assigns (“**Holder**”) the Outstanding Principal Value (as reduced pursuant to the terms hereof pursuant to redemption, conversion or otherwise, the “**Principal**”) when due, whether upon the Maturity Date, or upon acceleration, redemption or otherwise (in each case in accordance with the terms hereof) and to pay (i) interest (“**Interest**”) on any Outstanding Principal Value at the applicable Interest Rate (as defined below) and (ii) the Make-Whole Amount (as defined below), in each case from the date set forth above as the Issuance Date (the “**Issuance Date**”) until the same becomes due and payable, whether upon the Maturity Date or upon acceleration, conversion, redemption or otherwise (in each case in accordance with the terms hereof). This Convertible Note (including all Convertible Notes issued in exchange, transfer or replacement hereof, this “**Note**”, together with the Other Notes (as defined below), collectively, the “**Notes**”) was issued pursuant to the Securities Purchase Agreement, dated as of May 15, 2026 (the “**Subscription Date**”), by and among the Company and the purchasers (the “**Buyers**”) referred to therein (as amended from time to time, the “**Securities Purchase Agreement**”). As used herein, the term “**Other Notes**” shall mean the Convertible Notes other than this Note issued to a Purchaser pursuant to the Securities Purchase Agreement. Certain capitalized terms used herein are defined in Section 31.

1. PAYMENTS OF PRINCIPAL. On the Maturity Date, the Company shall pay to the Holder an amount in cash representing all Outstanding Principal Value, accrued and unpaid Interest on such Outstanding Principal Value and Interest and accrued and unpaid Late Charges (as defined in Section 24(c)). Other than as specifically permitted by this Note, the Company may not prepay any portion of the Outstanding Principal Value and accrued, unpaid Interest or accrued and unpaid Late Charges on Principal and Interest, if any. Notwithstanding anything herein to the contrary, with respect to any conversion or redemption hereunder, as applicable, the Company shall convert or redeem, as applicable, in the following order: first, all accrued and unpaid Late Charges on any Outstanding Principal Value and Interest hereunder and under any other Notes held by the Holder and all other amounts owed to the Holder under any other Transaction Document; second, all accrued and unpaid Interest and all Make-Whole Amount hereunder and under any other Notes held by such Holder; third, all other amounts (other than Principal) outstanding under any other Notes held by such Holder; and fourth, all Outstanding Principal Value outstanding hereunder and under any other Notes held by such Holder, in each case, allocated pro rata among this Note and such other Notes held by such Holder.

2. INTEREST; INTEREST RATE.

(a) Interest on this Note shall commence accruing on the Issuance Date and shall be computed on the basis of a 360-day year and twelve 30-day months and shall be payable in shares of Common Stock on a Conversion Date with respect to the Conversion Amount being converted on such Conversion Date, with any remaining accrued and unpaid Interest payable in cash on the Maturity Date (each, an “**Interest Date**”).

(b) Prior to the payment of Interest on an Interest Date, Interest on this Note shall accrue at the Interest Rate and be payable by way of inclusion of the Interest in the Conversion Amount on each Conversion Date in accordance with Section 3(b)(i) or upon any redemption in cash in accordance with Section 11 or any required payment upon any Bankruptcy Event of Default. From and after the occurrence and during the continuance of any Event of Default, the Interest Rate shall automatically be increased to the Default Rate. In the event that such Event of Default is subsequently cured (and no other Event of Default then exists, including, without limitation, for the Company’s failure to pay such Interest at the Default Rate on the applicable Interest Date), the adjustment referred to in the preceding sentence shall cease to be effective as of the calendar day immediately following the date of such cure; provided that the Interest as calculated and unpaid at such increased rate during the continuance of such Event of Default shall continue to apply to the extent relating to the days after the occurrence of such Event of Default through and including the date of such cure of such Event of Default.

3. CONVERSION OF NOTES. At any time after the Issuance Date, this Note shall be convertible into validly issued, fully paid and non-assessable shares of Common Stock (as defined below), on the terms and conditions set forth in this Section 3.

(a) Conversion Right. Subject to the provisions of Section 3(d), at any time or times on or after the Issuance Date, the Holder shall be entitled to convert any portion of the outstanding and unpaid Conversion Amount (as defined below) into validly issued, fully paid and non-assessable shares of Common Stock in accordance with Section 3(c), at the Conversion Rate (as defined below). The Company shall not issue any fraction of a share of Common Stock upon any conversion. If the issuance would result in the issuance of a fraction of a share of Common Stock, the Company shall round such fraction of a share of Common Stock up to the nearest whole share. The Company shall pay any and all transfer, stamp, issuance and similar taxes, costs and expenses (including, without limitation, fees and expenses of the Company’s transfer agent (the “**Transfer Agent**”)) that may be payable with respect to the issuance and delivery of Common Stock upon conversion of any Conversion Amount.

(b) Conversion Rate. The number of shares of Common Stock issuable upon conversion of any Conversion Amount pursuant to Section 3(a) shall be determined by dividing (x) such Conversion Amount by (y) the Conversion Price (the “**Conversion Rate**”).

(i) “**Conversion Amount**” means the sum of (i) the Outstanding Principal Value of this Note to be converted, redeemed or otherwise with respect to which this determination is being made, (ii) accrued and unpaid Interest with respect to such Outstanding Principal Value of this Note, (iii) Make-Whole Amount (iv) accrued and unpaid Late Charges with respect to such Principal of this Note and Interest and Make-Whole Amount, and (v) other amounts outstanding under this Note to be converted, redeemed or otherwise with respect to which this determination is being made.

(ii) “**Conversion Price**” shall mean, subject to adjustment as provided herein, as of any Conversion Date or other date of determination, \$0.3882.

(c) Mechanics of Conversion.

(i) Optional Conversion. To convert any Conversion Amount into shares of Common Stock on any date (a “**Conversion Date**”), the Holder shall deliver (whether via electronic mail or otherwise), for receipt on or prior to 11:59 p.m., New York time, on such date, a copy of an executed notice of conversion in the form attached hereto as Exhibit I (each, a “**Conversion Notice**”) to the Company. If required by Section 3(c)(iii), within two (2) Trading Days following a conversion of this Note as aforesaid, the Holder shall surrender this Note to a nationally recognized overnight delivery service for delivery to the Company (or an indemnification undertaking with respect to this Note in the case of its loss, theft or destruction as contemplated by Section 18(b)). On or before the first (1st) Trading Day following the date on which the Company has received a Conversion Notice (or such earlier date as required pursuant to the 1934 Act or other applicable law, rule or regulation for the settlement of a trade initiated on the applicable Conversion Date of such shares of Common Stock issuable pursuant to such Conversion Notice) (the “**Share Delivery Deadline**”), the Company shall (1) provided that the Transfer Agent is participating in the Depository Trust Company (“**DTC**”) Fast Automated Securities Transfer Program (“**FAST**”), credit such aggregate number of shares of Common Stock to which the Holder shall be entitled pursuant to such conversion to the Holder’s or its designee’s balance account with DTC through its Deposit/Withdrawal at Custodian system or (2) if the Transfer Agent is not participating in FAST, upon the request of the Holder, issue and deliver (via reputable overnight courier) to the address as specified in the Conversion Notice, a certificate, registered in the name of the Holder or its designee, for the number of shares of Common Stock to which the Holder shall be entitled pursuant to such conversion. If this Note is physically surrendered for conversion pursuant to Section 3(c)(iii) and the Outstanding Principal Value of this Note is greater than the Outstanding Principal Value portion of the Conversion Amount being converted, then the Company shall as soon as practicable and in no event later than one (1) Business Day after receipt of this Note and at its own expense, issue and deliver to the Holder (or its designee) a new Note (in accordance with Section 18(d)) representing the Outstanding Principal Value not converted. The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of this Note shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date.

(ii) Company's Failure to Timely Convert. If (I) the Company shall fail, for any reason or for no reason, on or prior to the applicable Share Delivery Deadline, if the Transfer Agent is not participating in FAST, to issue and deliver to the Holder (or its designee) a certificate for the number of shares of Common Stock to which the Holder is entitled and register such shares of Common Stock on the Company's share register or, if the Transfer Agent is participating in FAST, to credit the balance account of the Holder or the Holder's designee with DTC for such number of shares of Common Stock to which the Holder is entitled upon the Holder's conversion of this Note (as the case may be), or (II) (A) a Registration Statement covering the resale of the shares of Common Stock that are the subject of the Conversion Notice (the "**Unavailable Conversion Shares**") is not available for the resale of such Unavailable Conversion Shares and the Company fails to promptly (x) so notify the Holder and (y) deliver the shares of Common Stock electronically without any restrictive legend by crediting such aggregate number of shares of Common Stock to which the Holder is entitled pursuant to such conversion to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system and (B) the Unavailable Conversion Shares are not eligible to be resold by the Holder pursuant to Rule 144 (the event described in the immediately foregoing clause (II) is hereinafter referred to as a "**Notice Failure**") and together with the event described in clause (I) above, a "**Conversion Failure**"), then, in addition to all other remedies available to the Holder, (1) the Company shall pay in cash to the Holder on each day after such Share Delivery Deadline that the issuance of such shares of Common Stock is not timely effected an amount equal to 1% of the product of (A) the sum of the number of shares of Common Stock not issued to the Holder on or prior to the Share Delivery Deadline and to which the Holder is entitled, multiplied by (B) any trading price of the Common Stock selected by the Holder in writing as in effect at any time during the period beginning on the applicable Conversion Date and ending on the applicable Share Delivery Deadline and (2) the Holder, upon written notice to the Company, may void its Conversion Notice with respect to, and retain or have returned (as the case may be) any portion of this Note that has not been converted pursuant to such Conversion Notice, provided that the voiding of a Conversion Notice shall not affect the Company's obligations to make any payments which have accrued prior to the date of such notice pursuant to this Section 3(c)(ii) or otherwise. In addition to the foregoing, if on or prior to the Share Delivery Deadline if the Transfer Agent is not participating in FAST, the Company shall fail to issue and deliver to the Holder (or its designee) a certificate and register such shares of Common Stock on the Company's share register or, if the Transfer Agent is participating in FAST, the Transfer Agent shall fail to credit the balance account of the Holder or the Holder's designee with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's conversion hereunder or pursuant to the Company's obligation pursuant to clause (II) below, and if on or after such Share Delivery Deadline the Holder acquires (in an open market transaction, stock loan or otherwise) shares of Common Stock corresponding to all or any portion of the number of shares of Common Stock issuable upon such conversion that the Holder is entitled to receive from the Company and has not received from the Company in connection with such Conversion Failure (a "**Buy-In**"), then, in addition to all other remedies available to the Holder, the Company shall, within two (2) Business Days after receipt of the Holder's request and in the Holder's discretion, either: (I) pay cash to the Holder in an amount equal to the Holder's total purchase price (including brokerage commissions, stock loan costs and other out-of-pocket expenses, if any) for the shares of Common Stock so acquired (including, without limitation, by any other Person in respect, or on behalf, of the Holder) (the "**Buy-In Price**"), at which point the Company's obligation to so issue and deliver such certificate (and to issue such shares of Common Stock) or credit the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's conversion hereunder (as the case may be) (and to issue such shares of Common Stock) shall terminate, or (II) promptly honor its obligation to so issue and deliver to the Holder a certificate or certificates representing such shares of Common Stock or credit the balance account of such Holder or such Holder's designee, as applicable, with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's conversion hereunder (as the case may be) and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (x) such number of shares of Common Stock multiplied by (y) the lowest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date of the applicable Conversion Notice and ending on the date of such issuance and payment under this clause (II) (the "**Buy-In Payment Amount**"). Nothing shall limit the 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 certificates representing shares of Common Stock (or to electronically deliver such shares of Common Stock) upon the conversion of this Note as required pursuant to the terms hereof.

(iii) Registration; Book-Entry. The Company shall maintain a register (the “**Register**”) for the recordation of the names and addresses of the holders of each Note and the principal amount of the Notes held by such holders (the “**Registered Notes**”). The entries in the Register shall be conclusive and binding for all purposes absent manifest error. The Company and the holders of the Notes shall treat each Person whose name is recorded in the Register as the owner of a Note for all purposes (including, without limitation, the right to receive payments of Principal and Interest hereunder) notwithstanding notice to the contrary. A Registered Note may be assigned, transferred or sold in whole or in part only by registration of such assignment or sale on the Register. Upon its receipt of a written request to assign, transfer or sell all or part of any Registered Note by the holder thereof, the Company shall record the information contained therein in the Register and issue one or more new Registered Notes in the same aggregate principal amount as the principal amount of the surrendered Registered Note to the designated assignee or transferee pursuant to Section 18, provided that if the Company does not so record an assignment, transfer or sale (as the case may be) of all or part of any Registered Note within two (2) Business Days of such a request, then the Register shall be automatically deemed updated to reflect such assignment, transfer or sale (as the case may be). Notwithstanding anything to the contrary set forth in this Section 3, following conversion of any portion of this Note in accordance with the terms hereof, the Holder shall not be required to physically surrender this Note to the Company unless (A) the full Conversion Amount represented by this Note is being converted (in which event this Note shall be delivered to the Company following conversion thereof as contemplated by Section 3(c)(i)) or (B) the Holder has provided the Company with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of this Note upon physical surrender of this Note. The Holder and the Company shall maintain records showing the Principal, Interest and Late Charges converted and/or paid (as the case may be) and the dates of such conversions, and/or payments (as the case may be) or shall use such other method, reasonably satisfactory to the Holder and the Company, so as not to require physical surrender of this Note upon conversion. If the Company does not update the Register to record such Principal, Interest and Late Charges converted and/or paid (as the case may be) and the dates of such conversions, and/or payments (as the case may be) within two (2) Business Days of such occurrence, then the Register shall be automatically deemed updated to reflect such occurrence.

(iv) Pro Rata Conversion; Disputes. In the event that the Company receives a Conversion Notice from more than one holder of Notes for the same Conversion Date and the Company can convert some, but not all, of such portions of the Notes submitted for conversion, the Company, subject to Section 3(d), shall convert from each holder of Notes electing to have Notes converted on such date a pro rata amount of such holder’s portion of its Notes submitted for conversion based on the principal amount of Notes submitted for conversion on such date by such holder relative to the aggregate principal amount of all Notes submitted for conversion on such date. In the event of a dispute as to the number of shares of Common Stock issuable to the Holder in connection with a conversion of this Note, the Company shall issue to the Holder the number of shares of Common Stock not in dispute and resolve such dispute in accordance with Section 23. If a Conversion Notice delivered to the Company would result in a breach of Section 3(d)(i) below, and the Holder does not elect in writing to withdraw, in whole, such Conversion Notice, the Company shall hold such Conversion Notice in abeyance until such time as such Conversion Notice may be satisfied without violating Section 3(d)(i) below (with such calculations thereunder made as of the date such Conversion Notice was initially delivered to the Company). Notwithstanding the foregoing and for the avoidance of doubt, any such Conversion Notice being held in abeyance pursuant hereto shall not constitute a Conversion Failure or an Event of Default, nor shall it cause the accrual of any Late Charges. Notwithstanding the foregoing, at the election of the Holder, in its sole discretion and by written notice to the Company, once such Conversion Notice may be satisfied without violating Section 3(d)(i), such Conversion Notice shall cease to be held in abeyance and the Company shall treat such Conversion Notice as a valid and effective Conversion Notice delivered on the date originally received by the Company, with all calculations hereunder (including, without limitation, the Conversion Price and the number of shares of Common Stock issuable) determined as of such original delivery date, and the Company shall promptly deliver such shares in accordance with Section 3(c).

(d) Limitations on Conversions.

(i) **Beneficial Ownership.** The Company shall not effect the conversion of any portion of this Note, and the Holder shall not have the right to convert any portion of this Note pursuant to the terms and conditions of this Note and any such conversion shall be null and void and treated as if never made, to the extent that after giving effect to such conversion, the Holder together with the other Attribution Parties collectively would beneficially own in excess of 9.99% or such lesser amount as specified by the Holder in a written notice received by the Company on or prior to the Closing Date (the “**Maximum Percentage**”) of the shares of Common Stock outstanding immediately after giving effect to such conversion. For purposes of the foregoing sentence, the aggregate number of shares of Common Stock beneficially owned by the Holder and the other Attribution Parties shall include the number of shares of Common Stock held by the Holder and all other Attribution Parties plus the number of shares of Common Stock issuable upon conversion of this Note with respect to which the determination of such sentence is being made, but shall exclude shares of Common Stock which would be issuable upon (A) conversion of the remaining, nonconverted portion of this Note beneficially owned by the Holder or any of the other Attribution Parties and (B) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any convertible notes or convertible preferred stock or warrants) beneficially owned by the Holder or any other Attribution Party subject to a limitation on conversion or exercise analogous to the limitation contained in this Section 3(d)(i). For purposes of this Section 3(d)(i), beneficial ownership shall be calculated in accordance with Section 13(d) of the 1934 Act. For purposes of determining the number of outstanding shares of Common Stock the Holder may acquire upon the conversion of this Note without exceeding the Maximum Percentage, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (x) the Company’s most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the SEC, as the case may be, (y) a more recent public announcement by the Company or (z) any other written notice by the Company or the Transfer Agent, if any, setting forth the number of shares of Common Stock outstanding (the “**Reported Outstanding Share Number**”). If the Company receives a Conversion Notice from the Holder at a time when the actual number of outstanding shares of Common Stock is less than the Reported Outstanding Share Number, the Company shall notify the Holder in writing of the number of shares of Common Stock then outstanding and, to the extent that such Conversion Notice would otherwise cause the Holder’s beneficial ownership, as determined pursuant to this Section 3(d)(i), to exceed the Maximum Percentage, the Holder must notify the Company of a reduced number of shares of Common Stock to be purchased pursuant to such Conversion Notice. For any reason at any time, upon the written or oral request of the Holder, the Company shall within one (1) Business Day confirm orally and in writing or by electronic mail 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 of the Company, including this Note, by the Holder and any other Attribution Party since the date as of which the Reported Outstanding Share Number was reported. In the event that the issuance of shares of Common Stock to the Holder upon conversion of this Note results in the Holder and the other Attribution Parties being deemed to beneficially own, in the aggregate, more than the Maximum Percentage of the number of outstanding shares of Common Stock (as determined under Section 13(d) of the 1934 Act), the number of shares so issued by which the Holder’s and the other Attribution Parties’ aggregate beneficial ownership exceeds the Maximum Percentage (the “**Excess Shares**”) shall be deemed null and void and shall be cancelled ab initio, and the Holder shall not have the power to vote or to transfer the Excess Shares. Upon delivery of a written notice to the Company, the Holder may from time to time increase (with such increase not effective until the sixty-first (61st) day after delivery of such notice) or decrease the Maximum Percentage to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder and the other Attribution Parties and not to any other holder of Notes that is not an Attribution Party of the Holder. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Note in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the 1934 Act. No prior inability to convert this Note pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of convertibility. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 3(d)(i) to the extent necessary to correct this paragraph (or any portion of this paragraph) which may be defective or inconsistent with the intended beneficial ownership limitation contained in this Section 3(d)(i) or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitation contained in this paragraph may not be waived and shall apply to a successor holder of this Note.

(ii) Principal Market Regulation The Company shall not issue any shares of Common Stock upon conversion of this Note or otherwise pursuant to the terms of this Note if the issuance of such shares of Common Stock would exceed the aggregate number of shares of Common Stock which the Company may issue upon conversion of the Notes or otherwise pursuant to the terms of this Note (as the case may be) without breaching the Company's obligations under the rules or regulations of the Principal Market (the number of shares which may be issued without violating such rules and regulations, including rules related to the aggregation of offerings under NASDAQ Listing Rule 5635(d), the "**Exchange Cap**"), except that such limitation shall not apply in the event that the Company (A) obtains the approval of its stockholders as required by the applicable rules of the Principal Market for issuances of shares of Common Stock in excess of such amount or (B) obtains a written opinion from counsel to the Company that such approval is not required, which opinion shall be reasonably satisfactory to the Holder. Until such approval or such written opinion is obtained, no Buyer shall be issued in the aggregate, upon conversion or exercise (as the case may be) of any Notes or otherwise pursuant to the terms of the Notes, shares of Common Stock in an amount greater than the product of (i) the Exchange Cap as of the Subscription Date multiplied by (ii) the quotient of (1) the original principal amount of Notes issued to such Buyer pursuant to the Securities Purchase Agreement on each Closing Date (as defined in the Securities Purchase Agreement) divided by (2) the aggregate original principal amount of all Notes issued to the Buyers pursuant to the Securities Purchase Agreement on each Closing Date (with respect to each Buyer, the "**Exchange Cap Allocation**"). In the event that any Buyer shall sell or otherwise transfer any of such Buyer's Notes, the transferee shall be allocated a pro rata portion of such Buyer's Exchange Cap Allocation with respect to such portion of such Notes so transferred, and the restrictions of the prior sentence shall apply to such transferee with respect to the portion of the Exchange Cap Allocation so allocated to such transferee. Upon conversion in full of a holder's Notes, the difference (if any) between such holder's Exchange Cap Allocation and the number of shares of Common Stock actually issued to such holder upon such holder's conversion in full of such Notes shall be allocated, to the respective Exchange Cap Allocations of the remaining holders of Notes on a pro rata basis in proportion to the shares of Common Stock underlying the Notes then held by each such holder of Notes. At any time after the Stockholder Approval Deadline (as defined in the Securities Purchase Agreement), in the event that the Company is prohibited from issuing shares of Common Stock pursuant to this Section 3(d)(ii) (the "**Exchange Cap Shares**"), the Company shall pay cash in exchange for the cancellation of such portion of this Note convertible into such Exchange Cap Shares at a price equal to the sum of (i) the product of (x) such number of Exchange Cap Shares and (y) the greatest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date the Holder delivers the applicable Conversion Notice with respect to such Exchange Cap Shares to the Company and ending on the date of such issuance and payment under this Section 3(d)(ii), and (ii) to the extent of any Buy-In related thereto, any Buy-In Payment Amount, any brokerage commissions and other out-of-pocket expenses, if any, of the Holder incurred in connection therewith (collectively, the "**Exchange Cap Share Cancellation Amount**").

(e) Floor Breach Event. If during any period of ten (10) consecutive Trading Days, the daily VWAP of the Company's Common Stock is less than the Floor Price on five (5) or more such Trading Days (a "**Floor Breach Event**"), then a cure period shall commence. The cure period shall be (i) thirty (30) calendar days with respect to the first Floor Breach Event and (ii) twenty (20) calendar days with respect to the second and each subsequent Floor Breach Event. During the applicable cure period, the Company may, if permitted by Nasdaq, cure such Floor Breach Event by resetting the Floor Price to a level such that the daily VWAP of the Common Stock equals or exceeds such reset Floor Price for at least ten (10) consecutive Trading Days. A Floor Breach Event shall also be deemed cured if, without any such reset of the Floor Price by the Company, the daily VWAP of the Common Stock equals or exceeds the Floor Price for ten (10) consecutive Trading Days. If the Company fails to cure a Floor Breach Event within the applicable cure period, the Holder shall have the right, at its option, upon written notice to the Company (a "**Floor Breach Redemption Notice**") delivered at any time following the expiration of such cure period and during the continuance of such uncured Floor Breach Event, to require the Company to redeem all or any portion of the Conversion Amount of this Note for cash, at a price equal to the Conversion Amount of the Notes (the "**Floor Redemption Price**"), which Floor Redemption Price shall be due and payable by the Company within five (5) Trading Days following receipt of such notice; provided, however, that the Holder shall retain all rights to effect conversions at any time during the continuance of such Floor Breach Event and until the Floor Redemption Price is paid in full. For the avoidance of doubt, Floor Breach Events shall be counted on a cumulative basis and shall not reset upon any cure.

(f) Right of Alternate Conversion.

(i) General.

(1) Alternate Optional Conversion. Subject to Section 3(d), at any time or times on or after the Issuance Date, at the option of the Holder, the Holder may convert (each, an “**Alternate Optional Conversion**”, and the date of such Alternate Optional Conversion, an “**Alternate Optional Conversion Date**”) all, or any part, of the outstanding and unpaid Conversion Amount into validly issued, fully paid and non-assessable shares of Common Stock (such portion of the Conversion Amount subject to such Alternate Optional Conversion, the “**Alternate Optional Conversion Amount**”) at the Alternate Conversion Price.

(2) Alternate Conversion Upon an Event of Default. Subject to Section 3(d), at any time after the occurrence of an Event of Default (regardless of whether such Event of Default has been cured, or if the Company has delivered an Event of Default Notice to the Holder or if the Holder has delivered an Event of Default Redemption Notice to the Company or otherwise notified the Company that an Event of Default has occurred), the Holder may, at the Holder’s option, convert (each, an “**Alternate Event of Default Conversion**” and together with each Alternate Optional Conversion, each, an “**Alternate Conversion**”, and the date of such Alternate Event of Default Conversion, each, an “**Alternate Event of Default Conversion Date**”, and together with each Alternate Optional Conversion Date, each, an “**Alternate Conversion Date**”) all, or any part of, the Conversion Amount (such portion of the Conversion Amount subject to such Alternate Conversion, the “**Alternate Event of Default Conversion Amount**” and together with each Alternate Optional Conversion Amount, each, an “**Alternate Conversion Amount**”) into shares of Common Stock at the Alternate Conversion Price.

(ii) Mechanics of Alternate Conversion. On any Alternate Conversion Date, the Holder may voluntarily convert any Alternate Conversion Amount pursuant to Section 3(c) (with “Alternate Conversion Price” replacing “Conversion Price” for all purposes hereunder with respect to such Alternate Conversion and, solely with respect to the calculation of the number of shares of Common Stock issuable upon conversion of any Conversion Amount in an Alternate Event of Default Conversion, with “Redemption Premium of the Conversion Amount” replacing “Conversion Amount” in clause (x) of the definition of Conversion Rate above with respect to such Alternate Conversion) by designating in the Conversion Notice delivered pursuant to this Section 3(f) of this Note that the Holder is electing to use the Alternate Conversion Price for such conversion. Notwithstanding anything to the contrary in this Section 3(f), but subject to Section 3(d), until the Company delivers shares of Common Stock representing the applicable Alternate Conversion Amount to the Holder, such Alternate Conversion Amount may be converted by the Holder into shares of Common Stock pursuant to Section 3(c) without regard to this Section 3(f). In the event of an Alternate Conversion pursuant to this Section 3(f) of all, or any portion, of this Note, the Holder’s damages would be uncertain and difficult to estimate because of the parties’ inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any redemption premium due under this Section 3(f), together the Alternate Conversion Price used in such Alternate Conversion, as applicable, is intended by the parties to be, and shall be deemed, a reasonable estimate of, the Holder’s actual loss of its investment opportunity and not as a penalty. The Company shall pay any and all transfer, stamp, issuance and similar taxes, costs and expenses (including, without limitation, fees and expenses of the Transfer Agent) that may be payable with respect to the issuance and delivery of Common Stock in connection with any Alternate Conversion.

4. RIGHTS UPON EVENT OF DEFAULT.

(a) Event of Default. Each of the following events shall constitute an “**Event of Default**” and each of the events in clauses (vii), (viii) and (ix) shall constitute a “**Bankruptcy Event of Default**”:

(i) the suspension from trading or the failure of the Common Stock to be trading or listed (as applicable) on an Eligible Market for a period of ten (10) consecutive Trading Days;

(ii) the failure of the Registration Statement (as defined in the Securities Purchase Agreement) to be filed with the SEC on or prior to the date that is five (5) days after the Filing Deadline (as defined in the Securities Purchase Agreement), or to be declared effective by the SEC on or prior to the date that is five (5) days after the Effectiveness Deadline (as defined in the Securities Purchase Agreement);

(iii) the Company’s (A) failure to cure a Conversion Failure by delivery of the required number of freely tradeable shares of Common Stock within five (5) Trading Days after the applicable Conversion Date or exercise date (as the case may be) or (B) notice, written or oral, to any holder of the Notes, including, without limitation, by way of public announcement or through any of its agents, at any time, of its intention not to comply, as required, with a request for conversion of any Notes into shares of Common Stock that is requested in accordance with the provisions of the Notes, other than pursuant to Section 3(d); *provided*, that on five (5) occasions during the life of this Note (aggregated with all other such occasions occurring under this Section 4(a)(iii) and Section 4(a)(v) of this Note), the Company shall be granted one (1) additional Trading Day to deliver the required number of freely tradeable shares of Common Stock; *provided*, further, that such additional Trading Day shall not limit, impair or otherwise affect any rights or remedies of the Holder pursuant to Section 3(c)(ii) (including, without limitation, any buy-in or related damages thereunder) or otherwise under this Note or any other Transaction Document, and shall not be deemed to extend the Share Delivery Deadline for any purpose.

(iv) the Company’s or any Subsidiary’s failure to pay to the Holder any amount of Outstanding Principal Value, Interest, Make-Whole Amount, Late Charges or other amounts when and as due under this Note (including, without limitation, the Company’s or any Subsidiary’s failure to pay any redemption payments or amounts hereunder) or any other Transaction Document (as defined in the Securities Purchase Agreement) or any other agreement, document, certificate or other instrument delivered in connection with the transactions contemplated hereby and thereby, except, in the case of a failure to pay Interest and Late Charges when and as due, in which case only if such failure remains uncured for a period of at least five (5) Trading Days;

(v) the Company fails to remove any restrictive legend on any certificate or any shares of Common Stock issued to the Holder upon conversion of this Note as and when required hereunder or pursuant to any other Transaction Document (as defined in the Securities Purchase Agreement), unless otherwise then prohibited by applicable federal securities laws, and any such failure remains uncured for at least five (5) Trading Days; *provided*, that on five (5) occasions during the life of this Note (aggregated with all other such occasions occurring under this Section 4(a)(v) and Section 4(a)(iii) of this Note), the Company shall be granted one (1) additional Trading Day to remove any such restrictive legend on any certificate or any shares of Common Stock issued to the Holder upon conversion of this Note; *provided*, further, that such additional Trading Day shall not limit, impair or otherwise affect any rights or remedies of the Holder pursuant to Section 3(c)(ii) (including, without limitation, any buy-in or related damages thereunder) or otherwise under this Note or any other Transaction Document, and shall not be deemed to extend the Share Delivery Deadline for any purpose.

(vi) the occurrence of any default under, redemption of or acceleration prior to maturity of at least an aggregate of \$1,500,000 of Indebtedness of the Company or any of its Subsidiaries;

(vii) bankruptcy, insolvency, reorganization or liquidation proceedings or other proceedings for the relief of debtors shall be instituted by or against the Company or any Subsidiary and, if instituted against the Company or any Subsidiary by a third party, shall not be dismissed within thirty (30) days of their initiation;

(viii) the commencement by the Company or any Subsidiary of a voluntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree, order, judgment or other similar document in respect of the Company or any Subsidiary in an involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal, state or foreign law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Subsidiary or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the execution of a composition of debts, or the occurrence of any other similar federal, state or foreign proceeding, or the admission by it in writing of its inability to pay its debts generally as they become due, the taking of corporate action by the Company or any Subsidiary in furtherance of any such action or the taking of any action by any Person to commence a Uniform Commercial Code foreclosure sale or any other similar action under federal, state or foreign law;

(ix) the entry by a court of (i) a decree, order, judgment or other similar document in respect of the Company or any Subsidiary of a voluntary or involuntary case or proceeding under any applicable federal, state or foreign bankruptcy, insolvency, reorganization or other similar law or (ii) a decree, order, judgment or other similar document adjudging the Company or any Subsidiary as bankrupt or insolvent, or approving as properly filed a petition seeking liquidation, reorganization, arrangement, adjustment or composition of or in respect of the Company or any Subsidiary under any applicable federal, state or foreign law or (iii) a decree, order, judgment or other similar document appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or any Subsidiary or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree, order, judgment or other similar document or any such other decree, order, judgment or other similar document unstayed and in effect for a period of thirty (30) consecutive days;

(x) a final judgment or judgments for the payment of money aggregating in excess of \$1,500,000 are rendered against the Company and/or any of its Subsidiaries and which judgments are not, within thirty (30) days after the entry thereof, bonded, discharged, settled or stayed pending appeal, or are not discharged within thirty (30) days after the expiration of such stay; provided, however, any judgment which is covered by insurance or an indemnity from a credit worthy party shall not be included in calculating the \$1,500,000 amount set forth above so long as the Company provides the Holder a written statement from such insurer or indemnity provider (which written statement shall be reasonably satisfactory to the Holder) to the effect that such judgment is covered by insurance or an indemnity and the Company or such Subsidiary (as the case may be) will receive the proceeds of such insurance or indemnity within thirty (30) days of the issuance of such judgment;

(xi) the Company and/or any Subsidiary, individually or in the aggregate, either (i) fails to pay, when due, or within any applicable grace period, any payment with respect to any Indebtedness in excess of \$1,500,000 due to any third party (other than, with respect to unsecured Indebtedness only, payments contested by the Company and/or such Subsidiary (as the case may be) in good faith by proper proceedings and with respect to which adequate reserves have been set aside for the payment thereof in accordance with GAAP) or is otherwise in breach or violation of any agreement for monies owed or owing in an amount in excess of \$1,500,000, which breach or violation permits the other party thereto to declare a default or otherwise accelerate amounts due thereunder, or (ii) suffer to exist any other circumstance or event that would, with or without the passage of time or the giving of notice, result in a default or event of default under any agreement binding the Company or any Subsidiary, which default or event of default would or is likely to have a Material Adverse Effect (as defined in the Securities Purchase Agreement) on the business, assets, operations (including results thereof), liabilities, properties, condition (including financial condition) or prospects of the Company or any of its Subsidiaries, individually or in the aggregate;

(xii) other than as specifically set forth in another clause of this Section 4(a), the Company or any Subsidiary breaches any representation or warranty, in any material respect (other than representations or warranties subject to Material Adverse Effect or materiality, which may not be breached in any respect) or any covenant or other term or condition of any Transaction Document or any Financing Document (as defined in the Securities Purchase Agreement), except, in the case of a breach of a covenant or other term or condition that is curable, only if such breach remains uncured for a period of five (5) consecutive Trading Days;

(xiii) a false or inaccurate certification (including a false or inaccurate deemed certification) by the Company that either (A) the Equity Conditions are satisfied, (B) there has been no Equity Conditions Failure, or (C) as to whether any Event of Default has occurred;

(xiv) any breach or failure in any material respect by the Company or any Subsidiary to comply with any provision of Section 13 of this Note;

(xv) any breach or failure in any respect by the Company or any Subsidiary to comply with any provision of Section 14 of this Note;

(xvi) institution of any steps by any Person to terminate a Pension Plan (as defined in the Existing Senior Securities) if as a result of such termination the Company or any Subsidiary or any member of the Controlled Group (as defined in the Existing Senior Securities) could reasonably be expected to be required to make a contribution to such Pension Plan, or could reasonably be expected to incur a liability or obligation to such Pension Plan, in either case in excess of \$1,500,000, (ii) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien (as defined in the Securities Purchase Agreement) under ERISA (as defined in the Existing Senior Securities) or the code (as defined in the Existing Senior Securities), or (iii) there shall occur any withdrawal or partial withdrawal from a Multiemployer Plan (as defined in the Existing Senior Securities) and the withdrawal liability (without unaccrued interest) to Multiemployer Plans as a result of such withdrawal (including any outstanding withdrawal liability that the Company or any member of the Controlled Group have incurred on the date of such withdrawal) exceeds \$1,500,000;

(xvii) any material provision of any Transaction Document or any Financing Documents shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against the parties thereto, or the validity or enforceability thereof shall be contested by any party thereto, or a proceeding shall be commenced by the Company or any Subsidiary or any governmental authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof, or the Company or any Subsidiary shall deny in writing that it has any liability or obligation purported to be created under any Transaction Document or any Financing Documents; and

(xviii) any Event of Default (as defined in the Other Notes) occurs with respect to any Other Notes.

(b) Notice of an Event of Default; Redemption Right. Upon the occurrence of an Event of Default with respect to this Note or any Other Note, the Company shall within one (1) Business Day deliver written notice thereof via electronic mail and overnight courier (with next day delivery specified) (an “**Event of Default Notice**”) to the Holder. At any time after the earlier of the Holder’s receipt of an Event of Default Notice and the Holder becoming aware of an Event of Default (such earlier date, the “**Event of Default Right Commencement Date**”) and ending (such ending date, the “**Event of Default Right Expiration Date**”, and each such period, an “**Event of Default Redemption Right Period**”) on the twentieth (20th) Trading Day after the later of (x) the date such Event of Default is cured and (y) the Holder’s receipt of an Event of Default Notice that includes (I) a reasonable description of the applicable Event of Default, (II) a certification as to whether, in the opinion of the Company, such Event of Default is capable of being cured and, if applicable, a reasonable description of any existing plans of the Company to cure such Event of Default and (III) a certification as to the date the Event of Default occurred and, if cured on or prior to the date of such Event of Default Notice, the applicable Event of Default Right Expiration Date, the Holder may require the Company to redeem (regardless of whether such Event of Default has been cured on or prior to the Event of Default Right Expiration Date) all or any portion of this Note by delivering written notice thereof (the “**Event of Default Redemption Notice**”) to the Company, which Event of Default Redemption Notice shall indicate the portion (if not all) of this Note the Holder is electing to redeem. This Note, or each portion of this Note, subject to redemption by the Company pursuant to this Section 4(b) shall be redeemed by the Company at a price equal to the greater of (i) the product of (A) the Conversion Amount to be redeemed multiplied by (B) the Redemption Premium and (ii) the product of (X) the Conversion Rate (determined by substituting the Alternate Conversion Price for the Conversion Price for purposes of such calculation) with respect to the Conversion Amount in effect at such time as the Holder delivers an Event of Default Redemption Notice multiplied by (Y) the product of (1) the Redemption Premium multiplied by (2) the greatest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date immediately preceding such Event of Default and ending on the date the Company makes the entire payment required to be made under this Section 4(b) (the “**Event of Default Redemption Price**”). Redemptions required by this Section 4(b) shall be made in accordance with the provisions of Section 11. To the extent redemptions required by this Section 4(b) are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 4(b), but subject to Section 3(d), until the Event of Default Redemption Price (together with any Late Charges thereon) is paid in full, the Conversion Amount submitted for redemption under this Section 4(b) (together with any Late Charges thereon) may be converted, in whole or in part, by the Holder into Common Stock pursuant to the terms of this Note. In the event of the Company’s redemption of any portion of this Note under this Section 4(b), the Holder’s damages would be uncertain and difficult to estimate because of the parties’ inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any redemption premium due under this Section 4(b) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder’s actual loss of its investment opportunity and not as a penalty. Any redemption upon an Event of Default shall not constitute an election of remedies by the Holder, and all other rights and remedies of the Holder shall be preserved.

(c) Mandatory Redemption upon Bankruptcy Event of Default. Notwithstanding anything to the contrary herein, and notwithstanding any conversion that is then required or in process, upon any Bankruptcy Event of Default, whether occurring prior to or following the Maturity Date, the Company shall immediately pay to the Holder an amount in cash representing (i) all Outstanding Principal Value, accrued and unpaid Interest and accrued and unpaid Late Charges on such Outstanding Principal Value and Interest, and Make-Whole Amount, multiplied by (ii) the Redemption Premium, in addition to any and all other amounts due hereunder, without the requirement for any notice or demand or other action by the Holder or any other person or entity, provided that the Holder may, in its sole discretion, waive such right to receive payment upon a Bankruptcy Event of Default, in whole or in part, and any such waiver shall not affect any other rights of the Holder hereunder, including any other rights in respect of such Bankruptcy Event of Default, any right to conversion, and any right to payment of the Event of Default Redemption Price or any other Redemption Price, as applicable.

5. RIGHTS UPON FUNDAMENTAL TRANSACTION.

(a) Assumption. The Company shall not enter into or be party to a Fundamental Transaction unless (i) the Successor Entity assumes in writing all of the obligations of the Company under this Note and the other Transaction Documents in accordance with the provisions of this Section 5(a) pursuant to written agreements in form and substance satisfactory to the Holder and approved by the Holder prior to such Fundamental Transaction, including agreements to deliver to each holder of Notes in exchange for such Notes a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to the Notes, including, without limitation, having a principal amount and interest rate equal to the principal amounts then outstanding and the interest rates of the Notes held by such holder, having similar conversion rights as the Notes and having similar ranking and security to the Notes, and satisfactory to the Holder and (ii) the Successor Entity (including its Parent Entity) is a publicly traded corporation whose common stock is quoted on or listed for trading on an Eligible Market. Upon the occurrence of any 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 Note 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 Note and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein. Upon consummation of a Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon conversion or redemption of this Note at any time after the consummation of such Fundamental Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property (except such items still issuable under Sections 6 and 15, which shall continue to be receivable thereafter)) issuable upon the conversion or redemption of the Notes prior to such Fundamental Transaction, such shares of the publicly traded common stock (or their equivalent) of the Successor Entity (including its Parent Entity) which the Holder would have been entitled to receive upon the happening of such Fundamental Transaction had this Note been converted immediately prior to such Fundamental Transaction (without regard to any limitations on the conversion of this Note), as adjusted in accordance with the provisions of this Note. Notwithstanding the foregoing, the Holder may elect, at its sole option, by delivery of written notice to the Company to waive this Section 5(a) to permit the Fundamental Transaction without the assumption of this Note. The provisions of this Section 5 shall apply similarly and equally to successive Fundamental Transactions and shall be applied without regard to any limitations on the conversion of this Note.

(b) Notice of a Change of Control; Redemption Right. No sooner than twenty (20) Trading Days nor later than ten (10) Trading Days prior to the consummation of a Change of Control (the “**Change of Control Date**”), but not prior to the public announcement of such Change of Control, the Company shall deliver written notice thereof via electronic mail and overnight courier to the Holder (a “**Change of Control Notice**”). At any time during the period beginning after the Holder’s receipt of a Change of Control Notice or the Holder becoming aware of a Change of Control if a Change of Control Notice is not delivered to the Holder in accordance with the immediately preceding sentence (as applicable) and ending on twenty (20) Trading Days after the later of (A) the date of consummation of such Change of Control or (B) the date of receipt of such Change of Control Notice or (C) the date of the announcement of such Change of Control, the Holder may require the Company to redeem all or any portion of this Note by delivering written notice thereof (“**Change of Control Redemption Notice**”) to the Company, which Change of Control Redemption Notice shall indicate the Conversion Amount the Holder is electing to redeem. The portion of this Note subject to redemption pursuant to this Section 5 shall be redeemed by the Company in cash at a price equal to the greatest of (i) the product of (w) the Redemption Premium multiplied by (y) the Conversion Amount being redeemed, (ii) the product of (x) the Redemption Premium multiplied by (y) the product of (A) the Conversion Amount being redeemed multiplied by (B) the quotient determined by dividing (I) the greatest Closing Sale Price of the shares of Common Stock during the period beginning on the date immediately preceding the earlier to occur of (1) the consummation of the applicable Change of Control and (2) the public announcement of such Change of Control and ending on the date the Holder delivers the Redemption Notice by (II) the Alternate Conversion Price then in effect and (iii) the product of (y) the Redemption Premium multiplied by (z) the product of (A) the Conversion Amount being redeemed multiplied by (B) the quotient of (I) the aggregate cash consideration and the aggregate cash value of any non-cash consideration per share of Common Stock to be paid to the holders of the shares of Common Stock upon consummation of such Change of Control (any such non-cash consideration constituting publicly-traded securities shall be valued at the highest of the Closing Sale Price of such securities as of the Trading Day immediately prior to the consummation of such Change of Control, the Closing Sale Price of such securities on the Trading Day immediately following the public announcement of such proposed Change of Control and the Closing Sale Price of such securities on the Trading Day immediately prior to the public announcement of such proposed Change of Control) divided by (II) the Alternate Conversion Price then in effect (the “**Change of Control Redemption Price**”). Redemptions required by this Section 5 shall be made in accordance with the provisions of Section 11 and shall have priority to payments to stockholders in connection with such Change of Control. To the extent redemptions required by this Section 5(b) are deemed or determined by a court of competent jurisdiction to be prepayments of this Note by the Company, such redemptions shall be deemed to be voluntary prepayments. Notwithstanding anything to the contrary in this Section 5, but subject to Section 3(d), until the Change of Control Redemption Price (together with any Late Charges thereon) is paid in full, the Conversion Amount submitted for redemption under this Section 5(b) (together with any Late Charges thereon) may be converted, in whole or in part, by the Holder into Common Stock pursuant to Section 3. In the event of the Company’s redemption of any portion of this Note under this Section 5(b), the Holder’s damages would be uncertain and difficult to estimate because of the parties’ inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any redemption premium due under this Section 5(b) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder’s actual loss of its investment opportunity and not as a penalty.

6. RIGHTS UPON ISSUANCE OF PURCHASE RIGHTS AND OTHER CORPORATE EVENTS.

(a) Purchase Rights. In addition to any adjustments pursuant to Sections 7 or 15 below, if at any time the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to all or substantially all of the record holders of any class 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 conversion of this Note (without taking into account any limitations or restrictions on the convertibility of this Note and assuming for such purpose that the Note was converted at the Alternate Conversion Price as of the applicable record date) immediately prior to 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 and the other Attribution Parties exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Purchase Right to the extent of the Maximum Percentage (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Purchase Right (and beneficial ownership) to the extent of any such excess) and such Purchase Right to such extent shall be held in abeyance (and, if such Purchase Right has an expiration date, maturity date or other similar provision, such term shall be extended by such number of days held in abeyance, if applicable) for the benefit of the Holder until such time or times, if ever, as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times the Holder shall be granted such right (and any Purchase Right granted, issued or sold on such initial Purchase Right or on any subsequent Purchase Right held similarly in abeyance (and, if such Purchase Right has an expiration date, maturity date or other similar provision, such term shall be extended by such number of days held in abeyance, if applicable)) to the same extent as if there had been no such limitation).

(b) Other Corporate Events. In addition to and not in substitution for any other rights hereunder, prior to the consummation of any Fundamental Transaction pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock (a “**Corporate Event**”), the Company shall make appropriate provision to ensure that the Holder will thereafter have the right to receive upon a conversion of this Note, at the Holder’s option (i) in addition to the shares of Common Stock receivable upon such conversion, such securities or other assets to which the Holder would have been entitled with respect to such shares of Common Stock had such shares of Common Stock been held by the Holder upon the consummation of such Corporate Event (without taking into account any limitations or restrictions on the convertibility of this Note) or (ii) in lieu of the shares of Common Stock otherwise receivable upon such conversion, such securities or other assets received by the holders of shares of Common Stock in connection with the consummation of such Corporate Event in such amounts as the Holder would have been entitled to receive had this Note initially been issued with conversion rights for the form of such consideration (as opposed to shares of Common Stock) at a conversion rate for such consideration commensurate with the Conversion Rate. Provision made pursuant to the preceding sentence shall be in a form and substance satisfactory to the Holder. The provisions of this Section 6 shall apply similarly and equally to successive Corporate Events and shall be applied without regard to any limitations on the conversion or redemption of this Note.

7. RIGHTS UPON ISSUANCE OF OTHER SECURITIES.

(a) Adjustment of Conversion Price upon Issuance of Common Stock. If and whenever on or after the Subscription Date the Company grants, issues or sells (or enters into any agreement to grant, issue or sell), or in accordance with this Section 7(a) is deemed to have granted, issued or sold, any shares of Common Stock (including the granting, issuance or sale of shares of Common Stock owned or held by or for the account of the Company, but excluding any Excluded Securities granted, issued or sold or deemed to have been granted, issued or sold) for a consideration per share (the “**New Issuance Price**”) less than a price equal to the Conversion Price in effect immediately prior to such granting, issuance or sale or deemed granting, issuance or sale (such Conversion Price then in effect is referred to herein as the “**Applicable Price**”) (the foregoing a “**Dilutive Issuance**”), then, immediately after such Dilutive Issuance, the Conversion Price then in effect shall be adjusted (downward only) to an amount equal to the New Issuance Price. For all purposes of the foregoing (including, without limitation, determining the adjusted Conversion Price and the New Issuance Price under this Section 7(a)), the following shall be applicable:

(i) Issuance of Options. If the Company in any manner grants, issues or sells (or enters into any agreement to grant, issue or sell) any Options and the lowest price per share for which one share of Common Stock is at any time issuable upon the exercise of any such Option or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option or otherwise pursuant to the terms thereof is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the granting, issuance or sale of such Option for such price per share. For purposes of this Section 7(a)(i), the “lowest price per share for which one share of Common Stock is at any time issuable upon the exercise of any such Option or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option or otherwise pursuant to the terms thereof” shall be equal to (1) the lower of (x) the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to any one share of Common Stock upon the granting, issuance or sale of such Option, upon exercise of such Option and upon conversion, exercise or exchange of any Convertible Security issuable upon exercise of such Option or otherwise pursuant to the terms thereof and (y) the lowest exercise price set forth in such Option for which one share of Common Stock is issuable (or may become issuable assuming all possible market conditions) upon the exercise of any such Options or upon conversion, exercise or exchange of any Convertible Securities issuable upon exercise of any such Option or otherwise pursuant to the terms thereof, minus (2) the sum of all amounts paid or payable to the holder of such Option (or any other Person) with respect to any one share of Common Stock upon the granting, issuance or sale of such Option, upon exercise of such Option and upon conversion, exercise or exchange of any Convertible Security issuable upon exercise of such Option or otherwise pursuant to the terms thereof plus the value of any other consideration (including, without limitation, consideration consisting of cash, debt forgiveness, assets or any other property) received or receivable by, or benefit conferred on, the holder of such Option (or any other Person). Except as contemplated below, no further adjustment of the Conversion Price shall be made upon the actual issuance of such share of Common Stock or of such Convertible Securities upon the exercise of such Options or otherwise pursuant to the terms thereof or upon the actual issuance of such shares of Common Stock upon conversion, exercise or exchange of such Convertible Securities.

(ii) Issuance of Convertible Securities. If the Company in any manner issues or sells (or enters into any agreement to issue or sell) any Convertible Securities and the lowest price per share for which one share of Common Stock is at any time issuable upon the conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof is less than the Applicable Price, then such share of Common Stock shall be deemed to be outstanding and to have been issued and sold by the Company at the time of the issuance or sale (or the time of execution of such agreement to issue or sell, as applicable) of such Convertible Securities for such price per share. For the purposes of this Section 7(a)(ii), the “lowest price per share for which one share of Common Stock is at any time issuable upon the conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof” shall be equal to (1) the lower of (x) the sum of the lowest amounts of consideration (if any) received or receivable by the Company with respect to one share of Common Stock upon the issuance or sale (or pursuant to the agreement to issue or sell, as applicable) of the Convertible Security and upon conversion, exercise or exchange of such Convertible Security or otherwise pursuant to the terms thereof and (y) the lowest conversion price set forth in such Convertible Security for which one share of Common Stock is issuable (or may become issuable assuming all possible market conditions) upon conversion, exercise or exchange thereof or otherwise pursuant to the terms thereof minus (2) the sum of all amounts paid or payable to the holder of such Convertible Security (or any other Person) with respect to any one share of Common Stock upon the issuance or sale (or the agreement to issue or sell, as applicable) of such Convertible Security plus the value of any other consideration received or receivable (including, without limitation, any consideration consisting of cash, debt forgiveness, assets or other property) by, or benefit conferred on, the holder of such Convertible Security (or any other Person). Except as contemplated below, no further adjustment of the Conversion Price shall be made upon the actual issuance of such shares of Common Stock upon conversion, exercise or exchange of such Convertible Securities or otherwise pursuant to the terms thereof, and if any such issuance or sale of such Convertible Securities is made upon exercise of any Options for which adjustment of the Conversion Price has been or is to be made pursuant to other provisions of this Section 7(a), except as contemplated below, no further adjustment of the Conversion Price shall be made by reason of such issuance or sale.

(iii) Change in Option Price or Rate of Conversion. If the purchase or exercise price provided for in any Options, the additional consideration, if any, payable upon the issue, conversion, exercise or exchange of any Convertible Securities, or the rate at which any Convertible Securities are convertible into or exercisable or exchangeable for shares of Common Stock increases or decreases at any time (other than proportional changes in conversion or exercise prices, as applicable, in connection with an event referred to in Section 7(b) below), the Conversion Price in effect at the time of such increase or decrease shall be adjusted to the Conversion Price which would have been in effect at such time had such Options or Convertible Securities provided for such increased or decreased purchase price, additional consideration or increased or decreased conversion rate (as the case may be) at the time initially granted, issued or sold. For purposes of this Section 7(a)(i), if the terms of any Option or Convertible Security (including, without limitation, any Option or Convertible Security that was outstanding as of the Subscription Date) are increased or decreased in the manner described in the immediately preceding sentence, then such Option or Convertible Security and the shares of Common Stock deemed issuable upon exercise, conversion or exchange thereof shall be deemed to have been issued as of the date of such increase or decrease. No adjustment pursuant to this Section 7(a) shall be made if such adjustment would result in an increase of the Conversion Price then in effect.

(iv) Calculation of Consideration Received. If any Option and/or Convertible Security and/or Adjustment Right is issued in connection with the issuance or sale or deemed issuance or sale of any other securities of the Company (as determined by the Holder, the “**Primary Security**”, and such Option and/or Convertible Security and/or Adjustment Right, the “**Secondary Securities**”), together comprising one integrated transaction (or one or more transactions if such issuances or sales or deemed issuances or sales of securities of the Company either (A) have at least one investor or purchaser in common, (B) are consummated in reasonable proximity to each other and/or (C) are consummated under the same plan of financing), the aggregate consideration per share of Common Stock with respect to such Primary Security shall be deemed to be equal to the difference of (x) the lowest price per share for which one share of Common Stock was issued (or was deemed to be issued pursuant to Section 7(a)(i) or 7(a)(ii) above, as applicable) in such integrated transaction solely with respect to such Primary Security, minus (y) with respect to such Secondary Securities, the sum of (I) the Black Scholes Consideration Value of each such Option, if any, (II) the fair market value (as determined by the Holder in good faith) or the Black Scholes Consideration Value, as applicable, of such Adjustment Right, if any, and (III) the fair market value (as determined by the Holder) of such Convertible Security, if any, in each case, as determined on a per share basis in accordance with this Section 7(a)(iv). If any shares of Common Stock, Options or Convertible Securities are issued or sold or deemed to have been issued or sold for cash, the consideration received therefor (for the purpose of determining the consideration paid for such Common Stock, Option or Convertible Security, but not for the purpose of the calculation of the Black Scholes Consideration Value) will be deemed to be the net amount of consideration received by the Company therefor. If any shares of Common Stock, Options or Convertible Securities are issued or sold for a consideration other than cash, the amount of such consideration received by the Company (for the purpose of determining the consideration paid for such Common Stock, Option or Convertible Security, but not for the purpose of the calculation of the Black Scholes Consideration Value) will be the fair value of such consideration, except where such consideration consists of publicly traded securities, in which case the amount of consideration received by the Company for such securities will be the arithmetic average of the VWAPs of such security for each of the five (5) Trading Days immediately preceding the date of receipt. If any shares of Common Stock, Options or Convertible Securities are issued to the owners of the non-surviving entity in connection with any merger in which the Company is the surviving entity, the amount of consideration therefor (for the purpose of determining the consideration paid for such Common Stock, Option or Convertible Security, but not for the purpose of the calculation of the Black Scholes Consideration Value) will be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such shares of Common Stock, Options or Convertible Securities (as the case may be). The fair value of any consideration other than cash or publicly traded securities will be determined jointly by the Company and the Holder. If such parties are unable to reach agreement within ten (10) days after the occurrence of an event requiring valuation (the “**Valuation Event**”), the fair value of such consideration will be determined within five (5) Trading Days after the tenth (10th) day following such Valuation Event by an independent, reputable appraiser jointly selected by the Company and the Holder. The determination of such appraiser shall be final and binding upon all parties absent manifest error and the fees and expenses of such appraiser shall be borne by the Company.

(v) Record Date. If the Company takes a record of the holders of shares of Common Stock for the purpose of entitling them (A) to receive a dividend or other distribution payable in shares of Common Stock, Options or in Convertible Securities or (B) to subscribe for or purchase shares of Common Stock, Options or Convertible Securities, then such record date will be deemed to be the date of the issuance or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase (as the case may be).

(b) Adjustment of Conversion Price upon Subdivision or Combination of Common Stock. Without limiting any provision of Section 6, Section 15 or Section 7(a), if the Company at any time on or after the Subscription Date subdivides (by any stock split, stock dividend, stock combination, recapitalization or other similar transaction) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. Without limiting any provision of Section 6, Section 15 or Section 7(a), if the Company at any time on or after the Subscription Date combines (by any stock split, stock dividend, stock combination, recapitalization or other similar transaction) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination will be proportionately increased. Any adjustment pursuant to this Section 7(b) shall become effective immediately after the effective date of such subdivision or combination. If any event requiring an adjustment under this Section 7(b) occurs during the period that a Conversion Price is calculated hereunder, then the calculation of such Conversion Price shall be adjusted appropriately to reflect such event.

(c) Holder's Right of Adjusted Conversion Price. In addition to and not in limitation of the other provisions of this Section 7, if the Company in any manner issues or sells or enters into any agreement to issue or sell, any Common Stock, Options or Convertible Securities (any such securities, "**Variable Price Securities**"), after the Subscription Date that are issuable pursuant to such agreement or convertible into or exchangeable or exercisable for shares of Common Stock at a price which varies or may vary with the market price of the shares of Common Stock, including by way of one or more reset(s) to a fixed price, but exclusive of such formulations reflecting customary anti-dilution provisions (such as share splits, share combinations, share dividends and similar transactions) (each of the formulations for such variable price being herein referred to as, the "**Variable Price**"), the Company shall provide written notice thereof via electronic mail and overnight courier to the Holder on the date of such agreement and the issuance of such Common Stock, Convertible Securities or Options. From and after the date the Company enters into such agreement or issues any such Variable Price Securities, the Holder shall have the right, but not the obligation, in its sole discretion to substitute the Variable Price for the Conversion Price upon conversion of this Note by designating in the Conversion Notice delivered upon any conversion of this Note that solely for purposes of such conversion the Holder is relying on the Variable Price rather than the Conversion Price then in effect. The Holder's election to rely on a Variable Price for a particular conversion of this Note shall not obligate the Holder to rely on a Variable Price for any future conversion of this Note.

(d) Other Events. In the event that the Company (or any Subsidiary) shall take any action to which the provisions hereof are not strictly applicable, or, if applicable, would not operate to protect the Holder from dilution or if any event occurs of the type contemplated by the provisions of this Section 7 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Company's board of directors shall in good faith determine and implement an appropriate adjustment in the Conversion Price so as to protect the rights of the Holder, provided that no such adjustment pursuant to this Section 7(d) will increase the Conversion Price as otherwise determined pursuant to this Section 7, provided further that if the Holder does not accept such adjustments as appropriately protecting its interests hereunder against such dilution, then the Company's board of directors and the Holder shall agree, in good faith, upon an independent investment bank of nationally recognized standing to make such appropriate adjustments, whose determination shall be final and binding absent manifest error and whose fees and expenses shall be borne by the Company.

(e) Calculations. All calculations under this Section 7 shall be made by rounding to the nearest cent or the nearest 1/100th of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Company, and the disposition of any such shares shall be considered an issue or sale of Common Stock.

(f) Voluntary Adjustment by Company with Consent of the Holder. Subject to the rules and regulations of the Principal Market, the Company may at any time during the term of this Note, with the prior written consent of the Holder, reduce the then current Conversion Price of the Note to any amount and for any period of time deemed appropriate by the board of directors of the Company.

8. REDEMPTIONS AT THE COMPANY'S ELECTION.

(a) Company Optional Redemption. At any time no Equity Conditions Failure exists, the Company shall have the right to redeem all, but not less than all, of the Conversion Amount then remaining under this Note (the "**Company Optional Redemption Amount**") on the Company Optional Redemption Date (each as defined below) (a "**Company Optional Redemption**"). The portion of this Note subject to redemption pursuant to this Section 8(a) shall be redeemed by the Company in cash at a price (the "**Company Optional Redemption Price**") equal to the greater of (i) 110% of the Conversion Amount being redeemed as of the Company Optional Redemption Date and (ii) the product of (1) the Conversion Rate (determined by substituting the Alternate Conversion Price for the Conversion Price for purposes of such calculation) with respect to the Conversion Amount being redeemed as of the Company Optional Redemption Date multiplied by (2) the greatest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date immediately preceding such Company Optional Redemption Notice Date and ending on the Trading Day immediately prior to the date the Company makes the entire payment required to be made under this Section 8(a). The Company may exercise its right to require redemption under this Section 8(a) by delivering a written notice thereof by electronic mail and overnight courier to all, but not less than all, of the holders of Notes (the "**Company Optional Redemption Notice**" and the date all of the holders of Notes received such notice is referred to as the "**Company Optional Redemption Notice Date**"). The Company may deliver only one Company Optional Redemption Notice hereunder and such Company Optional Redemption Notice shall be irrevocable. The Company Optional Redemption Notice shall (x) state the date on which the Company Optional Redemption shall occur (the "**Company Optional Redemption Date**") which date shall not be less than fifteen (15) Trading Days nor more than thirty(30) Trading Days following the Company Optional Redemption Notice Date, (y) certify that there has been no Equity Conditions Failure and (z) state the aggregate Conversion Amount of the Notes which is being redeemed in such Company Optional Redemption from the Holder and all of the other holders of the Notes pursuant to this Section 8(a) (and analogous provisions under the Other Notes) on the Company Optional Redemption Date. Notwithstanding anything herein to the contrary, (i) if no Equity Conditions Failure has occurred as of the Company Optional Redemption Notice Date but an Equity Conditions Failure occurs at any time prior to the Company Optional Redemption Date, (A) the Company shall provide the Holder a subsequent notice to that effect and (B) unless the Holder waives the Equity Conditions Failure, the Company Optional Redemption shall be cancelled and the applicable Company Optional Redemption Notice shall be null and void and (ii) at any time prior to the date the Company Optional Redemption Price is paid, in full, the Company Optional Redemption Amount may be converted, in whole or in part, by the Holder into shares of Common Stock pursuant to Section 3. All Conversion Amounts converted by the Holder after the Company Optional Redemption Notice Date shall reduce the Company Optional Redemption Amount of this Note required to be redeemed on the Company Optional Redemption Date. Redemptions made pursuant to this Section 8(a) shall be made in accordance with Section 11. In the event of the Company's redemption of any portion of this Note under this Section 8(a), the Holder's damages would be uncertain and difficult to estimate because of the parties' inability to predict future interest rates and the uncertainty of the availability of a suitable substitute investment opportunity for the Holder. Accordingly, any redemption premium due under this Section 8(a) is intended by the parties to be, and shall be deemed, a reasonable estimate of the Holder's actual loss of its investment opportunity and not as a penalty. For the avoidance of doubt, the Company shall have no right to effect a Company Optional Redemption if any Event of Default has occurred and continuing, but any Event of Default shall have no effect upon the Holder's right to convert this Note in its discretion.

(b) Pro Rata Redemption Requirement. If the Company elects to cause a Company Optional Redemption of this Note pursuant to Section 8(a), then it must simultaneously take the same action with respect to all of the Other Notes.

9. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its certificate of incorporation, bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, 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 Note, and will at all times in good faith carry out all of the provisions of this Note and take all action as may be required to protect the rights of the Holder of this Note. Without limiting the generality of the foregoing or any other provision of this Note or the other Transaction Documents, the Company (a) shall not increase the par value of any shares of Common Stock receivable upon conversion of this Note above the Conversion Price then in effect, and (b) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the conversion of this Note. Notwithstanding anything herein to the contrary, if after the sixty (60) calendar day anniversary of the Issuance Date, the Holder is not permitted to convert this Note in full for any reason (other than pursuant to restrictions set forth in Section 3(d) hereof), the Company shall use its best efforts to promptly remedy such failure, including, without limitation, obtaining such consents or approvals as necessary to permit such conversion into shares of Common Stock.

10. RESERVATION OF AUTHORIZED SHARES.

(a) So long as this Note is outstanding, following the Stockholder Approval Deadline the Company shall at all times reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of issuance upon conversion of this Note, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder, not less than 100% of the maximum aggregate number of shares of Common Stock as shall be issuable from time to time (taking into account the adjustments and restrictions of Section 3(d)) upon the conversion of the then outstanding Conversion Amount of this Note (without regard to any limitations on the conversion of this Note) (the “**Required Reserve Amount**”). The initial number of shares of Common Stock reserved for conversions of this Note and each increase in the number of shares so reserved shall be allocated pro rata among the holders of the Notes based on the principal amount of the Notes held by each holder on the Closing Date or increase date (as the case may be) (the “**Authorized Share Allocation**”). If at any time while this Note is outstanding, following the Stockholder Approval Deadline, the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve the Required Reserve Amount (an “**Authorized Share Failure**”), then the Company shall promptly take all action reasonably necessary to increase the Company’s authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount, including, without limitation, calling and holding a meeting of stockholders for such purpose or obtaining the written consent of stockholders for such purpose within seventy-five (75) days of an Authorized Share Failure, and using its reasonable best efforts to obtain such stockholder approval.

(b) Following the Stockholder Approval Deadline, until such time as the Company has a sufficient number of authorized shares of Common Stock to satisfy the Required Reserve Amount, the Company shall (i) not issue shares of Common Stock, Options or Convertible Securities in connection with any transaction if such issuance would reduce the number of authorized shares of Common Stock available to satisfy the Required Reserve Amount and (ii) at each annual or special meeting of stockholders of the Company (including any adjournment or postponement thereof) or by written consent in lieu of such a meeting, include a proposal seeking authorization to increase the number of authorized shares of Common Stock sufficient to satisfy the Required Reserve Amount.

11. REDEMPTIONS.

(a) Mechanics. The Company shall deliver the applicable Event of Default Redemption Price to the Holder in cash within five (5) Business Days after the Company's receipt of the Holder's Event of Default Redemption Notice. The Company shall deliver the applicable Company Optional Redemption Price to the Holder in cash on the applicable Company Optional Redemption Date. The Company shall deliver the applicable Change of Control Redemption Price to the Holder in cash on or prior to the later of (i) the Change of Control Date and (ii) five (5) Business Days after the Company's receipt of a Change of Control Redemption Notice. The Company shall deliver the applicable Floor Redemption Price to the Holder in cash on or prior to the no later than five (5) Business Days after the Company's receipt of a Floor Breach Redemption Notice. Notwithstanding anything herein to the contrary, in connection with any redemption hereunder at a time the Holder is entitled to receive a cash payment under any of the other Transaction Documents, at the option of the Holder delivered in writing to the Company, the applicable Redemption Price hereunder shall be increased by the amount of such cash payment owed to the Holder under such other Transaction Document and, upon payment in full or conversion in accordance herewith, shall satisfy the Company's payment obligation under such other Transaction Document. In the event of a redemption of less than all of the Conversion Amount of this Note, the Company shall promptly cause to be issued and delivered to the Holder a new Note (in accordance with Section 18(d)) representing the outstanding Principal which has not been redeemed. In the event that the Company does not pay the applicable Redemption Price to the Holder within the time period required, at any time thereafter and until the Company pays such unpaid Redemption Price in full, the Holder shall have the option, in lieu of redemption, to require the Company to promptly return to the Holder all or any portion of this Note representing the Conversion Amount that was submitted for redemption and for which the applicable Redemption Price (together with any Late Charges thereon) has not been paid, and in such case the Holder shall retain the right to effect an Alternate Conversion pursuant to Section 3(e) with respect to such Conversion Amount. Upon the Company's receipt of such notice, (x) the applicable Redemption Notice shall be null and void with respect to such Conversion Amount, (y) the Company shall immediately return this Note, or issue a new Note (in accordance with Section 18(d)), to the Holder, and in each case the principal amount of this Note or such new Note (as the case may be) shall be increased by an amount equal to the difference between (1) the applicable Redemption Price (as the case may be, and as adjusted pursuant to this Section 11, if applicable) minus (2) the Principal portion of the Conversion Amount submitted for redemption and (z) the Conversion Price of this Note or such new Notes (as the case may be) shall be automatically adjusted with respect to each conversion effected thereafter by the Holder to the lowest of (A) the Conversion Price as in effect on the date on which the applicable Redemption Notice is voided and (B) the greater of (x) the Floor Price and (y) the lowest VWAP of the Common Stock during the five (5) consecutive Trading Day period ending and including the applicable Conversion Date (it being understood and agreed that all such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period). For the avoidance of doubt, notwithstanding any pending or uncompleted redemption hereunder, the Holder shall at all times retain the right to convert any outstanding Conversion Amount (including any Conversion Amount submitted for redemption) pursuant to Section 3(e) at the Alternate Conversion Price, and any such conversion shall reduce the applicable Redemption Amount on a dollar-for-dollar basis. The Holder's delivery of a notice voiding a Redemption Notice and exercise of its rights following such notice shall not affect the Company's obligations to make any payments of Late Charges which have accrued prior to the date of such notice with respect to the Conversion Amount subject to such notice.

(b) Redemption by Other Holders. Upon the Company's receipt of notice from any of the holders of the Other Notes for redemption or repayment as a result of an event or occurrence substantially similar to the events or occurrences described in Section 4(b), Section 5(b) or Section 8(a) (each, an "**Other Redemption Notice**"), the Company shall immediately, but no later than one (1) Business Day of its receipt thereof, forward to the Holder by facsimile or electronic mail a copy of such notice. If the Company receives a Redemption Notice and one or more Other Redemption Notices, during the seven (7) Business Day period beginning on and including the date which is two (2) Business Days prior to the Company's receipt of the Holder's applicable Redemption Notice and ending on and including the date which is two (2) Business Days after the Company's receipt of the Holder's applicable Redemption Notice and the Company is unable to redeem all principal, interest and other amounts designated in such Redemption Notice and such Other Redemption Notices received during such seven (7) Business Day period, then the Company shall redeem a pro rata amount from each holder of the Notes (including the Holder) based on the principal amount of the Notes submitted for redemption pursuant to such Redemption Notice and such Other Redemption Notices received by the Company during such seven (7) Business Day period.

12. VOTING RIGHTS. The Holder shall have no voting rights as the holder of this Note, except as required by law (including, without limitation, the Delaware General Corporation Law) and as expressly provided in this Note.

13. COVENANTS. Until all of the Notes have been converted, redeemed or otherwise satisfied in accordance with their terms:

(a) Rank. All payments due under this Note (i) shall rank *pari passu* with all Other Notes issued pursuant to the Securities Purchase Agreement; (ii) shall be senior in right of payment to all other Indebtedness of the Company and its Subsidiaries with respect to the Holder Control Account and all proceeds thereunder; and (iii) except as set forth in item (ii) above, *pari passu* with respect to all other Indebtedness of the Company.

(b) Restriction on Redemption and Cash Dividends. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, redeem, repurchase or declare or pay any cash dividend or distribution on any of its capital stock; provided that the foregoing shall not restrict or prohibit any Subsidiary from making dividends or distributions, directly or indirectly, to any Wholly-Owned Subsidiary (as defined in the Securities Purchase Agreement), except (i) cashless repurchases of equity interests deemed to occur upon the exercise of stock options or warrants shall be permitted, and de minimis cash distributions sufficient to pay employment and other taxes associated with such repurchase shall be permitted, if such equity interests represent a portion of the exercise price of such options or warrants, (ii) dividends or distributions payable only in Capital Stock (other than Disqualified Stock) of the Company and (iii) the Company may pay cash in lieu of fractional shares in connection with any exercise of warrants, options, or other securities convertible into or exchangeable for Capital Stock.

(c) Change in Nature of Business. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, engage in any material line of business substantially different from those lines of business conducted by or publicly contemplated to be conducted by the Company and each of its Subsidiaries on the Subscription Date or any business reasonably related or incidental thereto. The Company shall not, and the Company shall cause each of its Subsidiaries to not, directly or indirectly, materially modify its or their corporate structure or purpose.

(d) Preservation of Existence, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, its existence, rights and privileges, and become or remain, and cause each of its Subsidiaries to become or remain, duly qualified and in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary.

(e) Maintenance of Properties, Etc. The Company shall maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its properties which are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear and tear excepted, and comply, and cause each of its Subsidiaries to comply, at all times with the provisions of all leases to which it is a party as lessee or under which it occupies property, so as to prevent any loss or forfeiture thereof or thereunder.

(f) Maintenance of Intellectual Property. The Company will, and will cause each of its Subsidiaries to, take all action necessary or advisable to maintain all of the Intellectual Property Rights of the Company and/or any of its Subsidiaries that are necessary or material to the conduct of its business in full force and effect.

(g) Maintenance of Insurance. The Company shall maintain, and cause each of its Subsidiaries to maintain, insurance, including directors' and officers' insurance, with responsible and reputable insurance companies or associations (including, without limitation, comprehensive general liability, hazard, rent and business interruption insurance) with respect to its properties (including all real properties leased or owned by it) and business, in such amounts and covering such risks as is required by any governmental authority having jurisdiction with respect thereto or as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated.

(h) Transactions with Affiliates. The Company shall not, nor shall it permit any of its Subsidiaries to, enter into, renew, extend or be a party to, any transaction or series of related transactions (including, without limitation, the purchase, sale, lease, transfer or exchange of property or assets of any kind or the rendering of services of any kind) with any affiliate involving aggregate consideration in excess of \$1,500,000 with respect to all transactions collectively, except (i) transactions in the ordinary course of business in a manner and to an extent consistent with past practice and necessary or desirable for the prudent operation of its business, for fair consideration and on terms no less favorable to it or its Subsidiaries than would be obtainable in a comparable arm's length transaction with a Person that is not an affiliate thereof, (ii) employment, severance, benefit, equity award, equity option, and other similar compensation or benefit plans or arrangements between the Company and its Subsidiaries, on the one hand, and their respective officers, employees, directors and consultants, on the other hand, in the ordinary course of business, (iii) payment of reasonable and customary fees and reimbursements of expenses (pursuant to indemnity arrangements or otherwise) of officers, directors, employees or consultants of the Company or any of its Subsidiaries, (iv) the issuance of Capital Stock, or dividends or redemptions with respect thereto, of the Company (other than Disqualified Stock), (v) the issuance of Capital Stock, or dividends or redemptions with respect thereto, of the Company (other than Disqualified Stock), (vi) all related party transactions described in filings with the Securities and Exchange Commission made prior to the date hereof, (v) licenses of the Company's Intellectual Property Rights for use in consumer products, (vi) transactions existing on the Closing Date and described on Schedule 13(l) or (vii) as otherwise permitted under the Existing Senior Securities and the Existing Unsecured Securities.

(i) Restricted Issuances. The Company shall not, directly or indirectly, without the prior written consent of the Required Purchasers, (i) issue any Notes (other than as contemplated by the Securities Purchase Agreement and the Notes) or (ii) issue any other securities (other than Excluded Securities) that would cause a breach or default under the Notes.

(j) Stay, Extension and Usury Laws. To the extent that it may lawfully do so, the Company (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 Note; 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 Holder by this Note, but will suffer and permit the execution of every such power as though no such law has been enacted.

(k) Taxes. The Company and its Subsidiaries shall pay when due all material taxes, fees or other charges of any nature whatsoever (together with any related interest or penalties) now or hereafter imposed or assessed against the Company and its Subsidiaries or their respective assets or upon their ownership, possession, use, operation or disposition thereof or upon their rents, receipts or earnings arising therefrom (except where the failure to pay would not, individually or in the aggregate, have a Material Adverse Effect on the Company or any of its Subsidiaries). The Company and its Subsidiaries shall file on or before the due date therefor all personal property tax returns (except where the failure to file would not, individually or in the aggregate, have a Material Adverse Effect on the Company or any of its Subsidiaries). Notwithstanding the foregoing, the Company and its Subsidiaries may contest, in good faith and by appropriate proceedings, taxes for which they maintain adequate reserves therefor in accordance with GAAP.

(l) Independent Investigation. At the request of the Holder either (x) at any time when an Event of Default has occurred and is continuing, (y) upon the occurrence of an event that with the passage of time or giving of notice would constitute an Event of Default or (z) at any time the Holder reasonably believes an Event of Default may have occurred or be continuing, the Company shall hire an independent, reputable investment bank selected by the Company and approved by the Holder to investigate as to whether any breach of this Note has occurred (the “**Independent Investigator**”). If the Independent Investigator determines that such breach of this Note has occurred, the Independent Investigator shall notify the Company of such breach and the Company shall deliver written notice to each holder of a Note of such breach. In connection with such investigation, the Independent Investigator may, during normal business hours, inspect all contracts, books, records, personnel, offices and other facilities and properties of the Company and its Subsidiaries and, to the extent available to the Company after the Company uses reasonable efforts to obtain them, the records of its legal advisors and accountants (including the accountants’ work papers) and any books of account, records, reports and other papers not contractually required of the Company to be confidential or secret, or subject to attorney-client or other evidentiary privilege, and the Independent Investigator may make such copies and inspections thereof as the Independent Investigator may reasonably request. The Company shall furnish the Independent Investigator with such financial and operating data and other information with respect to the business and properties of the Company as the Independent Investigator may reasonably request. The Company shall permit the Independent Investigator to discuss the affairs, finances and accounts of the Company with, and to make proposals and furnish advice with respect thereto to, the Company’s officers, directors, key employees and independent public accountants or any of them (and by this provision the Company authorizes said accountants to discuss with such Independent Investigator the finances and affairs of the Company and any Subsidiaries), all at such reasonable times, upon reasonable notice, and as often as may be reasonably requested.

14. HOLDER CONTROL ACCOUNT; CONTROL ACCOUNT RELEASE; COLLATERAL.

With respect to each Holder, the Company shall establish and maintain an account (the “**Holder Control Account**”) with a financial institution located in the United States of America and satisfactory to the Holder (each, as applicable, a “**Controlled Account Bank**”), which Holder Control Account shall be subject to a deposit account control agreement in form and substance acceptable to the Holder (the “**Controlled Account Agreement**”). The Controlled Account Agreement shall provide, among other things, that (A) the applicable Controlled Account Bank will comply with any and all instructions originated by the Holder directing the disposition of any cash (and/or other assets, as applicable) in the Holder Control Account without further consent by the Company or any of its Subsidiaries, (B) such Controlled Account Bank shall waive, subordinate and agree not to exercise any rights of setoff or recoupment or any other claim against the Holder Control Account it being understood that all service fees and other charges of the Controlled Account Bank shall be the sole responsibility of the Company and shall not be satisfied from funds in the Holder Control Account, and (C) such Controlled Account Bank shall not comply with any instructions, directions or orders of any form with respect to the Holder Control Account other than instructions, directions or orders originated by the Holder. On the Closing Date, the Company shall deposit 50% of the Note Commitment Amount (as defined in the Securities Purchase Agreement) into the Holder Control Account.

Upon the occurrence of any Control Account Release Event, the Holder shall, as soon as commercially practicable, but in no event later than one (1) Trading Day thereafter, cause the release of such amount specified to be released from the Holder Control Account in such definition with respect thereto (each, a “**Control Account Release Amount**”) and deposited into a bank account specified in writing by the Company on or prior to such date (each, a “**Control Account Release**”); provided, that if the Company fails to select a bank account in a writing delivered to the Holder on or prior to such date, the Holder shall effect such Control Account Release as soon as commercially practicable after receipt of such bank account election from the Company.

The Company hereby grants and pledges to the Holder a continuing security interest in all right, title and interest of the Company in the Holder Control Account established and maintained in respect of such Holder, including but not limited to all cash, securities and other assets on deposit in such Holder Control Account from time to time, together with all products and proceeds thereof (the “**Reserve Collateral**”), to secure prompt repayment of any and all amounts outstanding hereunder and pursuant to the Transaction Documents from time to time and to secure prompt performance by the Company of each of its covenants and duties under the Transaction Documents. Such security interest constitutes a valid, first priority security interest in the presently existing Reserve Collateral, and will constitute a valid, first priority security interest in later-acquired Reserve Collateral. Notwithstanding any filings undertaken related to Holder’s rights under the applicable Uniform Commercial Code or any other applicable law, rules and/or regulations with respect thereto, the Holder’s Lien on the Reserve Collateral shall remain in effect for so long as any amounts remain outstanding hereunder or any Payment Obligations (as defined below) exist. Notwithstanding the foregoing, upon any Control Account Release, but solely with respect to such Control Account Release Amount, the Holder hereby automatically releases any Lien hereunder on such Control Account Release Amount.

Notwithstanding anything herein to the contrary, in its sole and absolute discretion, the Holder may satisfy all, or any part, of any redemption or other cash or asset payment obligation of the Company hereunder and/or pursuant to any other Transaction Document (each, a “**Payment Obligation**”) from the Reserve Collateral in the Holder Control Account, including, without limitation, in connection with any redemption hereunder or payment due at the Maturity Date. In connection with any Payment Obligation hereunder, the Company hereby irrevocably consents to the Holder’s delivery of an instruction letter to the Controlled Account Bank to release Reserve Collateral from the Holder Control Account in an amount not to exceed such Payment Obligation to the Holder. In addition, upon the occurrence of any event which could reasonably be expected to result in a Payment Obligation, the Holder may, at the Holder’s option, withdraw all, or any part, of the Reserve Collateral in the Holder Control Account; provided that (x) such withdrawn amount shall not exceed such amount which the Holder reasonably believes would be necessary to satisfy such Payment Obligation, and (y) such withdrawal shall not constitute the delivery of a Redemption Notice hereunder or payment hereunder unless the Holder specifies in writing to the Company that the Holder has applied such Reserve Collateral in satisfaction of such Payment Obligation. For the avoidance of doubt, and notwithstanding anything herein to the contrary, at such time as the only remaining Payment Obligations hereunder and pursuant to the Transaction Documents equals (or is less than) the fair market value of the Reserve Collateral then held in the Holder Control Account, the Holder shall be required to deliver an instruction letter to the Controlled Account Bank to release Reserve Collateral from the Holder Control Account to satisfy such Payment Obligations prior to taking any actions against any other collateral of the Company or demanding any other cash payment from the Company or any of its Subsidiaries with respect thereto.

If the Controlled Account Bank breaches any covenant or other term or condition of any Controlled Account Agreement or otherwise fails to promptly comply with the instructions of the Holder in connection with the Reserve Collateral, the Holder may, at its option, withdraw the Reserve Collateral from the Controlled Account Bank and hold such Reserve Collateral until such time as (x) the Company and the Holder have agreed upon a replacement Controlled Account Bank and (y) a Controlled Account Agreement with respect to such Reserve Collateral and a new account shall have been duly executed by the Company, the Holder and the replacement Controlled Account Bank. Notwithstanding anything herein to the contrary, if the Company or any of its Subsidiaries receives any of the Reserve Collateral in breach of any Controlled Account Agreement (or receives notice from the Holder that an amount was wired to the Company from the Holder Control Account without the proper authorization of the Holder), the Company shall promptly cause such amounts to be returned to the Holder Control Account.

15. DISTRIBUTION OF ASSETS. In addition to any adjustments pursuant to Sections 6(a) or 7, if the Company shall declare or make any dividend or other distributions of its assets (or rights to acquire its assets) to any or all 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) (the “**Distributions**”), then the Holder will be entitled to such Distributions as if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of this Note (without taking into account any limitations or restrictions on the convertibility of this Note and assuming for such purpose that the Note was converted at the Alternate Conversion Price as of the applicable record date) immediately prior to the date on which a record is taken for such Distribution or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for such Distributions (provided, however, that to the extent that the Holder’s right to participate in any such Distribution would result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Distribution to the extent of the Maximum Percentage (and shall not be entitled to beneficial ownership of such shares of Common Stock as a result of such Distribution (and beneficial ownership) to the extent of any such excess) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time or times, if ever, as its right thereto would not result in the Holder and the other Attribution Parties exceeding the Maximum Percentage, at which time or times the Holder shall be granted such Distribution (and any Distributions declared or made on such initial Distribution or on any subsequent Distribution held similarly in abeyance) to the same extent as if there had been no such limitation).

16. AMENDING THE TERMS OF THIS NOTE. Except for Section 3(d), which may not be amended, modified or waived by the parties hereto, the prior written consent of the Required Purchasers (as defined in the Securities Purchase Agreement) shall be required for any amendment, modification or waiver to this Note. Any amendment, modification or waiver so approved shall be binding upon all existing and future holders of this Note and any Other Notes; provided, however, that no such change, waiver or, as applied to any of the Notes held by any particular holder of Notes, shall, without the written consent of that particular holder, (i) reduce the amount of Principal, reduce the amount of accrued and unpaid Interest, or extend the Maturity Date, of the Notes, (ii) disproportionately and adversely affect any rights under the Notes of any holder of Notes; or (iii) modify any of the provisions of, or impair the right of any holder of Notes under, this Section 16.

17. TRANSFER. This Note and any shares of Common Stock issued upon conversion of this Note may be offered, sold, assigned or transferred by the Holder without the consent of the Company, subject only to the provisions of Section 4.13 of the Securities Purchase Agreement.

18. REISSUANCE OF THIS NOTE.

(a) Transfer. If this Note is to be transferred, the Holder shall surrender this Note to the Company, whereupon the Company will forthwith issue and deliver upon the order of the Holder a new Note (in accordance with Section 18(d)), registered as the Holder may request, representing the outstanding Principal being transferred by the Holder and, if less than the entire outstanding Principal is being transferred, a new Note (in accordance with Section 18(d)) to the Holder representing the outstanding Principal not being transferred. The Holder and any assignee, by acceptance of this Note, acknowledge and agree that, by reason of the provisions of Section 3(c)(iii) following conversion or redemption of any portion of this Note, the outstanding Principal represented by this Note may be less than the Principal stated on the face of this Note.

(b) Lost, Stolen or Mutilated Note. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Note (as to which a written certification and the indemnification contemplated below shall suffice as such evidence), and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of this Note, the Company shall execute and deliver to the Holder a new Note (in accordance with Section 18(d)) representing the outstanding Principal.

(c) Note Exchangeable for Different Denominations. This Note is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Note or Notes (in accordance with Section 18(d) and in principal amounts of at least \$1,000) representing in the aggregate the outstanding Principal of this Note, and each such new Note will represent such portion of such outstanding Principal as is designated by the Holder at the time of such surrender.

(d) Issuance of New Notes. Whenever the Company is required to issue a new Note pursuant to the terms of this Note, such new Note (i) shall be of like tenor with this Note, (ii) shall represent, as indicated on the face of such new Note, the Principal remaining outstanding (or in the case of a new Note being issued pursuant to Section 18(a) or Section 18(c), the Principal designated by the Holder which, when added to the principal represented by the other new Notes issued in connection with such issuance, does not exceed the Principal remaining outstanding under this Note immediately prior to such issuance of new Notes), (iii) shall have an issuance date, as indicated on the face of such new Note, which is the same as the Issuance Date of this Note, (iv) shall have the same rights and conditions as this Note, and (v) shall represent accrued and unpaid Interest and Late Charges on the Principal and Interest of this Note, from the Issuance Date.

19. REMEDIES, CHARACTERIZATIONS, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note and any of the other Transaction Documents at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Note. No failure on the part of the Holder to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by the Holder of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. In addition, the exercise of any right or remedy of the Holder at law or equity or under this Note or any of the documents shall not be deemed to be an election of Holder's rights or remedies under such documents or at law or equity. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). No failure on the part of the Holder to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by the Holder of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. In addition, the exercise of any right or remedy of the Holder at law or equity or under this Note or any other document shall not be deemed to be an election of the Holder's rights or remedies under any such other document or at law or equity. The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Holder shall be entitled, in addition to all other available remedies, to specific performance and/or temporary, preliminary and permanent injunctive or other equitable relief from any court of competent jurisdiction in any such case without the necessity of proving actual damages and without posting a bond or other security. The Company shall provide all information and documentation to the Holder that is requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Note (including, without limitation, compliance with Section 7).

20. PAYMENT OF COLLECTION, ENFORCEMENT AND OTHER COSTS. If (a) this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or the Holder otherwise takes action to collect amounts due under this Note or to enforce the provisions of this Note or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay the costs incurred by the Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, without limitation, attorneys' fees and disbursements. The Company expressly acknowledges and agrees that no amounts due under this Note shall be affected, or limited, by the fact that the purchase price paid for this Note was less than the original Principal amount hereof.

21. CONSTRUCTION; HEADINGS. This Note shall be deemed to be jointly drafted by the Company and the initial Holder and shall not be construed against any such Person as the drafter hereof. The headings of this Note are for convenience of reference and shall not form part of, or affect the interpretation of, this Note. Unless the context clearly indicates otherwise, each pronoun herein shall be deemed to include the masculine, feminine, neuter, singular and plural forms thereof. The terms "including," "includes," "include" and words of like import shall be construed broadly as if followed by the words "without limitation." The terms "herein," "hereunder," "hereof" and words of like import refer to this entire Note instead of just the provision in which they are found. Unless expressly indicated otherwise, all section references are to sections of this Note. Terms used in this Note and not otherwise defined herein, but defined in the other Transaction Documents, shall have the meanings ascribed to such terms on the Closing Date in such other Transaction Documents unless otherwise consented to in writing by the Holder.

22. FAILURE OR INDULGENCE NOT WAIVER. No failure or delay on the part of the Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party. Notwithstanding the foregoing, nothing contained in this Section 22 shall permit any waiver of any provision of Section 3(d).

23. DISPUTE RESOLUTION.

(a) Submission to Dispute Resolution.

(i) In the case of a dispute relating to a Closing Bid Price, a Closing Sale Price, a Conversion Price, an Alternate Conversion Price, a Black Scholes Consideration Value, a VWAP or a fair market value or the arithmetic calculation of a Conversion Rate, or the applicable Redemption Price (as the case may be) (including, without limitation, a dispute relating to the determination of any of the foregoing), the Company or the Holder (as the case may be) shall submit the dispute to the other party via electronic mail (A) if by the Company, within two (2) Business Days after the occurrence of the circumstances giving rise to such dispute or (B) if by the Holder at any time after the Holder learned of the circumstances giving rise to such dispute. If the Holder and the Company are unable to promptly resolve such dispute relating to such Closing Bid Price, such Closing Sale Price, such Conversion Price, such Alternate Conversion Price, such Black Scholes Consideration Value, such VWAP or such fair market value, or the arithmetic calculation of such Conversion Rate or such applicable Redemption Price (as the case may be), at any time after the second (2nd) Business Day following such initial notice by the Company or the Holder (as the case may be) of such dispute to the Company or the Holder (as the case may be), then the Holder may, at its sole option, select an independent, reputable investment bank to resolve such dispute.

(ii) The Holder and the Company shall each deliver to such investment bank (A) a copy of the initial dispute submission so delivered in accordance with the first sentence of this Section 23 and (B) written documentation supporting its position with respect to such dispute, in each case, no later than 5:00 p.m. (New York time) by the fifth (5th) Business Day immediately following the date on which the Holder selected such investment bank (the “**Dispute Submission Deadline**”) (the documents referred to in the immediately preceding clauses (A) and (B) are collectively referred to herein as the “**Required Dispute Documentation**”) (it being understood and agreed that if either the Holder or the Company fails to so deliver all of the Required Dispute Documentation by the Dispute Submission Deadline, then the party who fails to so submit all of the Required Dispute Documentation shall no longer be entitled to (and hereby waives its right to) deliver or submit any written documentation or other support to such investment bank with respect to such dispute and such investment bank shall resolve such dispute based solely on the Required Dispute Documentation that was delivered to such investment bank prior to the Dispute Submission Deadline). Unless otherwise agreed to in writing by both the Company and the Holder or otherwise requested by such investment bank, neither the Company nor the Holder shall be entitled to deliver or submit any written documentation or other support to such investment bank in connection with such dispute (other than the Required Dispute Documentation).

(iii) The Company and the Holder shall cause such investment bank to determine the resolution of such dispute and notify the Company and the Holder of such resolution no later than ten (10) Business Days immediately following the Dispute Submission Deadline. The fees and expenses of such investment bank shall be borne solely by the Company, and such investment bank’s resolution of such dispute shall be final and binding upon all parties absent manifest error.

(b) Miscellaneous. The Company expressly acknowledges and agrees that (i) this Section 23 constitutes an agreement to arbitrate between the Company and the Holder (and constitutes an arbitration agreement) under Delaware Uniform Arbitration Act, (ii) a dispute relating to a Conversion Price includes, without limitation, disputes as to (A) whether an issuance or sale or deemed issuance or sale of Common Stock occurred under Section 7(a), (B) the consideration per share at which an issuance or deemed issuance of Common Stock occurred, (C) whether any issuance or sale or deemed issuance or sale of Common Stock was an issuance or sale or deemed issuance or sale of Excluded Securities, (D) whether an agreement, instrument, security or the like constitutes and Option or Convertible Security and (E) whether a Dilutive Issuance occurred, (iii) the terms of this Note and each other applicable Transaction Document shall serve as the basis for the selected investment bank's resolution of the applicable dispute, such investment bank shall be entitled (and is hereby expressly authorized) to make all findings, determinations and the like that such investment bank determines are required to be made by such investment bank in connection with its resolution of such dispute and in resolving such dispute such investment bank shall apply such findings, determinations and the like to the terms of this Note and any other applicable Transaction Documents, (iv) the Holder (and only the Holder), in its sole discretion, shall have the right to submit any dispute described in this Section 23 to any state or federal court sitting in Wilmington, Delaware in lieu of utilizing the procedures set forth in this Section 23 and (v) nothing in this Section 23 shall limit the Holder from obtaining any injunctive relief or other equitable remedies (including, without limitation, with respect to any matters described in this Section 23).

24. NOTICES; CURRENCY; PAYMENTS.

(a) Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with Section 12.3 of the Securities Purchase Agreement. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Note, including in reasonable detail a description of such action and the reason therefore. Without limiting the generality of the foregoing, the Company will give written notice to the Holder (i) immediately upon any adjustment of the Conversion Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment and (ii) at least fifteen (15) days prior to the date on which the Company closes its books or takes a record (A) with respect to any dividend or distribution upon the Common Stock, (B) with respect to any grant, issuances, or sales of any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property to holders of shares of Common Stock or (C) for determining rights to vote with respect to any Fundamental Transaction, dissolution or liquidation, provided in each case that such information shall be made known to the public prior to or in conjunction with such notice being provided to the Holder.

(b) Currency. All dollar amounts referred to in this Note are in United States Dollars (“**U.S. Dollars**”), and all amounts owing under this Note shall be paid in U.S. Dollars. All amounts denominated in other currencies (if any) shall be converted into the U.S. Dollar equivalent amount in accordance with the Exchange Rate on the date of calculation. “**Exchange Rate**” means, in relation to any amount of currency to be converted into U.S. Dollars pursuant to this Note, the U.S. Dollar exchange rate as published in the Wall Street Journal on the relevant date of calculation (it being understood and agreed that where an amount is calculated with reference to, or over, a period of time, the date of calculation shall be the final date of such period of time).

(c) Payments. Whenever any payment of cash is to be made by the Company to any Person pursuant to this Note, unless otherwise expressly set forth herein, such payment shall be made in lawful money of the United States of America by a certified check drawn on the account of the Company and sent via overnight courier service to such Person at such address as previously provided to the Company in writing (which address, in the case of each of the Buyers, shall initially be as set forth on the Schedule of Buyers attached to the Securities Purchase Agreement), provided that the Holder may elect to receive a payment of cash via wire transfer of immediately available funds by providing the Company with prior written notice setting out such request and the Holder's wire transfer instructions. Whenever any amount expressed to be due by the terms of this Note is due on any day which is not a Business Day, the same shall instead be due on the next succeeding day which is a Business Day. Any amount of Outstanding Principal Value or other amounts due under the Transaction Documents which is not paid when due (except to the extent such amount is simultaneously accruing Interest at the Default Rate hereunder) shall result in a late charge being incurred and payable by the Company in an amount equal to interest on such amount at the rate of eighteen percent (18%) per annum from the date such amount was due until the same is paid in full (“**Late Charge**”).

25. CANCELLATION. After all Outstanding Principal Value, accrued Interest, Late Charges and other amounts at any time owed on this Note have been paid in full, this Note shall automatically be deemed canceled, shall be surrendered to the Company for cancellation and shall not be reissued.

26. WAIVER OF NOTICE. To the extent permitted by law, the Company hereby irrevocably waives demand, notice, presentment, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note and the Securities Purchase Agreement.

27. GOVERNING LAW. This Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Note shall be governed by, the internal laws of the State of Delaware, without giving effect to any provision or rule (whether of the State of Delaware or any other jurisdictions) that would cause the application of the laws of any jurisdictions other than the State of Delaware. Except as otherwise required by Section 23 above, the Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of Wilmington, New Castle County, State of Delaware, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein (i) shall be deemed or operate to preclude the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder, or to enforce a judgment or other court ruling in favor of the Holder or (ii) shall limit, or shall be deemed or construed to limit, any provision of Section 23. **THE COMPANY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS NOTE OR ANY TRANSACTION CONTEMPLATED HEREBY.**

28. JUDGMENT CURRENCY.

(a) If for the purpose of obtaining or enforcing judgment against the Company in any court in any jurisdiction it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 28 referred to as the "**Judgment Currency**") an amount due in U.S. dollars under this Note, the conversion shall be made at the Exchange Rate prevailing on the Trading Day immediately preceding:

(i) the date actual payment of the amount due, in the case of any proceeding in the courts of New York or in the courts of any other jurisdiction that will give effect to such conversion being made on such date: or

(ii) the date on which the foreign court determines, in the case of any proceeding in the courts of any other jurisdiction (the date as of which such conversion is made pursuant to this Section 28(a)(ii) being hereinafter referred to as the "**Judgment Conversion Date**").

(b) If in the case of any proceeding in the court of any jurisdiction referred to in Section 28(a)(ii) above, there is a change in the Exchange Rate prevailing between the Judgment Conversion Date and the date of actual payment of the amount due, the applicable party shall pay such adjusted amount as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the Exchange Rate prevailing on the date of payment, will produce the amount of US dollars which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial order at the Exchange Rate prevailing on the Judgment Conversion Date.

(c) Any amount due from the Company under this provision shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of this Note.

29. SEVERABILITY. If any provision of this Note is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Note so long as this Note as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

30. MAXIMUM PAYMENTS. Nothing contained herein shall be deemed to establish or require the payment of a rate of interest or other charges in excess of the maximum permitted by applicable law. In the event that the rate of interest required to be paid or other charges hereunder exceed the maximum permitted by such law, any payments in excess of such maximum shall be credited against amounts owed by the Company to the Holder and thus refunded to the Company.

31. CERTAIN DEFINITIONS. For purposes of this Note, the following terms shall have the following meanings:

(a) “**1933 Act**” means the Securities Act of 1933, as amended, and the rules and regulations thereunder.

(b) “**1934 Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

(c) “**Adjustment Right**” means any right granted with respect to any securities issued in connection with, or with respect to, any issuance or sale (or deemed issuance or sale in accordance with Section 7) of shares of Common Stock (other than rights of the type described in Section 6(a) hereof) that could result in a decrease in the net consideration received by the Company in connection with, or with respect to, such securities (including, without limitation, any cash settlement rights, cash adjustment or other similar rights).

(d) “**Affiliate**” means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that “control” of a Person means the power directly or indirectly either to vote 10% or more of the stock having ordinary voting power for the election of directors of such Person or direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

(e) “**Alternate Conversion Price**” means, as of any date of determination that price which shall be the lower of (i) the applicable Conversion Price as in effect on the applicable Conversion Date of the applicable Alternate Conversion or such other date of determination, and (ii) the greater of (x) the Floor Price and (y) the lowest of the five (5) VWAPs of the Common Stock during the five (5) consecutive Trading Day period ending and including the Trading Day immediately preceding the delivery or deemed delivery of the applicable Conversion Notice, or if applicable, such other date of determination (such period, the “**Alternate Conversion Measuring Period**”). All such determinations to be appropriately adjusted for any stock dividend, stock split, stock combination, reclassification or similar transaction that proportionately decreases or increases the Common Stock during such Alternate Conversion Measuring Period.

(f) “**Approved Stock Plan**” means any employee benefit plan which has been approved by the board of directors of the Company prior to or subsequent to the Subscription Date pursuant to which shares of Common Stock and standard options to purchase Common Stock may be issued to any employee, officer or director for services provided to the Company in their capacity as such.

(g) “**Attribution Parties**” means, collectively, the following Persons and entities: (i) any investment vehicle, including, any funds, feeder funds or managed accounts, currently, or from time to time after the Issuance Date, directly or indirectly managed or advised by the Holder’s investment manager or any of its Affiliates or principals, (ii) any direct or indirect Affiliates of the Holder or any of the foregoing, (iii) any Person acting or who could be deemed to be acting as a Group together with the Holder or any of the foregoing and (iv) any other Persons whose beneficial ownership of the Company’s Common Stock would or could be aggregated with the Holder’s and the other Attribution Parties for purposes of Section 13(d) of the 1934 Act. For clarity, the purpose of the foregoing is to subject collectively the Holder and all other Attribution Parties to the Maximum Percentage.

(h) “**Black Scholes Consideration Value**” means the value of the applicable Option, Convertible Security or Adjustment Right (as the case may be) as of the date of issuance thereof calculated using the Black Scholes Option Pricing Model obtained from the “OV” function on Bloomberg utilizing (i) an underlying price per share equal to the Closing Sale Price of the Common Stock on the Trading Day immediately preceding the public announcement of the execution of definitive documents with respect to the issuance of such Option, Convertible Security or Adjustment Right (as the case may be), (ii) a risk-free interest rate corresponding to the U.S. Treasury rate for a period equal to the remaining term of such Option, Convertible Security or Adjustment Right (as the case may be) as of the date of issuance of such Option, Convertible Security or Adjustment Right (as the case may be), (iii) a zero cost of borrow and (iv) an expected volatility equal to the greater of 100% and the 100 day volatility obtained from the “HVT” function on Bloomberg (determined utilizing a 365 day annualization factor) as of the Trading Day immediately following the date of issuance of such Option, Convertible Security or Adjustment Right (as the case may be).

(i) “**Bloomberg**” means Bloomberg, L.P.

(j) “**Business Day**” means any day except Saturday, Sunday and any day which shall be a federal legal holiday in the United States or a day on which the Federal Reserve Bank of New York is closed and/or any of the following exchanges on which the Common Stock is traded and listed, or any successor(s) thereto, is not open for at least five (5) hours of trading: the Nasdaq Capital Market; the Nasdaq Global Market; the Nasdaq Global Select Market; the New York Stock Exchange; or the NYSE American; and any successor to any of the foregoing markets or exchanges.

(k) [Reserved].

(l) “**Change of Control**” means any Fundamental Transaction other than (i) any merger of the Company or any of its, direct or indirect, wholly-owned Subsidiaries with or into any of the foregoing Persons, (ii) any reorganization, recapitalization or reclassification of the shares of Common Stock in which holders of the Company’s voting power immediately prior to such reorganization, recapitalization or reclassification continue after such reorganization, recapitalization or reclassification to hold publicly traded securities and, directly or indirectly, are, in all material respects, the holders of the voting power of the surviving entity (or entities with the authority or voting power to elect the members of the board of directors (or their equivalent if other than a corporation) of such entity or entities) after such reorganization, recapitalization or reclassification, or (iii) pursuant to a migratory merger effected solely for the purpose of changing the jurisdiction of incorporation of the Company or any of its Subsidiaries.

(m) [Reserved]

(n) “**Closing Bid Price**” and “**Closing Sale Price**” means, for any security as of any date, the last closing bid price and last closing trade price, respectively, for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing bid price or the closing trade price (as the case may be) then the last bid price or last trade price, respectively, of such security prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last closing bid price or last trade price, respectively, of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last closing bid price or last trade price, respectively, of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no closing bid price or last trade price, respectively, is reported for such security by Bloomberg, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices). If the Closing Bid Price or the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Bid Price or the Closing Sale Price (as the case may be) of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 23. All such determinations shall be appropriately adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions during such period.

(o) “**Closing Date**” shall have the meaning set forth in the Securities Purchase Agreement, which date is each date the Company issued Notes pursuant to the terms of the Securities Purchase Agreement.

(p) “**Code**” means the United States Internal Revenue Code of 1986, as amended.

(q) [Reserved].

(r) “**Common Stock**” means (i) the Company’s shares of Class A common stock, \$0.001 par value per share, and (ii) any capital stock into which such Class A common stock shall have been changed or any share capital resulting from a reclassification of such Class A common stock.

(s) “**Contingent Obligation**” means, as to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to any Indebtedness, lease, dividend or other obligation of another Person if the primary purpose or intent of the Person incurring such liability, or the primary effect thereof, is to provide assurance to the obligee of such liability that such liability will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such liability will be protected (in whole or in part) against loss with respect thereto.

(t) “**Controlled Group**” means all members of a group of corporations and all members of a group of trades or businesses (whether or not incorporated) under common control which, together with the Company, are treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, under Section 414(m) or (o) of the Code.

(u) “**Control Account Release Event**” means, with respect to any voluntary conversion of this Note, the occurrence of each of (A) the Company’s receipt of a Conversion Notice hereunder executed by the Holder and (B) the Company’s receipt of written confirmation from the Holder that the shares of Common Stock issuable pursuant to such Conversion Notice have been delivered, freely tradable and free of any restrictive legends in accordance with Section 3(c) (in each case, as adjusted, if applicable, to reflect the withdrawal of any Conversion Notice, in whole or in part, by the Holder, whether pursuant to Section 3(c)(ii) or otherwise). Upon the occurrence of a Control Account Release Event, the Holder shall release from the Holder Controlled Account an amount in cash equal to the excess, if any, of (x) the amount of funds then held in the Holder Controlled Account over (y) the Conversion Amount of this Note then outstanding (with such determination made immediately after giving effect to such conversion).

(v) “**Convertible Securities**” means any stock or other security (other than Options) that is at any time and under any circumstances, directly or indirectly, convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any shares of Common Stock.

(w) “**Current Public Information Failure**” means if a Registration Statement is not effective for any reason or the prospectus contained therein is not available for use for any reason, and either (x) the Company fails for any reason to satisfy the requirements of Rule 144(c)(1) of the 1933 Act, including, without limitation, the failure to satisfy the current public information requirement under Rule 144(c) of the 1933 Act or (y) the Company has ever been an issuer described in Rule 144(i)(1)(i) of the 1933 Act or becomes such an issuer in the future, and the Company shall fail to satisfy any condition set forth in Rule 144(i)(2) of the 1933 Act.

(x) “**Default Rate**” means fifteen percent (15%) per annum.

(y) “**Eligible Market**” means The New York Stock Exchange, the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Select Market or the Nasdaq Global Market.

(z) “**Equity Conditions**” means, with respect to an given date of determination: (i) on each day during the period beginning thirty calendar days prior to such applicable date of determination and ending on and including such applicable date of determination either (x) one or more registration statements of the Company (the “**Registration Statements**”) shall be effective and the prospectus contained therein shall be available on such applicable date of determination (with, for the avoidance of doubt, any shares of Common Stock previously sold pursuant to such prospectus deemed unavailable) for the resale of all shares of Common Stock to be issued in connection with the event requiring this determination (or issuable upon conversion of the Conversion Amount being redeemed, as applicable, in the event requiring this determination at the Alternate Conversion Price then in effect (without regard to any limitations on conversion set forth herein)) (each, a “**Required Minimum Securities Amount**”) or (y) all shares of Common Stock issuable upon conversion of this Note (without regard to any limitations on conversion set forth herein) shall be eligible for sale pursuant to Rule 144 of the 1933 Act without the need for registration under any applicable federal or state securities laws (in each case, disregarding any limitation on conversion of the Notes, other issuance of securities with respect to the Notes) and no Current Public Information Failure exists or is continuing; (ii) on each day during the period beginning thirty calendar days prior to the applicable date of determination and ending on and including the applicable date of determination (the “**Equity Conditions Measuring Period**”), the Common Stock (including all shares of Common Stock issuable upon conversion of this Note (without regard to any limitations of conversion set forth herein)) is listed or designated for quotation (as applicable) on an Eligible Market and shall not have been suspended from trading on an Eligible Market (other than suspensions of not more than two (2) days and occurring prior to the applicable date of determination due to business announcements by the Company) nor shall delisting or suspension by an Eligible Market have been threatened (with a reasonable prospect of delisting occurring after giving effect to all applicable notice, appeal, compliance and hearing periods) or reasonably likely to occur or pending as evidenced by (A) a writing by such Eligible Market or (B) the Company falling below the minimum listing maintenance requirements of the Eligible Market on which the Common Stock is then listed or designated for quotation (as applicable); (iii) during the Equity Conditions Measuring Period, the Company shall have delivered all shares of Common Stock issuable upon conversion of this Note on a timely basis as set forth in Section 3 hereof and all other shares of capital stock required to be delivered by the Company on a timely basis as set forth in the other Transaction Documents; (iv) any shares of Common Stock to be issued in connection with the event requiring determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination) may be issued in full without violating Section 3(d) hereof; (v) any shares of Common Stock to be issued in connection with the event requiring determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination (without regards to any limitations on conversion set forth herein)) may be issued in full without violating the rules or regulations of the Eligible Market on which the Common Stock is then listed or designated for quotation (as applicable); (vi) on each day during the Equity Conditions Measuring Period, no public announcement of a pending, proposed or intended Fundamental Transaction shall have occurred which has not been abandoned, terminated or consummated; (vii) the Company shall have no knowledge of any fact that would reasonably be expected to cause (1) any Registration Statement to not be effective or the prospectus contained therein to not be available for the resale of the applicable Required Minimum Securities Amount of shares of Common Stock issuable upon conversion of this Note (without regard to any limitations of conversion set forth herein) or (2) any shares of Common Stock issuable upon conversion of this Note (without regard to any limitations of conversion set forth herein) to not be eligible for sale pursuant to Rule 144 without the need for registration under any applicable federal or state securities laws (in each case, disregarding any limitation on conversion of the Notes, other issuance of securities with respect to the Notes) and no Current Public Information Failure exists or is continuing; (viii) the Holder shall not be in (and no other holder of Notes shall be in) possession of any material, non-public information provided to any of them by the Company, any of its Subsidiaries or any of their respective affiliates, employees, officers, representatives, agents or the like; (ix) on each day during the Equity Conditions Measuring Period, the Company otherwise shall have been in compliance with each, and shall not have breached any representation or warranty in any material respect (other than representations or warranties subject to Material Adverse Effect or materiality, which may not be breached in any respect) or any covenant or other term or condition of any Transaction Document, including, without limitation, the Company shall not have failed to timely make any payment pursuant to any Transaction Document; (x) on the applicable date of determination, the Company has a sufficient number of authorized but unissued and unreserved shares of Common Stock equal to at least the number of shares of Common Stock to be issued in connection with the event requiring this determination (or issuable upon conversion of the Conversion Amount being redeemed in the event requiring this determination (without regards to any limitations on conversion set forth herein)); (xi) on each day during the Equity Conditions Measuring Period, there shall not have occurred and there shall not exist an Event of Default or an event that with the passage of time or giving of notice would constitute an Event of Default; (xii) no bone fide dispute shall exist, by and between any of holder of Notes, the Company, the Principal Market (or such applicable Eligible Market in which the Common Stock of the Company is then principally trading) and/or FINRA with respect to any term or provision of any Note or any other Transaction Document and (xiii) the shares of Common Stock issuable pursuant the event requiring the satisfaction of the Equity Conditions are duly authorized and listed and eligible for trading without restriction on an Eligible Market.

(aa) **“Equity Conditions Failure”** means that on any day during the period commencing twenty (20) Trading Days prior to the applicable Company Optional Redemption Notice Date through the applicable Company Optional Redemption Date, the Equity Conditions have not been satisfied (or waived in writing by the Holder) or there has been a Price Failure or Volume Failure.

(bb) [Reserved].

(cc) **“Excluded Securities”** means (i) shares of Common Stock or standard options to purchase Common Stock issued to directors, officers or employees of the Company for services rendered to the Company in their capacity as such pursuant to an Approved Stock Plan (as defined above), provided that (A) all such issuances (taking into account the shares of Common Stock issuable upon exercise of such options) after the Subscription Date pursuant to this clause (i) do not, in the aggregate, exceed more than 5% of the Common Stock issued and outstanding immediately prior to the Subscription Date and (B) the exercise price of any such options is not lowered, none of such options are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such options are otherwise materially changed in any manner that adversely affects any of the Buyers; (ii) shares of Common Stock issued upon the conversion or exercise of Convertible Securities or Options (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) issued prior to the Subscription Date, provided that the conversion price of any such Convertible Securities (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) is not lowered, none of such Convertible Securities or Options (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) are amended to increase the number of shares issuable thereunder and none of the terms or conditions of any such Convertible Securities or Options (other than standard options to purchase Common Stock issued pursuant to an Approved Stock Plan that are covered by clause (i) above) are otherwise materially changed in any manner that adversely affects any of the Buyers; (iii) the shares of Common Stock issuable upon conversion of the Notes or otherwise pursuant to the terms of the Notes; provided, that the terms of the Notes are not amended, modified or changed on or after the Subscription Date (other than antidilution adjustments pursuant to the terms thereof in effect as of the Subscription Date); and (iv) the Existing Senior Securities, provided the terms of the Existing Senior Securities are not amended, modified or changed after the Subscription Date, Existing Unsecured Securities, provided the terms of the Existing Unsecured Securities are not amended, modified or changed after the Subscription Date, and any other securities issued after the date of the Securities Purchase Agreement pursuant to any Existing SPA and the shares of Common Stock issuable upon conversion of each of the foregoing, provided the terms of such securities are not amended, modified or changed after the Subscription Date.

(dd) “**Existing Senior Securities**” means those certain (i) secured convertible notes, issued from time to time, and accompanying common warrants, pursuant to that certain Securities Purchase Agreement, dated as of September 5, 2024, by and among the Company and certain investors party thereto, as such may be amended, modified, waived and/or supplemented, as applicable, from time to time (the “**September 2024 SPA**”) and (ii) promissory notes, issued from time to time, pursuant to that certain Notes Purchase Agreement, dated as of April 17, 2026, by and between the Company and the institutional investor party thereto, as such may be amended, modified, waived and/or supplemented, as applicable, from time to time (the “**April 2026 SPA**”).

(ee) “**Existing SPAs**” means collectively, the September 2024 SPA, the December 2024 SPA, the March 2025 SPA, the May 2023 SPA, the July 2025 SPA, the April 2026 A&R SPA and the April 2026 SPA.

(ff) “**Existing Unsecured Securities**” means those certain (i) unsecured convertible notes, issued from time to time, and accompanying common warrants, pursuant to that certain Securities Purchase Agreement, dated as of December 21, 2024, by and among the Company and certain investors party thereto, as such may be amended, modified, waived and/or supplemented, as applicable, from time to time (the “**December 2024 SPA**”); (ii) unsecured convertible notes, issued from time to time, and accompanying common warrants, pursuant to that certain Securities Purchase Agreement, dated as of March 21, 2025, by and among the Company and certain investors party thereto, as such may be amended, modified, waived and/or supplemented, as applicable, from time to time (the “**March 2025 SPA**”); (iii) unsecured convertible notes, issued, or to be issued from time to time, and accompanying common warrants, pursuant to that certain Securities Purchase Agreement, dated as of May 8, 2023, by and among the Company and certain investors party thereto, as such may be amended, modified, waived and/or supplemented, as applicable, from time to time (the “**May 2023 SPA**”); (iv) unsecured convertible notes, issued from time to time, and accompanying common warrants, pursuant to that certain Securities Purchase Agreement, dated as of July 14, 2025, by and among the Company and certain investors party thereto, as such may be amended, modified, waived and/or supplemented, as applicable, from time to time (the “**July 2025 SPA**”); and (v) shares of Series C Convertible Preferred Stock, par value \$0.0001 per share, of the Company and the common stock purchase warrant issued pursuant to that certain Amended and Restated Securities Purchase Agreement, dated as of April 14, 2026, by and between the Company and the investor party thereto, as such may be amended, modified, waived and/or supplemented, as applicable, from time to time (the “**April 2026 A&R SPA**”).

(gg) “**Financing Documents**” shall have the meaning as set forth in the Securities Purchase Agreement.

(hh) “**Floor Price**” means \$0.15528 (as adjusted for stock splits, stock dividends, stock combinations, recapitalizations and similar events). Notwithstanding the foregoing, the Company may reduce the Floor Price to a price per share not contrary to the rules and regulations promulgated by the Principal Market; provided, that, the Company shall provide the Holders with a written notice setting forth the adjusted Floor Price within one (1) Business Day of such adjustment.

(ii) “**Fundamental Transaction**” means (A) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, (i) consolidate or merge with or into (whether or not the Company is the surviving corporation) another Subject Entity, or (ii) sell, assign, transfer, convey or otherwise dispose of all or substantially all of the properties or assets of the Company or any of its “significant subsidiaries” (as defined in Rule 1-02 of Regulation S-X) to one or more Subject Entities, or (iii) make, or allow one or more Subject Entities to make, or allow the Company to be subject to or have its Common Stock be subject to or party to one or more Subject Entities making, a purchase, tender or exchange offer that is accepted by the holders of at least either (x) 50% of the outstanding shares of Common Stock, (y) 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all Subject Entities making or party to, or Affiliated with any Subject Entities making or party to, such purchase, tender or exchange offer were not outstanding; or (z) such number of shares of Common Stock such that all Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such purchase, tender or exchange offer, become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (iv) consummate a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with one or more Subject Entities whereby all such Subject Entities, individually or in the aggregate, acquire in any transaction or series or related transactions, either (x) at least 50% of the outstanding shares of Common Stock, (y) at least 50% of the outstanding shares of Common Stock calculated as if any shares of Common Stock held by all the Subject Entities making or party to, or Affiliated with any Subject Entity making or party to, such stock purchase agreement or other business combination were not outstanding; or (z) such number of shares of Common Stock such that the Subject Entities become collectively the beneficial owners (as defined in Rule 13d-3 under the 1934 Act) of at least 50% of the outstanding shares of Common Stock, or (v) reorganize, recapitalize or reclassify its Common Stock, (B) that the Company shall, directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, allow any Subject Entity individually or the Subject Entities in the aggregate to be or become the “beneficial owner” (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, whether through acquisition, purchase, assignment, conveyance, tender, tender offer, exchange, reduction in outstanding shares of Common Stock, merger, consolidation, business combination, reorganization, recapitalization, spin-off, scheme of arrangement, reorganization, recapitalization or reclassification or otherwise in any manner whatsoever, of either (x) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock, (y) at least 50% of the aggregate ordinary voting power represented by issued and outstanding Common Stock not held by all such Subject Entities as of the date of this Note calculated as if any shares of Common Stock held by all such Subject Entities were not outstanding, or (z) a percentage of the aggregate ordinary voting power represented by issued and outstanding shares of Common Stock or other equity securities of the Company sufficient to allow such Subject Entities to effect a statutory short form merger or other transaction requiring other stockholders of the Company to surrender their shares of Common Stock without approval of the stockholders of the Company or (C) directly or indirectly, including through subsidiaries, Affiliates or otherwise, in one or more related transactions, the issuance of or the entering into any other instrument or transaction structured in a manner to circumvent, or that circumvents, the intent of this definition in which case this definition shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this definition to the extent necessary to correct this definition or any portion of this definition which may be defective or inconsistent with the intended treatment of such instrument or transaction.

(jj) “**GAAP**” means United States generally accepted accounting principles, consistently applied.

(kk) “**Group**” means a “group” as that term is used in Section 13(d) of the 1934 Act and as defined in Rule 13d-5 thereunder.

(ll) “**Indebtedness**” of any Person means, without duplication (A) all indebtedness for borrowed money, (B) all obligations issued, undertaken or assumed as the deferred purchase price of property or services (including, without limitation, “capital leases” in accordance with GAAP) (other than trade payables entered into in the ordinary course of business consistent with past practice), (C) all reimbursement or payment obligations with respect to letters of credit, surety bonds and other similar instruments, (D) all obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses, (E) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to any property or assets acquired with the proceeds of such indebtedness (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property), (F) all monetary obligations under any leasing or similar arrangement which, in connection with GAAP, consistently applied for the periods covered thereby, is classified as a capital lease, (G) all indebtedness referred to in clauses (A) through (F) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in any property or assets (including accounts and contract rights) owned by any Person, even though the Person which owns such assets or property has not assumed or become liable for the payment of such indebtedness, and (H) all Contingent Obligations in respect of indebtedness or obligations of others of the kinds referred to in clauses (A) through (G) above.

(mm) “**Intellectual Property Rights**” means trademarks, trade names, service marks, service mark registrations, service names, original works of authorship, patents, patent rights, copyrights, inventions, licenses, approvals, governmental authorizations, trade secrets and other intellectual property rights and all applications and registrations therefor of the Company and/or any of its Subsidiaries.

(nn) “**Interest Rate**” means eight percent (8%) per annum.

(oo) “**Investment**” means any beneficial ownership (including stock, partnership or limited liability company interests) of or in any Person, or any loan, advance or capital contribution to any Person or the acquisition of all, or substantially all, of the assets of another Person or the purchase of any assets of another Person for greater than the fair market value of such assets.

(pp) “**Make-Whole Amount**” means as of any given date and as applicable, in connection with any conversion, redemption or other repayment hereunder, an amount equal to the amount of additional Interest that would accrue under this Note at the Interest Rate then in effect assuming for calculation purposes that the Outstanding Principal Value of this Note following issuance on the Issuance Date remained outstanding through and including the Maturity Date.

(qq) “**Maturity Date**” shall mean May 15, 2027; provided, however, the Maturity Date may be extended at the option of the Holder (i) in the event that, and for so long as, an Event of Default shall have occurred and be continuing or any event shall have occurred and be continuing that with the passage of time and the failure to cure would result in an Event of Default or (ii) through the date that is twenty (20) Business Days after the consummation of a Fundamental Transaction in the event that a Fundamental Transaction is publicly announced or a Change of Control Notice is delivered prior to the Maturity Date, provided further that if a Holder elects to convert some or all of this Note pursuant to Section 3 hereof, and the Conversion Amount would be limited pursuant to Section 3(d) hereunder, the Maturity Date shall automatically be extended until such time as such provision shall not limit the conversion of this Note.

(rr) “**Options**” means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(ss) “**Outstanding Principal Value**”: as of any time of determination, means 108% of all outstanding Principal of this Note as of such time of determination

(tt) “**Parent Entity**” of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(uu) “**Person**” means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity or a government or any department or agency thereof.

(vv) “**Price Failure**” means, with respect to a particular date of determination, the VWAP of the Common Stock on any Trading Day during the twenty (20) Trading Day period ending on the Trading Day immediately preceding such date of determination fails to exceed the Floor Price (as adjusted for stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions occurring after the Issuance Date). All such determinations to be appropriately adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions during any such measuring period.

(ww) “**Principal Market**” means the Nasdaq Capital Market.

(xx) “**Redemption Notices**” means, collectively, the Event of Default Redemption Notices, the Company Optional Redemption Notices and the Change of Control Redemption Notices, and each of the foregoing, individually, a “**Redemption Notice**.”

(yy) “**Redemption Premium**” means 108%.

(zz) “**Redemption Prices**” means, collectively, the Event of Default Redemption Prices, the Company Optional Redemption Prices, the Floor Redemption Price and the Change of Control Redemption Prices, and each of the foregoing, individually, a “**Redemption Price**.”

(aaa) “**SEC**” means the United States Securities and Exchange Commission or the successor thereto.

(bbb) “**Securities Purchase Agreement**” means that certain securities purchase agreement, dated as of the Subscription Date, by and among the Company and the holders of the Notes party thereto, as may be amended from time to time.

(ccc) “**Subscription Date**” means May 15, 2026.

(ddd) “**Subsidiaries**” shall have the meaning as set forth in the Securities Purchase Agreement.

(eee) “**Subject Entity**” means any Person, Persons or Group or any Affiliate or associate of any such Person, Persons or Group.

(fff) “**Successor Entity**” means the Person (or, if so elected by the Holder, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Holder, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

(ggg) [Reserved].

(hhh) “**Trading Day**” means, as applicable, (x) with respect to all price or trading volume determinations relating to the Common Stock, any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded, provided that “Trading Day” shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) unless such day is otherwise designated as a Trading Day in writing by the Holder or (y) with respect to all determinations other than price determinations relating to the Common Stock, any day on which The New York Stock Exchange (or any successor thereto) is open for trading of securities.

(iii) “**Transaction Documents**” shall have the meaning as set forth in the Securities Purchase Agreement.

(jjj) “**Volume Failure**” means, with respect to a particular date of determination, the aggregate daily dollar trading volume (as reported on Bloomberg) of the Common Stock on the Principal Market on any Trading Day during the twenty (20) Trading Day period ending on the Trading Day immediately preceding such date of determination (such period, the “**Volume Failure Measuring Period**”) is less than \$1,500,000 (as adjusted for any stock splits, stock dividends, stock combinations, recapitalizations or other similar transactions occurring after the Subscription Date).

(kkk) “**VWAP**” means, for any security as of any date, the dollar volume-weighted average price for such security on the Principal Market (or, if the Principal Market is not the principal trading market for such security, then on the principal securities exchange or securities market on which such security is then traded), during the period beginning at 9:30 a.m., New York time, and ending at 4:00 p.m., New York time, as reported by Bloomberg through its “VAP” function (set to 09:30 start time and 16:00 end time) or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30 a.m., New York time, and ending at 4:00 p.m., New York time, as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices). If the VWAP cannot be calculated for such security on such date on any of the foregoing bases, the VWAP of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 23. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination, recapitalization or other similar transaction during such period.

32. **DISCLOSURE.** Upon delivery by the Company to the Holder (or receipt by the Company from the Holder) of any notice in accordance with the terms of this Note, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Company or any of its Subsidiaries, the Company shall on or prior to 9:00 am, New York city time on the Business Day immediately following such notice delivery date, publicly disclose such material, non-public information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, non-public information relating to the Company or any of its Subsidiaries, the Company so shall indicate to the Holder explicitly in writing in such notice (or immediately upon receipt of notice from the Holder, as applicable), and in the absence of any such written indication in such notice (or notification from the Company immediately upon receipt of notice from the Holder), the Holder shall be entitled to presume that information contained in the notice does not constitute material, non-public information relating to the Company or any of its Subsidiaries. Nothing contained in this Section 32 shall limit any obligations of the Company, or any rights of the Holder, under Section 4.18 of the Securities Purchase Agreement.

33. ABSENCE OF TRADING AND DISCLOSURE RESTRICTIONS. The Company acknowledges and agrees that the Holder is not a fiduciary or agent of the Company and that the Holder shall have no obligation to (a) maintain the confidentiality of any information provided by the Company or (b) refrain from trading any securities while in possession of such information in the absence of a written non-disclosure agreement signed by an officer of the Holder that explicitly provides for such confidentiality and trading restrictions. In the absence of such an executed, written non-disclosure agreement, the Company acknowledges that the Holder may freely trade in any securities issued by the Company, may possess and use any information provided by the Company in connection with such trading activity, and may disclose any such information to any third party.

34. TAXES.

(a) Without limiting any other provision of this Note, any and all payments by the Company hereunder shall be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto (collectively referred to as “**Taxes**”) unless the Company is required to withhold or deduct any amounts for, or on account of Taxes pursuant to any applicable law. If the Company shall be required to deduct any Taxes from or in respect of any sum payable hereunder to the Holder, (i) the sum payable shall be increased by the amount by which the sum payable would otherwise have to be increased (the “**make-whole sum**”) to ensure that after making all required deductions (including deductions applicable to the make-whole sum) the Holder would receive an amount equal to the sum it would have received had no such deductions been made, (ii) the Company shall make such deductions and (iii) the Company shall pay the full amount withheld or deducted to the relevant governmental authority within the time required. Upon the request of the Company, the Holder shall provide the Company with such duly completed and executed forms or certificates prescribed by law as a basis for claiming an exemption from, or a reduction of, any Taxes imposed on payments made hereunder.

(b) In addition, the Company agrees to pay to the relevant governmental authority in accordance with applicable law any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made hereunder or in connection with the execution, delivery, registration or performance of, or otherwise with respect to, this Note (“**Other Taxes**”).

(c) The Company shall deliver to the Holder official receipts, if any, in respect of any Taxes and Other Taxes payable hereunder promptly after payment of such Taxes and Other Taxes or other evidence of payment reasonably acceptable to the Holder.

(d) If the Company fails to pay any amounts in accordance with this Section 34, the Company shall indemnify the Holder within ten (10) calendar days after written demand therefor, for the full amount of any Taxes or Other Taxes, plus any related interest or penalties, that are paid by the Holder to the relevant governmental authority or other relevant governmental authority as a result of such failure.

(e) The obligations of the Company under this Section 34 shall survive the termination of this Agreement and the payment of all amounts payable hereunder.

[signature page follows]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed as of the Issuance Date set forth above.

Faraday Future Intelligent Electric, Inc.

By: _____
Name:
Title:

Convertible Note - Signature Page

EXHIBIT I

FARADAY FUTURE INTELLIGENT ELECTRIC, INC.
CONVERSION NOTICE

Reference is made to the Unsecured Convertible Note (the "Note") issued to the undersigned by Faraday Future Intelligent Electric, Inc., a Delaware corporation (the "Company"). In accordance with and pursuant to the Note, the undersigned hereby elects to convert the Conversion Amount (as defined in the Note) of the Note indicated below into shares of Class A Common Stock, \$0.001 par value per share (the "Common Stock"), of the Company, as of the date specified below. Capitalized terms not defined herein shall have the meaning as set forth in the Note.

Date of Conversion: _____

Aggregate Principal to be converted: _____

Aggregate accrued and unpaid Interest and accrued and unpaid
Late Charges with respect to such portion of the Aggregate
Principal and such Aggregate Interest to be converted: _____

AGGREGATE CONVERSION AMOUNT TO BE CONVERTED: _____

Please confirm the following information:

Conversion Price: _____

Number of shares of Common Stock to be issued: _____

Please issue the Common Stock into which the Note is being converted to Holder, or for its benefit, as follows:

Check here if requesting delivery as a certificate to the following name and to the following address:

Issue to: _____

Check here if requesting delivery by Deposit/Withdrawal at Custodian as follows:

DTC Participant: _____

DTC Number: _____

Account Number: _____

Date: _____, ____

Name of Registered Holder

By: _____

Name:
Title:

Tax ID: _____

E-mail Address:

SECURITIES PURCHASE AGREEMENT

DATED AS OF MAY 15, 2026

AMONG

**FARADAY FUTURE INTELLIGENT ELECTRIC INC.,
as the Issuer**

and

THE PURCHASERS

FROM TIME TO TIME PARTY HERETO

ANNEXES, EXHIBITS AND SCHEDULES

ANNEXES

- Annex A - Definitions
- Annex B - Commitment Annex
- Annex C - Closing Checklist

EXHIBITS

- Exhibit A - Form of Convertible Note

SCHEDULES

- Schedule 3.1 - Existence, Organizational Identification Numbers, Foreign Qualification, Prior Names
- Schedule 3.4 - Capitalization
- Schedule 3.6 - Litigation
- Schedule 3.7 - Ownership of Property
- Schedule 3.9 - Labor Matters
- Schedule 3.13 - Taxes
- Schedule 3.14 - ERISA
- Schedule 3.17 - Intellectual Property
- Schedule 3.18 - Real Estate
- Schedule 3.19 - Insurance
- Schedule 3.20 - Bank Accounts
- Schedule 3.23 - Outstanding Debt
- Schedule 3.30 - Listing and Maintenance Requirements
- Schedule 13.6 - Certain Related Transactions

SECURITIES PURCHASE AGREEMENT

This SECURITIES PURCHASE AGREEMENT dated as of May 15, 2026 (the “**Signing Date**”), is by and among, **FARADAY FUTURE INTELLIGENT ELECTRIC INC.** (the “**Issuer**” or the “**Company**”), and the entities from time to time parties hereto, each as a “**Purchaser**” and collectively the “**Purchasers**”.

RECITALS:

WHEREAS, the Issuer wishes to sell to the Purchasers, and the Purchasers have agreed to purchase from the Issuer, convertible promissory notes in an aggregate principal amount as indicated on the Commitment Annex (each a “**Note**” and collectively, the “**Notes**”) upon and subject to the terms and conditions set forth in this Agreement; and

WHEREAS, 50% of the proceeds from the sale of each Note will be deposited in a Holder Control Account (as defined in the Note) with such proceeds to be released to the Company in connection with any conversions of the Notes in accordance with the applicable Controlled Account Agreement (as defined in the Note);

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the Issuer and each Purchaser agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.1 Certain Defined Terms. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms on Annex A to this Agreement or in the Notes, as applicable.

Section 1.2 Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder (including without limitation determinations made pursuant to the exhibits hereto) shall be made, and all financial statements required to be delivered hereunder shall be prepared on a consolidated basis in accordance with GAAP consistently applied. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Accounting Standards Codification 825-10 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Issuer or any Subsidiary of the Issuer at “fair value.”

Section 1.3 Other Definitional Provisions and References. References in this Agreement to “Articles”, “Sections”, “Annexes”, “Exhibits” or “Schedules” shall be to Articles, Sections, Annexes, Exhibits or Schedules of or to this Agreement unless otherwise specifically provided. Any term defined herein may be used in the singular or plural. “Include”, “includes” and “including” shall be deemed to be followed by “without limitation”. Except as otherwise specified or limited herein, references to any Person include the successors and assigns of such Person. References “from” or “through” any date mean, unless otherwise specified, “from and including” or “through and including”, respectively. Unless otherwise specified herein, the settlement of all payments and fundings hereunder between or among the parties hereto shall be made in lawful money of the United States and in immediately available funds. Time is of the essence for each performance obligation of the Issuer under this Agreement and each Financing Document. All amounts used for purposes of financial calculations required to be made herein shall be without duplication. References to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and regulations. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto. Unless otherwise expressly provided herein or in any other Financing Document, references to agreements and other contractual instruments, including this Agreement and the other Financing Documents, shall be deemed to include all subsequent amendments, thereto, restatements and substitutions thereof and other modifications and supplements thereto which are in effect from time to time, but only to the extent such amendments and other modifications are not prohibited by the terms of any Financing Document. References to any statute or regulation may be made by using either the common or public name thereof or a specific cite reference and, except as otherwise provided with respect to FATCA, are to be construed as including all statutory and regulatory provisions related thereto or consolidating, amending, replacing, supplementing or interpreting the statute or regulation.

ARTICLE 2 PURCHASE AND SALE

Section 2.1 Notes; Repayment of Notes.

(a) Commitment, Purchase, Sale and Issuance of the Notes. Effective as of the Signing Date, each Purchaser hereby commits, severally and not jointly, to acquire from the Issuer as set forth in Section 2.1(b) the principal amount of Notes in an amount equal to the Note Commitment Amount set forth opposite such Purchaser’s name on the Commitment Annex subject only to the conditions set forth in Article 7.

(b) Closing.

(i) The purchase and issuance of the Notes (the “**Closing**”) shall take place on the third (3rd) Business Day following the Signing Date upon the satisfaction of all the conditions set forth in Section 7.1 and Section 7.2 hereof. At the Closing, each applicable Purchaser shall purchase Notes for an amount equal to 100% of the Note Commitment Amount set forth opposite such Purchaser’s name on the Commitment Annex and disburse the net proceeds from the purchase of the Notes pursuant to the Flow of Funds delivered by the Issuer as follows: (i) 50% of such Purchaser’s Note Commitment Amount will be sent to the Company; and (ii) 50% of such Purchaser’s Note Commitment Amount will be sent to or otherwise deposited with the Controlled Account Bank (as defined in the Note) to be held in the Holder Control Account (as defined in the Note) pursuant to the applicable Controlled Account Agreement.

(ii) [reserved]

(iii) The Issuer acknowledges and agrees that (A) no notices or documentation that constitute material non-public information shall be sent to any Purchaser following the Closing, and (B) if any notices or documents sent by the Issuer or any of its Subsidiaries to any Purchaser contain any material non-public information, such notices or documents must be sent either after the market closes or on a day other than a Business Day and the Issuer shall file an 8-K immediately following the day such information was delivered before the market opens (unless such Purchaser has agreed in writing to accept such information); provided that any notice or other documentation withheld and not disclosed to the Purchasers as a result of this paragraph shall not result in a violation of any other provision of the Financing Documents that may require the disclosure of such notice or documentation.

(c) Commitments. Each Purchaser's obligation to purchase the Notes shall be limited to such Purchaser's applicable Note Commitment Amount, and no Purchaser shall have any obligation to fund any portion of the Notes required to be funded by any other Purchaser, but not so funded. The Issuer shall not have any right to reborrow any portion of the Notes which are repaid or prepaid from time to time.

Section 2.2 Notes. The Notes purchased by each Purchaser at the Closing shall be evidenced by a convertible promissory note, substantially in the form of Exhibit A hereto executed by the Issuer in an original principal amount equal to such Purchaser's applicable share of the Notes.

Section 2.3 [Reserved].

Section 2.4 Lock-Up. Notwithstanding anything in this Agreement to the contrary, so long as no Event of Default (as defined in the Notes) has occurred, each Purchaser agrees, severally and not jointly, with the Issuer that during the period beginning on the Closing Date and ending on the date that is the earlier of (a) the two-month anniversary of the Closing Date or (b) the effectiveness of the Registration Statement (the "**Lock-Up Period**"), such Purchaser will not, without prior consent from the Issuer, directly or indirectly, (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, or otherwise dispose of or transfer any shares of Common Stock issuable upon conversion of the Notes (collectively, "**Lock-Up Securities**"), as applicable, whether now owned or hereafter acquired by such Purchaser or with respect to which such Purchaser has or hereafter acquires the power of disposition, or (ii) enter into any swap or any other agreement or any transaction that transfers, in whole or in part, directly or indirectly, the economic consequence of ownership of the Lock-Up Securities, whether any such swap or transaction is to be settled by delivery of Common Stock or other securities, in cash or otherwise. For the avoidance, and notwithstanding anything to the contrary herein, the Lock-Up Period shall terminate immediately upon the occurrence of an Event of Default.

Section 2.5 [Reserved].

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

To induce the Purchasers to enter into this Agreement and to purchase the Notes and other transactions contemplated thereby, the Issuer hereby represents and warrants to each Purchaser that the following are true, correct and complete as of the Signing Date, and after giving effect to the consummation of the transactions contemplated by the Financing Documents will be, true, correct and complete as of the Closing Date:

Section 3.1 Existence and Power. The Issuer and each of its Domestic Subsidiaries (a) is an entity duly organized, validly existing and in good standing (to the extent applicable in the relevant jurisdiction) under the laws of its jurisdiction of incorporation, organization, or formation, which, with respect to the Issuer and each such Domestic Subsidiary, in existence as of the Closing Date, is specified on Schedule 3.1, has the same legal name as it appears in such Person's Organizational Documents and an organizational identification number (if any), in each case as of the Closing Date as specified on Schedule 3.1, and (b) has all powers and all material governmental licenses, authorizations, registrations, permits, consents and approvals required under all applicable Laws and required in order to carry on its business as now conducted (collectively, "**Permits**"), except where the failure to have such Permits could not reasonably be expected to have a Material Adverse Effect. The Issuer and each of its Domestic Subsidiaries is qualified to do business as a foreign entity in each jurisdiction in which it is required to be so qualified, except where the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.1 or in the SEC Reports, neither the Issuer nor any of its Domestic Subsidiaries has had, over the five (5) year period preceding the Closing Date, any name other than its current name or was incorporated or organized under the laws of any jurisdiction other than its current jurisdiction of incorporation or organization. As of the Closing Date, except for the Subsidiaries set forth on Schedule 3.1 or in the SEC Reports, no Subsidiary exists.

Section 3.2 Organizational Authority and Governmental Authorization; No Contravention. The execution, delivery and performance by the Issuer of the Financing Documents to which it is a party (a) are within its corporate powers, (b) have been duly authorized by all necessary action pursuant to its Organizational Documents, (c) require no further approval, consent, exemption, authorization or other action by or in respect of, or filing with, or notice to, any Governmental Authority with respect to any shares of Common Stock except for (i) the approvals, consents, exemptions, authorizations, actions, notices and filings that have been duly obtained, taken, given or made and are in full force and effect and (ii) those approvals, consents exemptions, authorization, actions, notices and filings, the failure of which to obtain or make has not resulted in, or could not reasonably be expected, individually or in the aggregate to result in a Material Adverse Effect and (d) do not violate, conflict with or cause a breach or a default under or a right of termination under (i) any of the Organizational Documents of the Issuer and each of its Domestic Subsidiaries; or (ii) any applicable Law or any contract, agreement, lease or other instrument binding upon it or its properties, except for such violations, conflicts, breaches or defaults or rights of termination as could not, with respect to this clause (d)(ii), reasonably be expected to have a Material Adverse Effect.

Section 3.3 Binding Effect. Each of the Financing Documents to which the Issuer is a party constitutes a valid and binding agreement or instrument of the Issuer, enforceable against the Issuer in accordance with its respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

Section 3.4 Capitalization. The authorized and issued and outstanding Capital Stock of each of the Issuer and each Domestic Subsidiary as of the Signing Date is as set forth on Schedule 3.4. Except as set forth on Schedule 3.4, all issued and outstanding Capital Stock of each such Person is duly authorized and validly issued, fully paid, non-assessable (to the extent that such concepts apply to such Capital Stock), free and clear of all liens and such Capital Stock was issued in compliance with all applicable laws. The identity of the holders of the Capital Stock of each Domestic Subsidiary and the percentage of the fully diluted ownership of the Capital Stock of each such Person as of the Signing Date is set forth on Schedule 3.4. Except as set forth on Schedule 3.4 or in the SEC Reports, there are no preemptive or other outstanding rights, options, warrants, conversion rights or similar agreements or understandings for the purchase or acquisition of the Issuer or any Domestic Subsidiary of any Capital Stock of any such Person.

Section 3.5 Financial Information.

(a) The consolidated financial statements of the Company included or incorporated by reference in the SEC Reports filed with or furnished to the Commission, together with the related notes and schedules, present fairly, in all material respects, the consolidated financial position of the Company and the consolidated Subsidiaries as of the dates indicated and the consolidated results of operations, cash flows and changes in shareholders' equity of the Company and the consolidated Subsidiaries for the periods specified (subject, in the case of unaudited statements, to normal year-end audit adjustments which shall 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 the generally accepted accounting principles of the United States ("GAAP") applied on a consistent basis (except (A) for such adjustments to accounting standards and practices as are noted therein and (B) 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 pro forma financial statements or data included or incorporated by reference in the SEC Reports filed with or furnished to the Commission comply with the requirements of Regulation S-X of the Securities Act, including, without limitation, Article 8 or Article 11 thereof, as applicable, and the assumptions used in the preparation of such pro forma financial statements and data are reasonable, the pro forma adjustments used therein are appropriate to give effect to the circumstances referred to therein and the pro forma adjustments have been properly applied to the historical amounts in the compilation of those statements and data. The other financial and statistical data with respect to the Company and Subsidiaries contained or incorporated by reference in the SEC Reports filed with or furnished to the Commission, if any, 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 SEC Reports filed with or furnished to the Commission that are not included or incorporated by reference as required. The Company and Subsidiaries do not have any material liabilities or obligations, direct or contingent (including any off-balance sheet obligations or any "variable interest entities" as that term is used in Accounting Standards Codification Paragraph 810-10-25-20), not described in the SEC Reports that are required to be described or incorporated by reference in the SEC Reports. All disclosures contained in the SEC Reports, if any, regarding "non-GAAP financial measures" (as such term is defined by the rules and regulations of the Commission) comply in all material respects with Regulation G of the Exchange Act and Item 10 of Regulation S-K under the Securities Act, to the extent applicable. The reserves, if any, established by the Company or the lack of reserves, if applicable, are reasonable based upon facts and circumstances known by the Company on the date of this Agreement, as applicable, and there are no loss contingencies that are required to be accrued by the Statement of Financial Accounting Standard No. 5 of the Financial Accounting Standards Board which are not provided for by the Company in its financial statements or otherwise. The Company is not currently contemplating to amend or restate any of the financial statements included in the SEC Reports (including, without limitation, any notes or any letter of the independent accountants of the Company with respect thereto), nor is the Company currently aware of facts or circumstances which would require the Company to amend or restate any such financial statements, in each case, in order for any of such financial statements to be in compliance with GAAP and the rules and regulations of the Commission. The Company has not been informed by its independent accountants that they recommend that the Company amend or restate any of the financial statements included in the SEC Reports or that there is any need for the Company to amend or restate any such financial statements.

Except as set forth in the SEC Reports, since December 31, 2025: (i) the Company has not experienced or suffered any Material Adverse Effect, and there exists no current state of facts, condition or event which would have a Material Adverse Effect; (ii) there has not occurred any material adverse change, or any development that would reasonably be expected to result in a prospective material adverse change, in the condition, financial or otherwise, or in the earnings, business or operations of the Company from that disclosed or incorporated by reference in the SEC Reports; (iii) neither the Company nor any of its Subsidiaries has incurred any material liability or obligation, direct or contingent, nor entered into any material transaction; (iv) the Company has not purchased any of its outstanding shares, nor declared, paid or otherwise made any dividend or distribution of any kind on its shares other than ordinary and customary dividends; and (v) there has not been any material adverse change in the shares, short-term debt or long-term debt of the Company.

Section 3.6 Litigation. Except as set forth on Schedule 3.6 or in the SEC Reports, there is no Litigation involving monetary damages in excess of \$2,500,000 in the aggregate pending against, or, to the knowledge of the Issuer or any of its Domestic Subsidiaries, threatened against the Issuer, any of its Domestic Subsidiaries or any of their respective properties.

Section 3.7 Ownership of Property. Except as set forth on Schedule 3.7 or in the SEC Reports, the Issuer and each of its Domestic Subsidiaries is the lawful owner of, has good and marketable title to and is in lawful possession of, or has valid leasehold interests in, license to or right to use, all properties and other assets (except for Intellectual Property Rights, which is covered in Schedule 3.17, and real property, which is covered in Schedule 3.18) reported by the Issuer or such Domestic Subsidiary to be owned or leased (as the case may be) by such Person, except (i) for any such properties which are immaterial to the operations of the Issuer's or such Domestic Subsidiary's respective business or (ii) as may have been disposed of in the Ordinary Course of Business or otherwise in compliance with the terms hereof.

Section 3.8 No Default. No Event of Default (as defined in the Notes) has occurred and is continuing.

Section 3.9 Labor Matters. There are no strikes or other labor disputes pending or threatened against the Issuer or any of its Domestic Subsidiaries, which could reasonably be expected to have a Material Adverse Effect. Since January 1, 2021, hours worked and payments made to the employees of the Issuer and each of its Domestic Subsidiaries have not been in violation, in any material respect, of the Fair Labor Standards Act or any other applicable Law dealing with such matters. All payments due from the Issuer and its Domestic Subsidiaries, or for which any claim may be made against any of them, on account of wages and employee and retiree health and welfare insurance and other benefits have been paid or accrued as a liability on their books, as the case may be, except as could not reasonably be expected to have a Material Adverse Effect. Any pending strikes and material labor disputes related to any collective bargaining agreements to which the Issuer or any of its Domestic Subsidiaries is a party are set forth on Schedule 3.9 or in the SEC Reports. All material payments due from the Issuer or any of its Domestic Subsidiaries on account of (a) workers' compensation, employee health plans, social security and welfare insurance and employee income tax source deductions and vacation pay; and (b) the equivalent plans of those specified in subsection (a) in each foreign (non-U.S.) jurisdiction where the Issuer or any such Domestic Subsidiary carries on business, in each case, have been paid in full to date or accrued as a liability on the books of the Issuer and each such Domestic Subsidiary. Neither the Issuer nor any of its Domestic Subsidiaries has any obligation under any collective bargaining agreement which would be reasonably expected to result in a Material Adverse Effect. There is no material organizing activity involving the Issuer or any of its Domestic Subsidiaries by any labor union or group of employees which would be expected to result in a Material Adverse Effect.

Section 3.10 Investment Company. Neither the Issuer nor any of its Domestic Subsidiaries is an "investment company" or a company "controlled" by an "investment company" or a "subsidiary" of an "investment company," all within the meaning of the Investment Company Act of 1940. The Issuer and its Domestic Subsidiaries are not subject to regulation under the Federal Power Act, the Interstate Commerce Act, any state public utilities code, or any other federal or state statute, rule or regulation limiting its ability to incur Debt, or which may render its obligations under the Financing Documents unenforceable.

Section 3.11 Margin Regulations. None of the proceeds from the Notes have been or will be used by the Issuer or any Domestic Subsidiary for the purpose of purchasing or carrying any Margin Stock, for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry any Margin Stock or for any other purpose which might cause any of the Notes to be considered a "purpose credit" within the meaning of Regulation T, U or X of the Federal Reserve Board.

Section 3.12 Compliance With Laws; Anti-Terrorism Laws.

(a) Laws Generally. The Issuer and each Subsidiary is in compliance with the requirements of all applicable Laws, except to the extent such noncompliance could not reasonably be expected to have a Material Adverse Effect.

(b) Anti-Terrorism Laws. Neither the Issuer nor any of its Subsidiaries, or, to the knowledge of the Issuer and its Subsidiaries, none of their Affiliates (i) is in violation of any Anti-Terrorism Law, or (ii) is a Blocked Person, or is controlled by a Blocked Person. Neither the Issuer nor any of its Domestic Subsidiaries, or, to the knowledge of the Issuer and its Subsidiaries, none of their Affiliates, (A) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (B) deals in any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law. No part of the proceeds of any Notes will be used directly or, to the knowledge of the Issuer and its Subsidiaries, indirectly for any payments to any government official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the FCPA or any other applicable Law dealing with such matters.

Section 3.13 Taxes. Except as set forth on Schedule 3.13 or in the SEC Reports, all federal, state and foreign tax returns, reports and statements required to be filed by or on behalf of the Issuer or any Domestic Subsidiary have been timely filed with the appropriate Governmental Authorities in each jurisdiction in which such returns, reports and statements are required to be filed and, except to the extent subject to a Permitted Contest, all taxes (including sales, employment and real property taxes) and other charges shown to be due and payable in respect thereof or otherwise due from the Issuer or any Domestic Subsidiary in any material amount have been timely paid prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for nonpayment thereof.

Section 3.14 Compliance with ERISA; Foreign Benefit Plans.

(a) ERISA Plans. Schedule 3.14 lists all Pension Plans and Multiemployer Plans of the Issuer and its Domestic Subsidiaries. Except as could not reasonably be expected to have a Material Adverse Effect, each ERISA Plan (and the related trusts and funding agreements) complies in form and in operation with, has been administered in material compliance with, and the terms of each ERISA Plan satisfies, the applicable requirements of ERISA and the Code in all material respects. Each ERISA Plan which is intended to be qualified under Section 401(a) of the Code is so qualified, and the United States Internal Revenue Service has issued a favorable determination letter with respect to each such ERISA Plan which may be relied on currently. Neither the Issuer nor any of its Domestic Subsidiaries has incurred liability for any material excise tax under any of Sections 4971 through 5000 of the Code.

(b) Pension Plans and Multiemployer Plans. During the thirty-six (36) month period prior to making of the Notes, (i) no steps have been taken to terminate any Pension Plan and (ii) no failure to make contributions with respect to any Pension Plan sufficient to give rise to a Lien under the Code has occurred. All amounts required by Code Sections 412 and 430 to be funded by the Issuer or any Domestic Subsidiary or any member of a Controlled Group with respect to a Pension Plan have been made in compliance therewith. No condition exists or event or transaction has occurred with respect to any Pension Plan which could result in the incurrence by the Issuer and Domestic Subsidiaries, taken as a whole, of any liabilities, fines and penalties exceeding \$500,000 (excluding, for the avoidance of doubt, current PBGC premiums or other contributions required by ERISA or other applicable Law in the ordinary course). The Issuer and Domestic Subsidiaries, taken as a whole, have not incurred liabilities exceeding \$500,000 to the PBGC (other than for current premiums) with respect to any Pension Plan. All contributions (if any) have been made on a timely basis to any Multiemployer Plan that are required to be made by the Issuer, any of its Domestic Subsidiaries or any member of the Controlled Group under the terms of such plan, any collective bargaining agreement, or by applicable Law. Neither the Issuer, any of its Domestic Subsidiaries nor any member of the Controlled Group (A) has withdrawn or partially withdrawn from any Multiemployer Plan, (B) has incurred any withdrawal liability with respect to any such plan, or (C) has received notice of any claim or demand for withdrawal liability or partial withdrawal liability from any such plan (in each case with respect to which there is any unsatisfied withdrawal liability). No member of the Controlled Group has received any written notice that a Multiemployer Plan is in reorganization or termination, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of any excise tax, that any such plan is or has been funded at a rate less than that required under Section 412 or Section 431 of the Code, that any such plan is or may be terminated, or that any such plan is or is expected to become insolvent.

(c) With respect to each program, plan or arrangement mandated by a government other than the United States providing for post-employment benefits (each a “**Foreign Government Benefit Plan**”) and with respect to each employee benefit plan maintained or contributed to by the Issuer or any Domestic Subsidiary that is not subject to Laws of the United States providing for post-employment benefits (each, a “**Foreign Plan**”), to the Issuer’s and its Domestic Subsidiaries’ knowledge: (i) all employee and employee contributions required by Law or by the terms of any Foreign Government Benefit Plan or any Foreign Plan have been made, or, if applicable, accrued, in accordance with normal accounting practices, (ii) the liability of the Issuer or any Domestic Subsidiary with respect to a Foreign Plan is reflected in accordance with normal accounting practices or the financial statements of the Issuer or such Domestic Subsidiary, as the case may be and (iii) each Foreign Plan required to be registered has been registered and has been maintained in good standing with applicable regulatory authorities unless in each case under the foregoing clauses (i), (ii) and (iii), the failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 3.15 [Reserved].

Section 3.16 Environmental Compliance.

(a) Hazardous Materials. No Hazardous Materials (i) are currently located on any properties owned, leased or operated by the Issuer or any Domestic Subsidiary in violation of any Environmental Law, except for violations which could not reasonably be expected to have a Material Adverse Effect, or (ii) have been released into the environment, or deposited, discharged, placed or disposed of at, on, under or near any of such properties in a manner that would require the taking of any action by the Issuer or any Domestic Subsidiary under any Environmental Law and have resulted in, or could reasonably be expected to result in, a Material Adverse Effect. No portion of any such property is being used, or to the Issuer’s or its Domestic Subsidiaries’ knowledge, has been used at any previous time, for the disposal, storage, treatment, processing or other handling of Hazardous Materials in material violation of any Environmental Law nor to the Issuer’s or its Domestic Subsidiaries’ knowledge is any such property affected by any Hazardous Materials Contamination, which in each case, would reasonably be expected to result in a Material Adverse Effect. All written notifications of a release of Hazardous Materials required to be filed by or on behalf of the Issuer or any Domestic Subsidiary under any applicable Environmental Law have been filed or are in the process of being timely filed by or on behalf of the Issuer or Domestic Subsidiary, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(b) Notices Regarding Environmental Compliance. No written notice, notification, demand, request for information, citation, summons, complaint or order has been issued, no complaint has been filed, no penalty has been assessed and no investigation or review is pending, or to the Issuer's or and its Domestic Subsidiaries' knowledge, threatened by any Governmental Authority or other Person with respect to any (i) alleged violation by the Issuer or any Domestic Subsidiary of any Environmental Law, (ii) alleged failure by the Issuer or any such Domestic Subsidiary to have any Permits required in connection with the conduct of its business or to comply with the terms and conditions thereof, (iii) any generation, treatment, storage, recycling, transportation or disposal of any Hazardous Materials or (iv) release of Hazardous Materials, except in each case of the foregoing to the extent as would not reasonably be expected to have a Material Adverse Effect.

(c) Properties Requiring Remediation. No property now owned or leased by the Issuer or any Domestic Subsidiary and, to the Issuer's or its Domestic Subsidiaries' knowledge, no such property previously owned or leased by the Issuer or any such Domestic Subsidiary, to which the Issuer or any such Domestic Subsidiary has, directly or indirectly, transported or arranged for the transportation of any Hazardous Materials, is listed or, to the Issuer's or any of its Domestic Subsidiaries' knowledge, proposed for listing, on the National Priorities List promulgated pursuant to SEMS or any state list or is the subject of federal, state or local enforcement actions or other investigations which may lead to claims against the Issuer or any such Domestic Subsidiary for clean-up costs, remedial work, damage to natural resources or personal injury claims, including, but not limited to, claims under CERCLA or RCRA, except, in each case of the foregoing, to the extent as would not reasonably be expected to have a Material Adverse Effect.

(d) Underground Storage Tanks. Neither the Issuer nor any of its Domestic Subsidiaries operates any underground storage tanks on any property owned or leased by the Issuer or any Domestic Subsidiary that are not registered or permitted in accordance with applicable Environmental Laws or that the Issuer or any of its Domestic Subsidiaries is required to monitor, maintain, retrofit, upgrade, investigate, abate, remediate or remove under Environmental Law, except to the extent as could not reasonably be expected to have a Material Adverse Effect.

(e) Environmental Liens. No Liens exist under or pursuant to any applicable Environmental Laws on any real property or other assets owned by the Issuer or any Domestic Subsidiary, and to the Issuer's or any of its Domestic Subsidiaries' knowledge no actions by any Governmental Authority have been taken or are in process which could subject any of such properties or assets to such Liens, except to the extent as could not reasonably be expected to have a Material Adverse Effect.

Section 3.17 Intellectual Property. The Company and its Domestic 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 of this Agreement or the Closing Date, as applicable, 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 and its Domestic 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 Knowledge, threatened judicial proceedings or interference proceedings challenging the Company’s or any of its Domestic Subsidiaries’ rights in or to or the validity of the scope of any of the Company’s or its Domestic Subsidiaries’ Intellectual Property. No other Person has any right or claim in any of the Company’s or any of its Domestic Subsidiaries’ Intellectual Property by virtue of any contract, license or other agreement entered into between such Person and the Company or any of its Domestic Subsidiaries or by any non-contractual obligation, other than by written licenses granted by the Company or any of its Domestic Subsidiaries. Neither the Company nor any of its Domestic Subsidiaries has received any written notice of any claim challenging the rights of the Company or any of its Domestic Subsidiaries in or to any Intellectual Property owned, licensed or optioned by the Company or any of its Domestic Subsidiaries, which claim, if the subject of an unfavorable decision, would result in a Material Adverse Effect.

Section 3.18 Real Property Interests. As of the Closing Date, except as set forth on Schedule 3.18 or in the SEC Reports, neither the Issuer nor any Domestic Subsidiary has any ownership, leasehold or other possessory interest in real property. As of the Closing Date, Schedule 3.18 sets forth, with respect to each parcel of real estate owned or leased by the Issuer or any Domestic Subsidiary, the street address of each such parcel.

Section 3.19 Insurance. Except as set forth on Schedule 3.19 or in the SEC Reports, the properties of the Issuer and its Domestic Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Issuer or its Domestic Subsidiaries in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in locations where the Issuer and its Subsidiaries operate.

Section 3.20 Bank Accounts. Set forth on Schedule 3.20 is a listing of all of the deposit accounts, securities accounts, commodities accounts or other similar accounts of the Issuer and each Domestic Subsidiary maintained by the Issuer and such Domestic Subsidiaries as of the Closing Date.

Section 3.21 SEC Reports. Since March 31, 2026 (the “**Most Recent 10-K Filing Date**”), the Company has timely filed all reports, schedules, forms, statements and other documents required to be filed with or furnished to the Commission by the Company under the Securities Act or the Exchange Act, including those required to be filed with or furnished to the Commission under Section 13(a) or Section 15(d) of the Exchange Act. As of the date of this Agreement or the Closing Date, as applicable, no Subsidiary of the Company is required to file or furnish any report, schedule, registration, form, statement, information or other document with the Commission. As of its filing date (or, if amended or superseded by a filing prior to the Signing Date or the Closing Date, as applicable, on the date of such amended or superseded filing), each SEC Reports filed with or furnished to the Commission complied in all material respects with the requirements of the Securities Act or the Exchange Act, as applicable, and other federal, state and local laws, rules and regulations applicable to it, and, as of its filing date (or, if amended or superseded by a filing prior to the date of this Agreement or the Closing Date, as applicable, on the date of such amended or superseded filing), such SEC Report did not contain any untrue statement of a material fact or omit 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. Each SEC Report to be filed with or furnished to the Commission after the date of this Agreement or the Closing Date, as applicable, when such document is filed with or furnished to the Commission and, if applicable, when such document becomes effective, as the case may be, shall comply in all material respects with the requirements of the Securities Act or the Exchange Act, as applicable, and other federal, state and local laws, rules and regulations applicable to it, and shall not contain any untrue statement of a material fact or omit 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. There are no outstanding or unresolved comments received by the Company from the Commission. The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company under the Securities Act or the Exchange Act

Section 3.22 Disagreements. There are no material disagreements of any kind presently existing, or reasonably anticipated by the Company to arise, between the Company and the accountants and lawyers formerly or presently employed by the Company and the Company is current with respect to any material fees owed to its accountants and lawyers which could adversely affect the Company’s ability to perform any of its obligations under any of the Transaction Documents

Section 3.23 Debt. Set forth on Schedule 3.23 or in the SEC Reports is a true and complete list of all Debt of the Issuer and such Schedule accurately sets forth the aggregate principal amount of such Debt as of the Signing Date.

Section 3.24 Treatment of Obligations. All Obligations including those to pay principal of and interest (including post-petition interest, whether or not allowed as a claim under bankruptcy or similar laws) on the Notes and other Obligations, and fees and expenses in connection therewith, shall constitute “Senior Indebtedness” or similar term relating to the Obligations and all such Obligations shall be entitled to the benefits of the subordination provisions created by any subordination agreement subordinating any Debt permitted hereunder to the Obligations in accordance with the terms hereof.

Section 3.25 Material Non-Public Information. All material non-public information regarding the Issuer or any Domestic Subsidiary that has been disclosed to the Purchasers on or prior to the date hereof, has been disclosed, or will be disclosed, in the 8-K filing to be made by the Issuer prior to the commencement of trading on the first Trading Day following the date hereof.

Section 3.26 Private Offering. Assuming the accuracy of the Purchaser's representations and warranties contained in Article 13, no registration of the Notes pursuant to the provisions of the Securities Act or state securities or "blue sky" laws or any other applicable law will be required for the offer, sale or issuance of the Notes by the Issuer to the Purchasers pursuant to this Agreement.

Section 3.27 Sanctions; Anti-Corruption.

(a) Neither the Issuer nor any of its Subsidiaries, nor, to the knowledge of the Issuer or any Subsidiary, any employee, agent, or affiliate of the Issuer or any of its Domestic Subsidiaries is an individual or entity ("**person**") that is, or is owned or controlled by persons that are: (i) the subject of any sanctions administered or enforced by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union, the Government of Canada, His Majesty's Treasury, or other relevant sanctions authority (collectively, "**Sanctions**"), or (ii) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions (including Crimea, Cuba, Iran, North Korea, Syria and the Donetsk/Luhansk/Zaporizhzhia/Kherson regions of Ukraine).

(b) The Issuer, its Domestic Subsidiaries and their respective directors and officers and, to the knowledge of the Issuer and any Domestic Subsidiary, any employees and the agents of the Issuer and its Domestic Subsidiaries, are in compliance with all applicable Sanctions and with the FCPA and any other applicable anti-corruption law. The Issuer and their Domestic Subsidiaries have instituted and maintain policies and procedures designed to ensure continued compliance with applicable Sanctions, the FCPA, and any other applicable anti-corruption laws.

Section 3.28 Filings, Consents and Approvals. To the Issuer's knowledge, the Issuer is not required to obtain any consent, waiver, authorization or order of, give any notice to, or make any filing or registration with, any court or other federal, state, local or other governmental authority or other Person in connection with the execution, delivery and performance by the Issuer of the Transaction Documents, other than those that have been or will be obtained.

Section 3.29 Issuance of the Securities. The Notes have been duly authorized and, when issued and paid for in accordance with the applicable Transaction Documents, will constitute valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their respective terms except as enforcement thereof may be limited by applicable laws relating to bankruptcy, insolvency, fraudulent conveyance and other similar laws and by general equitable principles. The Underlying Shares have been duly authorized and when issued in accordance with the terms of the Transaction Documents, will be validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Issuer other than restrictions on transfer provided for in the Transaction Documents.

Section 3.30 Listing and Maintenance Requirements. The Common Stock is registered pursuant to Section 12(b) or 12(g) of the Exchange Act, and the Issuer has taken no action designed to, or which to its knowledge is likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act nor has the Issuer received any notification that the Commission is contemplating terminating such registration. Except as set forth on Schedule 3.30 or in the SEC Reports, the Issuer is, and has no reason to believe that it will not in the foreseeable future continue to be, in compliance with all such listing and maintenance requirements. The Common Stock is currently eligible for electronic transfer through the Depository Trust Company or another established clearing corporation and the Issuer is current in payment of the fees to the Depository Trust Company (or such other established clearing corporation) in connection with such electronic transfer.

Section 3.32 No Integrated Offering. Assuming the accuracy of the Purchasers' representations and warranties set forth in Article 13, other than the April 2026 A&R SPA (as defined in the Notes) and the April 2026 SPA (as defined in the Notes), neither the Issuer, nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Securities to be integrated with prior offerings by the Issuer for purposes of (i) the Securities Act which would require the registration of any such securities under the Securities Act, or (ii) any applicable stockholder approval provisions of any Trading Market on which any of the securities of the Issuer are listed or designated.

Section 3.33 Acknowledgment Regarding Purchasers' Purchase of Securities. The Issuer acknowledges and agrees that each of the Purchasers is acting solely in the capacity of an arm's length purchaser with respect to the Transaction Documents and the transactions contemplated thereby. The Issuer further acknowledges that no Purchaser is acting as a financial advisor or fiduciary of the Issuer (or in any similar capacity) with respect to the Transaction Documents and the transactions contemplated thereby and any advice given by any Purchaser or any of their respective representatives or agents in connection with the Transaction Documents and the transactions contemplated thereby is merely incidental to the Purchasers' purchase of the Securities. The Issuer further represents to each Purchaser that the Issuer's decision to enter into this Agreement and the other Transaction Documents has been based solely on the independent evaluation of the transactions contemplated hereby by the Issuer and its representatives.

Section 3.34 Acknowledgment Regarding Purchaser's Trading Activity. Anything in this Agreement or elsewhere herein to the contrary notwithstanding, it is understood and acknowledged by the Issuer that: (i) none of the Purchasers has been asked by the Issuer to agree, nor has any Purchaser agreed, to desist from purchasing or selling, long and/or short, securities of the Issuer, or "derivative" securities based on securities issued by the Issuer or to hold the Securities for any specified term, (ii) past or future open market or other transactions by any Purchaser, specifically including, without limitation, Short Sales (as defined in Regulation SHO) or "derivative" transactions, before or after the closing of this or future private placement transactions, may negatively impact the market price of the Issuer's publicly-traded securities, (iii) any Purchaser, and counter-parties in "derivative" transactions to which any such Purchaser is a party, directly or indirectly, may presently have a "short" position in the Common Stock and (iv) each Purchaser shall not be deemed to have any affiliation with or control over any arm's length counter-party in any "derivative" transaction by virtue of this Agreement. The Issuer further understands and acknowledges that (y) one or more Purchasers may engage in hedging activities at various times during the period that the Securities are outstanding, including, without limitation, during the periods that the value of the Underlying Shares deliverable with respect to Securities are being determined, and (z) such hedging activities (if any) could reduce the value of the existing stockholders' equity interests in the Issuer at and after the time that the hedging activities are being conducted. The Issuer acknowledges that such aforementioned hedging activities do not constitute a breach of any of the Transaction Documents.

Section 3.35 Regulation M Compliance. The Issuer has not, and to its knowledge no one acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Issuer to facilitate the sale or resale of any of the Securities, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Securities, or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Issuer, other than, in the case of clauses (ii) and (iii), compensation paid to the Placement Agent in connection with the placement of the Securities.

ARTICLE 4 AFFIRMATIVE COVENANTS

Until all Obligations have been Paid in Full, the Issuer agrees:

Section 4.1 Financial Statements and Other Reports. Upon the prior written request of any Purchaser with respect to any of the items referred to below (provided that, to the extent, any such information is material, non-public information, such Purchaser shall have agreed in writing with the Issuer to keep such information confidential pursuant to terms acceptable to the Issuer in its reasonable discretion (it being understood that no such confidentiality arrangement shall include an obligation to publicly disclose such information without the Issuer's consent exercised in its sole discretion) and otherwise such item shall not be required to be delivered or may otherwise be redacted by the Issuer), to deliver to the Purchasers:

(a) [Reserved].

(b) Quarterly Financial Statements. Within sixty (60) days after the end of any Fiscal Quarter ending after the Closing Date (so long as the request therefor is received by the last day of such Fiscal Quarter, otherwise promptly thereafter), a consolidated balance sheet of the Issuer and its Subsidiaries as at the end of such Fiscal Quarter, and the related consolidated statements of operations and cash flows for such Fiscal Quarter, and for the portion of the Fiscal Year then ended together with in comparative form, the figures for the corresponding periods of the previous Fiscal Year, all in reasonable detail and in the case of such financial statements certified by a Responsible Officer of the Issuer as fairly presenting in all material respects the financial condition and results of operations of the Issuer and its Subsidiaries and as having been prepared in accordance with GAAP applied on a basis consistent with the financial statements of the Issuer, subject to changes resulting from normal year-end adjustments and the absence of footnote disclosures. Any such financial statements that the Issuer files with the Commission via EDGAR shall be deemed to have been delivered to the Purchasers.

(c) Annual Financial Statements. Within one hundred twenty (120) days after the end of the Fiscal Year ending December 31, 2026 and for each Fiscal Year thereafter, a consolidated balance sheet of the Issuer and its Subsidiaries as of the end of such Fiscal Year and the related consolidated statements of operations, owners' equity and cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, audited by an independent public accountant of nationally recognized standing or other independent public accountants (the "Accountants"); and, which report shall state that such financial statements fairly present, in all material respects, the financial position, on a consolidated basis, of the Issuer and its Subsidiaries as of the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such Accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards. Any such financial statements that the Issuer files with the Commission via EDGAR shall be deemed to have been delivered to the Purchasers.

(d) [Reserved].

(e) Regulatory Filing Information. Promptly upon their becoming available, copies of (i) all financial statements, material reports, material notices and proxy statements sent or made available generally by the Issuer to its security holders, (ii) all regular and periodic reports and all registration statements and prospectuses publicly filed by the Issuer with any securities exchange or with the Commission or any successor, and (iii) all press releases and other statements made available generally by the Issuer concerning material developments in the business of the Issuer.

(f) Notices of Material Events. Promptly upon any officer of the Issuer obtaining knowledge, (i) of the existence of any Event of Default or Default, (ii) of the institution or threat of any Litigation seeking equitable relief or involving an alleged liability of the Issuer or Domestic Subsidiary in excess of \$2,500,000 or (iii) any event or occurrence default which could reasonably be expected to have a Material Adverse Effect.

(g) [Reserved].

(h) Governmental Reports and Notices. Promptly upon receipt or filing thereof, copies of any reports or notices related to any matter which could reasonably be expected to have a Material Adverse Effect which are received by the Issuer or any Domestic Subsidiary from, or filed by the Issuer or any Domestic Subsidiary with, any Governmental Authority.

(i) Notices with Respect to Other Debt. Promptly upon receipt or delivery thereof, as applicable, copies of default notices, amendments and other material deliverables (other than in the ordinary course of business) which the Issuer delivers to or receives from any lender or credit provider under any material Debt of the Issuer.

(j) Issuer Information. With reasonable promptness, such other information and data with respect to the Issuer or any Domestic Subsidiary as from time to time may be reasonably requested by any Purchaser.

Notwithstanding anything to the contrary herein, nothing in any Financing Document shall require Issuer, or any of its Subsidiaries to provide information to any Purchaser (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) the disclosure of which is prohibited by applicable Law, (iii) that is subject to attorney client or similar privilege or constitutes attorney work product or (iv) the disclosure of which is restricted by a binding non-disclosure agreement or other contractual restriction owed to a third party that is not an Affiliate.

Any such document or report that the Issuer files with the Commission via EDGAR or otherwise makes publicly available on its website shall be deemed to be delivered with the Purchasers for purposes of this Section 4.1 at the time such documents are filed via EDGAR or posted to such website as long as, with respect to documents or reports posted on the Issuer's website, the Issuer has notified each Purchaser that such filing has been made.

Section 4.2 Payment and Performance of Obligations. The Issuer (a) will pay and discharge, and cause each Subsidiary to pay and discharge, at or before maturity, all of its respective material Tax liabilities and similar governmental obligations, except for such obligations and/or liabilities that may be the subject of a Permitted Contest or as set forth on Schedule 3.13, and (b) will not breach or permit any Subsidiary to breach, or permit to exist any default under, the terms of any lease, license, commitment, contract or instrument to which it is a party, or by which its properties or assets are bound, except for such breaches or defaults which could not reasonably be expected to have a Material Adverse Effect.

Section 4.3 Maintenance of Existence. The Issuer will preserve, renew and keep in full force and effect, and will cause each Subsidiary to preserve, renew and keep in full force and effect, (a) its legal existence (other than in connection with a transaction expressly permitted pursuant to Section 5.7) and (b) all rights, privileges and franchises necessary in the normal conduct of business, other than, in the case of this clause (b), (i) in connection with a transaction expressly permitted pursuant to Section 5.7 or (ii) where a failure to do so would not reasonably be expected to result in a Material Adverse Effect.

Section 4.4 Maintenance of Property; Insurance.

(a) Maintenance of Property. The Issuer will keep, and will cause each Subsidiary to keep, all property necessary in its business in good working order and condition (ordinary wear and tear, casualty and condemnation excepted), except to the extent the failure to do so has not resulted in, or could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(b) [Reserved].

(c) [Reserved].

(d) [Reserved].

Section 4.5 Compliance with Laws. The Issuer will comply, and cause each Subsidiary to comply, with the requirements of all applicable Laws, except to the extent that failure to so comply could not reasonably be expected to have a Material Adverse Effect.

Section 4.6 Inspection of Property, Books and Records, Appraisals, Account Verifications. The Issuer will keep, and will cause each Domestic Subsidiary to keep, proper books of record and account in accordance, in all material respects, with GAAP in which full, true and correct entries in all material respects shall be made of all dealings and transactions in relation to its business and activities. The Issuer will permit, and will cause each Subsidiary to permit during normal business hours following reasonable advance notice (during the continuance of an Event of Default, no such notice shall be required), at the sole cost of the Issuer, representatives of any Purchaser (which may be accompanied by representatives of such Purchaser) to visit and inspect any of their respective properties, to examine and make abstracts or copies from any of their respective books and records, to conduct collateral audits, physical inspections and analyses of their respective assets and to discuss their respective affairs, finances and accounts with their respective officers, employees and independent public accountants; provided that (a) excluding any such visits and inspections during the continuation of an Event of Default, a Purchaser shall not exercise such rights more often than two (2) times during any calendar year absent the continuation of an Event of Default and only one (1) such time shall be at the Issuer's expense and (b) when an Event of Default is continuing, a Purchaser may do any of the foregoing at the expense of the Issuer. In addition to the foregoing, from time to time, if a Purchaser reasonably determines in good faith that obtaining appraisals is necessary in order for any Purchaser to comply with applicable Laws or regulations, and at any time if an Event of Default shall have occurred and be continuing, such Purchaser may, at the sole cost of the Issuer require the Issuer to obtain and deliver to the Purchasers appraisal reports in form and substance and from appraisers reasonably satisfactory to the requesting Purchaser stating the then current market values of all or any portion of the real estate and personal property owned by the Issuer and its Subsidiaries.

Section 4.7 Use of Proceeds.

(a) The Issuer will use the proceeds of the Notes solely (a) to pay transaction fees and expenses incurred in connection with the consummation of the transactions contemplated by this Agreement and (b) for general working capital purposes and other corporate purposes.

(b) Without limiting the generality of Section 4.7(a) above, neither the Issuer nor any Subsidiary of the Issuer, intends to use nor shall they use any portion of the proceeds of the Notes, directly or, to such Person's knowledge, indirectly, for any purpose in violation of the Trading with the Enemy Act or to purchase or carry, or to reduce or refinance any Debt incurred to purchase or carry, any margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System) or for any related purpose governed by Regulations T, U or X of the Board of Governors of the Federal Reserve System.

Section 4.8 [Reserved].

Section 4.9 Sanctions; Anti-Corruption Laws. The Issuer will maintain in effect policies and procedures designed to promote compliance by the Issuer and its Subsidiaries, and their respective directors, officers, employees, and agents with applicable Sanctions and with the FCPA, CFPOA and any other applicable anti-corruption laws.

Section 4.10 [Reserved].

Section 4.11 Further Assurances. The Issuer will, and will cause each Domestic Subsidiary, at their own cost and expense, to promptly and duly take, execute, acknowledge and deliver all such further acts, documents and assurances as may from time to time be reasonably necessary or as the Required Purchasers may from time to time reasonably request in order to carry out the intent and purposes of the Financing Documents and the transactions contemplated thereby, including all such actions to establish, create, preserve, protect and perfect a Lien in favor of the Purchaser on the Holder Control Account) in accordance with the terms of this Agreement, the Controlled Account Agreement and the other Financing Documents.

Section 4.12 Post-Closing Deliverables. In order to induce the Purchasers to consummate the transactions contemplated by this Agreement, the following documents and/or actions shall be taken, executed and/or delivered no later than the respective dates set forth below:

(a) Quarterly Reports; Annual Report. The Issuer shall timely file its Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2026, June 30, 2026, and September 30, 2026, and its Annual Report on Form 10-K for the fiscal year ended December 31, 2026, in each case, within the period prescribed by the Exchange Act, including any extensions permitted pursuant to Rule 12b-25.

(b) Registration Statement.

(i) As soon as practicable after the Closing Date, and in any event within forty-five (45) days of the Closing Date (the “**Filing Deadline**”), the Company shall file a registration statement on Form S-3 or, if not available to the Company, such other appropriate available form, providing for the resale by the Purchasers of 200% of the number of shares of Common Stock underlying the Notes (assuming the conversion in full of the Notes at the Floor Price (as defined in the Notes)) (the “**Registration Statement**”). The Company shall cause such registration to be declared effective on or prior to the date that is one hundred five (105) days after the Closing Date (the “**Effectiveness Deadline**”). The Company will not file any other registration statements until the Registration Statement contemplated by this Section 4.12(b) is declared effective by the Commission.

(ii) In the event the Company fails to file the Registration Statement required by the Filing Deadline, or if the Registration Statement is not declared effective by the Commission by the Effectiveness Deadline, or if after the Registration Statement has been declared effective it ceases to be effective or the Purchasers are otherwise unable to utilize the prospectus therein to resell their Underlying Shares at any time during the period the registration statement is required to be kept effective (each such event, a “**Registration Default**”), the Company shall pay to each Purchaser, as liquidated damages and not as a penalty, an amount equal to one percent (1.0%) of the aggregate purchase price paid by such Purchaser for the Securities then held by such Purchaser for each thirty (30)-day period (or pro rata portion thereof) during which the Registration Default continues, payable in cash within five (5) business days after the end of each such thirty (30)-day period. The parties agree that the liquidated damages provided for in this Section represent a reasonable estimate of the damages that may be incurred by the Purchasers by reason of any such Registration Default. Notwithstanding the foregoing, in no event shall the aggregate amount of liquidated damages payable to any Purchaser exceed nine percent (9%) of the aggregate purchase price paid by such Purchaser for the Securities. The payment of liquidated damages shall not relieve the Company from its obligations to file or cause the effectiveness of the Registration Statement or to otherwise comply with its obligations under this Section 4.12, and shall not limit any Purchasers’ rights to pursue any other remedies available at law or in equity.

(iii) The Company shall maintain the effectiveness of the Registration Statement at all times until no Purchaser holds any Securities (the “**Effectiveness Period**”). During the Effectiveness Period, the Company shall not suspend the use of, or cause the prospectus included in the Registration Statement to be unavailable for resales of Underlying Shares by the Purchasers pursuant to such Registration Statement, except in connection with a bona fide business purpose where the Board of Directors of the Company has determined in good faith that the continued availability of such Registration Statement would require the disclosure of material non-public information the premature disclosure of which would materially and adversely affect the Company (each such period, a “**Suspension Period**”). In connection with any Suspension Period, the following limitations shall apply:

- a. The Company shall provide written notice to each Purchaser within one (1) business day of the commencement of a Suspension Period, which notice need not specify the nature of the material non-public information giving rise to such Suspension Period (a “**Suspension Notice**”). The Company shall also provide written notice to each Purchaser within one (1) business day of the termination of a Suspension Period.
- b. No single Suspension Period shall exceed fifteen (15) consecutive days.
- c. The aggregate number of trading days covered by all Suspension Periods during any twelve (12)-month period shall not exceed thirty (30) days.
- d. There shall be no more than two (2) Suspension Periods during any twelve (12)-month period.
- e. The Company shall use its best efforts to terminate any Suspension Period as promptly as practicable.
- f. In the event that any Suspension Period exceeds the limitations set forth in clauses (b), (c), or (d) above, such excess period shall constitute a Registration Default for purposes of the liquidated damages provisions set forth herein.

Section 4.13 Register; Transfer Agent Instructions; Legend.

(a) Register. The Company shall maintain at its principal executive offices (or such other office or agency of the Company as it may designate by notice to each holder of Securities), a register for the Notes in which the Company shall record the name and address of the Person in whose name the Notes have been issued (including the name and address of each transferee), the principal amount of the Notes held by such Person and the number of Underlying Shares issuable pursuant to the terms of the Notes held by such Person. The Company shall keep the register available during business hours for inspection of any Purchaser or its legal representatives upon their reasonable request.

(b) Legends. Each Purchaser understands that the Securities have been issued pursuant to an exemption from registration or qualification under the Securities Act and applicable state securities laws, and except as set forth below, the Securities shall bear any legend as required by the “blue sky” laws of any state and a restrictive legend in substantially the following form (and a stop-transfer order may be placed against transfer of such stock certificates):

NEITHER THE ISSUANCE AND SALE OF THIS SECURITY NOR THE SECURITIES INTO WHICH THIS SECURITY ARE CONVERTIBLE HAVE BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED (I) IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) AN OPINION OF COUNSEL TO THE HOLDER (IF REQUESTED BY THE COMPANY), IN A FORM REASONABLY ACCEPTABLE TO THE COMPANY, THAT REGISTRATION IS NOT REQUIRED UNDER SAID ACT OR (II) UNLESS SOLD OR ELIGIBLE TO BE SOLD PURSUANT TO RULE 144 OR RULE 144A UNDER SAID ACT. NOTWITHSTANDING THE FOREGOING, THE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN OR FINANCING ARRANGEMENT SECURED BY THE SECURITIES.

(c) Removal of Legends. Certificates or other documents evidencing Securities shall not be required to contain the legend set forth in Section 4.13(b) above or any other legend (i) while a registration statement covering the resale of such Securities is effective under the Securities Act, (ii) following any sale of such Securities pursuant to Rule 144 (as defined below) (assuming the transferor is not an affiliate of the Company), (iii) if such Securities are eligible to be sold, assigned or transferred under Rule 144 (provided that a Purchaser provides the Company with reasonable assurances that such Securities are eligible for sale, assignment or transfer under Rule 144 which shall not include an opinion of the Purchaser’s counsel, but may include customary Rule 144 investor and broker representation letters), (iv) in connection with a sale, assignment or other transfer (other than under Rule 144), provided that such Purchaser provides the Company with an opinion of counsel to such Purchaser, in a generally acceptable form, to the effect that such sale, assignment or transfer of the Securities may be made without registration under the applicable requirements of the Securities Act or (v) if such legend is not required under applicable requirements of the Securities Act (including, without limitation, controlling judicial interpretations and pronouncements issued by the Commission). If a legend is not required pursuant to the foregoing, the Company shall no later than one (1) Trading Day (or such earlier date as required pursuant to the 1934 Act or other applicable law, rule or regulation for the settlement of a trade initiated on the date such Purchaser delivers such legended certificate representing such Securities to the Company) following the delivery by a Purchaser to the Company or the Company’s Transfer Agent (with notice to the Company) of a legended certificate or entry representing such Securities (endorsed or with stock powers attached, signatures guaranteed, and otherwise in form necessary to affect the reissuance and/or transfer, if applicable), together with any other deliveries from such Purchaser as may be required above in this Section 4.13(c), as directed by such Purchaser, either: (A) provided that the Transfer Agent is participating in The Depository Trust Company (“DTC”) Fast Automated Securities Transfer Program (“FAST”) and such Securities are Underlying Shares, credit the aggregate number of shares of Common Stock to which such Purchaser shall be entitled to such Purchaser’s or its designee’s balance account with DTC through its Deposit/Withdrawal at Custodian system or (B) if the Transfer Agent is not participating in FAST, issue and deliver (via reputable overnight courier) to such Purchaser, a certificate or other documentation representing such Securities that is free from all restrictive and other legends, registered in the name of such Purchaser or its designee (the date by which such credit is so required to be made to the balance account of such Purchaser’s or such Purchaser’s designee with DTC or such certificate is required to be delivered to such Purchaser pursuant to the foregoing is referred to herein as the “**Required Delivery Date**”, and the date such shares of Common Stock are actually delivered without restrictive legend to such Purchaser or such Purchaser’s designee with DTC, as applicable, the “**Share Delivery Date**”). The Company shall be responsible for any transfer agent fees or DTC fees with respect to any issuance of Securities or the removal of any legends with respect to any Securities in accordance herewith. Any fees (with respect to the Transfer Agent, counsel to the Company or otherwise) associated with the issuance of such opinion or the removal of any legends on any of the Securities shall be borne by the Company. For the avoidance of doubt, if all or any portion of a Note is converted when there is an effective registration statement (including the Registration Statement) to cover the resale of the Underlying Shares or if such Underlying Shares may be sold under Rule 144 without volume or manner-of-sale restrictions, then such Underlying Shares shall be issued free of all legends. The Company shall cause its outside legal counsel to deliver a standing legal opinion to the Company’s transfer agent for the issuance of the Underlying Shares free of all legends in accordance with this Section 4.13(c).

(d) Failure to Timely Deliver; Buy-In. If the Company fails, for any reason or for no reason, to issue and deliver (or cause to be delivered) to a Purchaser (or its designee) by the Required Delivery Date, either (i) if the Transfer Agent is not participating in FAST, a certificate for the number of Underlying Shares to which such Purchaser is entitled and register such Underlying Shares on the Company's share register or, if the Transfer Agent is participating in FAST, to credit the balance account of such Purchaser or such Purchaser's designee with DTC for such number of Underlying Shares submitted for legend removal by such Purchaser pursuant to Section 4.13(c) above or (ii) if a registration statement declared effective after the date hereof and covering the resale of the Underlying Shares submitted for legend removal by such Purchaser pursuant to Section 4.13(c) above (the "**Unavailable Shares**") is not available for the resale of such Unavailable Shares and the Company fails to promptly (x) so notify such Purchaser and (y) deliver the Underlying Shares electronically without any restrictive legend by crediting such aggregate number of Underlying Shares submitted for legend removal by such Purchaser pursuant to Section 4.13(c) above to such Purchaser's or its designee's balance account with DTC through its Deposit/Withdrawal At Custodian system (the event described in the immediately foregoing clause (ii) is hereinafter referred to as a "**Notice Failure**" and together with the event described in clause (i) above, a "**Delivery Failure**"), then, in addition to all other remedies available to such Purchaser, the Company shall pay in cash to such Purchaser on each day after the Required Delivery Date and during such Delivery Failure an amount equal to 1% of the product of (A) the sum of the number of shares of Common Stock not issued to such Purchaser on or prior to the Required Delivery Date and to which such Purchaser is entitled, and (B) the lowest Closing Bid Price (as defined in the Notes) of the Common Stock of any Trading Day during the period beginning on the applicable Required Delivery Date and ending on the applicable Share Delivery Date. In addition to the foregoing, if on or prior to the Required Delivery Date either (I) if the Transfer Agent is not participating in FAST, the Company shall fail to issue and deliver a certificate to a Purchaser and register such shares of Common Stock on the Company's share register or, if the Transfer Agent is participating in FAST, credit the balance account of such Purchaser or such Purchaser's designee with DTC for the number of shares of Common Stock to which such Purchaser submitted for legend removal by such Purchaser pursuant to Section 4.13(c) above or (II) a Notice Failure occurs, and if on or after such Trading Day such Purchaser purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by such Purchaser of shares of Common Stock submitted for legend removal by such Purchaser pursuant to Section 4.13(c) above that such Purchaser is entitled to receive from the Company (a "**Buy-In**"), then the Company shall, within two (2) Trading Days after such Purchaser's request and in such Purchaser's discretion, either (x) pay cash to such Purchaser in an amount equal to such Purchaser's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any, for the shares of Common Stock so purchased) (the "**Buy-In Price**"), at which point the Company's obligation to so deliver such certificate or credit such Purchaser's balance account shall terminate and such shares shall be cancelled, or (y) promptly honor its obligation to so deliver to such Purchaser a certificate or certificates or credit the balance account of such Purchaser or such Purchaser's designee with DTC representing such number of shares of Common Stock that would have been so delivered if the Company timely complied with its obligations hereunder and pay cash to such Purchaser in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Underlying Shares that the Company was required to deliver to such Purchaser by the Required Delivery Date multiplied by (B) the lowest Closing Bid Price of the Common Stock on any Trading Day during the period commencing on the date of the delivery by such Purchaser to the Company of the applicable Underlying Shares and ending on the date of such delivery and payment under this clause (y). Nothing shall limit such Purchaser'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 certificates representing shares of Common Stock (or to electronically deliver such shares of Common Stock) as required pursuant to the terms hereof. Notwithstanding anything herein to the contrary, with respect to any given Notice Failure and/or Delivery Failure, this Section 4.13(d) shall not apply to the applicable Purchaser to the extent the Company has already paid such amounts in full to such Purchaser with respect to such Notice Failure and/or Delivery Failure, as applicable, pursuant to the analogous sections of the Note held by such Purchaser.

(e) [Reserved].

Section 4.14 Acknowledgment of Dilution. The Issuer acknowledges that the issuance of the Securities may result in dilution of the outstanding shares of Common Stock, which dilution may be substantial under certain market conditions. The Issuer further acknowledges that its obligations under the Transaction Documents, including, without limitation, its obligation to issue the Underlying Shares pursuant to the Transaction Documents, are unconditional and absolute and not subject to any right of set off, counterclaim, delay or reduction, regardless of the effect of any such dilution or any claim the Issuer may have against any Purchaser and regardless of the dilutive effect that such issuance may have on the ownership of the other stockholders of the Issuer.

Section 4.15 Furnishing of Information; Public Information.

(a) The Issuer covenants to use commercially reasonable efforts to maintain the registration of the Common Stock under Section 12(b) or 12(g) of the Exchange Act and to timely file (or obtain extensions in respect thereof and file within the applicable grace period) all reports required to be filed by the Issuer after the date hereof pursuant to the Exchange Act even if the Issuer is not then subject to the reporting requirements of the Exchange Act.

Section 4.16 Integration Conversion and Exercise Procedures. Each of the form of Notice of Conversion included in the Notes sets forth the totality of the procedures required of the Purchasers in order to convert the Notes. Without limiting the preceding sentences, no ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of Notice of Conversion form be required in order to convert the Notes. No additional legal opinion, other information or instructions shall be required of the Purchasers to convert their Notes. The Issuer shall honor conversions of the Notes and shall deliver Underlying Shares in accordance with the terms, conditions and time periods set forth in the Transaction Documents.

Section 4.17 [Reserved].

Section 4.18 Securities Laws Disclosure; Publicity. The Issuer shall, on or prior to 5:30 p.m., Eastern Time, on the first (1st) Trading Day following the date hereof, file a Current Report on Form 8-K, including the Transaction Documents as exhibits thereto, with the Commission. From and after the filing of such Current Report on Form 8-K, the Issuer represents to the Purchasers that it shall have publicly disclosed all material, non-public information delivered to any of the Purchasers by the Issuer or any of its Subsidiaries, or any of their respective officers, directors, employees, Affiliates or agents in connection with the transactions contemplated by the Transaction Documents. In addition, effective upon the filing of such Current Report on Form 8-K, the Issuer acknowledges and agrees that any and all confidentiality or similar obligations under any agreement, whether written or oral, between the Issuer, any of its Subsidiaries or any of their respective officers, directors, agents, employees, Affiliates or agents, on the one hand, and any of the Purchasers or any of their Affiliates on the other hand, shall terminate and be of no further force or effect. The Issuer understands and confirms that each Purchaser shall be relying on the foregoing covenant in effecting transactions in securities of the Issuer. The Issuer and each Purchaser shall consult with each other in issuing any press releases with respect to the transactions contemplated hereby, and neither the Issuer nor any Purchaser shall issue any such press release nor otherwise make any such public statement without the prior consent of the Issuer, with respect to any press release of any Purchaser, or without the prior consent of each Purchaser, with respect to any press release of the Issuer, which consent shall not unreasonably be withheld or delayed, except if such disclosure is required by law or requested by a governmental authority or self-regulatory organization, in which case the disclosing party shall promptly provide the other party with prior notice of such public statement or communication. Notwithstanding the foregoing, the Issuer shall not publicly disclose the name of any Purchaser, or include the name of any Purchaser in any filing with the Commission or any regulatory agency or Trading Market, without the prior written consent of such Purchaser, except (a) as required by federal securities law in connection with (i) any registration statement under the Securities Act and (ii) the filing of final Transaction Documents with the Commission and (b) to the extent such disclosure is required by law or Trading Market regulations or requested by a governmental authority or self-regulatory organization, in which case the Issuer shall provide the Purchasers with prior notice of such disclosure permitted under this clause (b) and reasonably cooperate with such Purchaser regarding such disclosure.

Section 4.19 Shareholder Rights Plan. No claim will be made or enforced by the Issuer or, with the consent of the Issuer, any other Person, that any Purchaser is an “Acquiring Person” under any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or similar anti-takeover plan or arrangement in effect or hereafter adopted by the Issuer, or that any Purchaser could be deemed to trigger the provisions of any such plan or arrangement, by virtue of receiving Securities under the Transaction Documents or under any other agreement between the Issuer and the Purchasers.

Section 4.20 Non-Public Information. Except with respect to the material terms and conditions of the transactions contemplated by the Transaction Documents, which shall be disclosed pursuant to Section 4.18, and as otherwise provided in this Agreement including Section 4.1 and Section 4.24, the Issuer covenants and agrees that neither it, nor any other Person acting on its behalf will provide any Purchaser or its agents or counsel with any information that constitutes, or the Issuer reasonably believes constitutes, material non-public information, unless prior thereto such Purchaser shall have consented in writing to the receipt of such information and agreed in writing with the Issuer to keep such information confidential. The Issuer understands and confirms that each Purchaser shall be relying on the foregoing covenant in effecting transactions in securities of the Issuer.

Section 4.21 Reservation and Listing of Securities.

(a) The Issuer shall reserve for each Purchaser from its duly authorized shares of Common Stock a number of shares of Common Stock, as mutually agreed between such Purchaser and the Company, for issuance pursuant to the Transaction Documents.

(b) If, on any date, the number of authorized but unissued (and otherwise unreserved) shares of Common Stock is less than the Required Maximum on such date, then the Board of Directors shall use commercially reasonable efforts to hold two special meetings of shareholders (which may also be at the annual meeting of shareholders) to amend the Issuer’s certificate or articles of incorporation to increase the number of authorized but unissued shares of Common Stock to at least the Required Maximum at such time, as soon as possible and in any event the first applicable Issuer stockholders meeting shall not be later than the 120th day after such date (and if the required Issuer stockholder approval is not obtained at such meeting, then the second applicable Issuer stockholders meeting shall not be later than the 120th day after the first applicable Issuer stockholders meeting, and if the required Issuer stockholder approval is not obtained at such second meeting, the Issuer shall use reasonable best efforts to seek such approval at each subsequent annual meeting until such approval is obtained).

(c) The Issuer shall, if applicable: (i) in the time and manner required by the principal Trading Market, prepare and file with such Trading Market an additional shares listing application covering a number of shares of Common Stock equal to the Required Maximum on the date of such application, (ii) use commercially reasonable efforts to take all steps necessary to cause such shares of Common Stock to be approved for listing or quotation on such Trading Market as soon as possible thereafter, (iii) provide to the Purchasers evidence of such listing or quotation as promptly as practicable after receipt thereof and (iv) use commercially reasonable efforts to maintain the listing or quotation of such Common Stock on any date at least equal to the Required Maximum on such date on such Trading Market or another Trading Market. The Issuer agrees to use commercially reasonable efforts to maintain the eligibility of the Common Stock for electronic transfer through the Depository Trust Issuer or another established clearing corporation, including, without limitation, by timely payment of fees to the Depository Trust Issuer or such other established clearing corporation in connection with such electronic transfer.

Section 4.22 Stockholder Approval. The Company shall provide each stockholder entitled to vote at a special meeting of stockholders of the Company (the “**Stockholder Meeting**”), which shall be promptly called and held not later than seventy-five (75) days after the Closing Date (the “**Stockholder Approval Deadline**”), a proxy statement, in a form reasonably acceptable to the Purchasers, at the expense of the Company, soliciting each such stockholder’s affirmative vote at the Stockholder Meeting for approval of (a) a proposal providing for the issuance of more than 19.9% of its outstanding shares of Common Stock (“**Exchange Share Cap**”) at an issue price below the “minimum price” in payment of interest, amortization, redemption and settlement of conversions of the Notes, in each case, in accordance with Nasdaq Listing Rule 5635 and (b) if the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve the Required Reserve Amount (as defined below), an increase in the number of authorized shares of Common Stock of the Company such that, following such increase, the number of authorized shares of Common Stock that are unissued and unreserved for any other purpose shall be equal to or greater than 200% of the maximum number of shares of Common Stock issuable upon conversion of the Notes in full (the “**Required Reserve Amount**”) at the Floor Price (as defined in the Notes) (the “**Stockholder Approval**” and the date the Stockholder Approval is obtained, the “**Stockholder Approval Date**”), and the Company shall use its reasonable best efforts to solicit its stockholders’ approval of such proposal and to cause the Board of Directors of the Company to recommend to the stockholders that they approve such proposal. The Company shall be obligated to seek to obtain the Stockholder Approval by the Stockholder Approval Deadline. If, despite the Company’s reasonable best efforts the Stockholder Approval is not obtained on or prior to the Stockholder Approval Deadline, the Company shall cause an additional Stockholder Meeting to be held on or prior to the date that is three (3) months after the initial Stockholder Meeting. If, despite the Company’s reasonable best efforts the Stockholder Approval is not obtained after such subsequent stockholder meeting, the Company shall cause an additional Stockholder Meeting to be held semi-annually thereafter until such Stockholder Approval is obtained.

Section 4.23 Certain Transactions and Confidentiality. Each Purchaser, severally and not jointly with the other Purchasers, covenants that neither it, nor any Affiliate acting on its behalf or pursuant to any understanding with it will execute any purchases or sales, including Short Sales, of any of the Issuer's securities during the period commencing with the execution of this Agreement and ending at such time that the transactions contemplated by this Agreement are first publicly announced pursuant to the filing of the Current Report on Form 8-K as described in Section 4.18. Each Purchaser, severally and not jointly with the other Purchasers, covenants that until such time as the transactions contemplated by this Agreement are publicly disclosed by the Issuer pursuant to the filing of the Current Report on Form 8-K as described in Section 4.18, such Purchaser will maintain the confidentiality of the existence and terms of this transaction and the information included in any disclosure schedules (other than as disclosed to its legal and other representatives). Notwithstanding the foregoing, and subject to anything contained in this Agreement to the contrary including Section 4.1 and Section 4.24, the Issuer expressly acknowledges and agrees that (i) no Purchaser makes any representation, warranty or covenant hereby that it will not engage in effecting transactions in any securities of the Issuer after the time that the transactions contemplated by this Agreement are first publicly announced pursuant to the filing of the Current Report on Form 8-K as described in Section 4.18, (ii) no Purchaser shall be restricted or prohibited from effecting any transactions in any securities of the Issuer in accordance with applicable securities laws from and after the time that the transactions contemplated by this Agreement are first publicly announced pursuant to the filing of the Current Report on Form 8-K as described in Section 4.18 and (iii) no Purchaser shall have any duty of confidentiality or duty not to trade in the securities of the Issuer to the Issuer, any of its Subsidiaries, or any of their respective officers, directors, employees, Affiliates or agent, including, without limitation, the Placement Agent, after the issuance of the filing of the Current Report on Form 8-K as described in Section 4.18. Notwithstanding the foregoing, in the case of a Purchaser that is a multi-managed investment vehicle whereby separate portfolio managers manage separate portions of such Purchaser's assets and the portfolio managers have no direct knowledge of the investment decisions made by the portfolio managers managing other portions of such Purchaser's assets, the covenant set forth above shall only apply with respect to the portion of assets managed by the portfolio manager that made the investment decision to purchase the Securities covered by this Agreement.

Section 4.24 Blue Sky Filings. The Issuer shall take such action as the Issuer shall reasonably determine is necessary in order to obtain an exemption for, or to qualify the Securities for, sale to the Purchasers under applicable securities or "Blue Sky" laws of the states of the United States, and shall provide evidence of such actions promptly upon request of any Purchaser.

ARTICLE 5
[RESERVED]

ARTICLE 6
[RESERVED]

ARTICLE 7
CONDITIONS

Section 7.1 Conditions to Closings. The obligation of each Purchaser under Section 2.1(a) to purchase Notes hereunder shall be subject to the receipt by each Purchaser of each Financing Document to be entered into on the Closing Date and each other agreement, document and instrument set forth on the Closing Checklist to be entered into or delivered on the Closing Date, each in form and substance reasonably satisfactory to each Purchaser, and to the satisfaction of the following conditions precedent, each in form and substance reasonably satisfactory to, and to the satisfaction of, each Purchaser:

- (a) receipt by the Purchasers of executed copies of the Financing Documents;

(b) [reserved];

(c) receipt by Purchasers of the financial statements referenced in Sections 3.5(a) and (b);

(d) receipt of a customary legal opinion of Pryor Cashman LLP, as special counsel to the Issuer;

(e) [reserved];

(f) receipt of payment of all fees, expenses and other amounts due and payable on the Closing Date under each Financing Document;

(g) the representations and warranties contained in the Financing Documents are true and correct in all material respects (without duplication of any materiality qualifier) as of the Closing Date, both before and after giving effect to the transactions contemplated by the Financing Documents;

(h) receipt of all customary resolutions or written consents of the Issuer's board of directors approving and authorizing the transactions contemplated hereby; and

(i) the Issuer has delivered to each Purchaser its applicable Note.

Section 7.2 Additional Conditions to the Closing.

(a) Each Purchaser shall have provided, in form and substance satisfactory to the Issuer, all documentation and other information as the Issuer deems appropriate in connection with customary "know your customer" requirements as requested by either the Issuer or the Placement Agent.

ARTICLE 8
[RESERVED]

ARTICLE 9
EXPENSES AND INDEMNITY

Section 9.1 Expenses. The Issuer hereby agrees to promptly pay (a) all reasonable and documented costs and expenses of the Purchasers (but limited, in the case of legal expenses, to the reasonable and documented fees, costs and expenses of (i) two (2) firms of counsel to the Purchasers in each relevant jurisdiction that is material to the interests of the Purchasers and (ii) if reasonably necessary, local or special counsel for the Purchasers, taken as a whole, in each relevant jurisdiction or specialty (including restructuring matters) that is material to the interest of such Persons (which may be a single local counsel acting in multiple material jurisdictions), and solely in the case of an actual or perceived conflict of interest between the Purchasers (where the Person affected by such conflict of interest informs the Issuer in writing of such conflict of interest), one (1) additional counsel in each relevant jurisdiction to each group of affected Persons similarly situated taken as a whole), in connection with loan proposals and commitments, in connection with the examination, review, due diligence investigation, documentation, negotiation, closing and syndication of the transactions contemplated by the Financing Documents, in connection with the performance by the Purchasers of their respective rights and remedies under the Financing Documents and in connection with the continued administration of the Financing Documents including (A) any amendments, modifications, consents and waivers to and/or under any and all Financing Documents and (B) any public record searches conducted by or at the request of the Purchasers from time to time (including, without limitation, title investigations and public records searches, pending litigation and tax lien searches and searches of applicable corporate, limited liability, partnership and related records concerning the continued existence, organization and good standing of certain Persons), (b) without limitation of the preceding clause (a), all documented costs and expenses of each Purchaser and its Affiliates, as applicable, in connection with (i) any litigation, dispute, suit or proceeding relating to any Financing Document, and (ii) any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all of the Financing Documents (it being agreed that such costs and expenses may include the costs and expenses of workout consultants, investment bankers, financial consultants, appraisers, valuation firms and other advisors (but limited, in the case of legal expenses, to the reasonable fees, costs and expenses of (i) two (2) firms of counsel to the Purchasers in each relevant jurisdiction that is material to the interests of the Purchasers and (ii) if reasonably necessary, a special local counsel for the Purchasers, in each relevant jurisdiction or specialty (including restructuring matters) that is material to the interest of such Persons (which may be a single local counsel acting in multiple material jurisdictions), additional counsel in each relevant jurisdiction to each group of affected Persons similarly situated taken as a whole)), and (c) all reasonable and documented fees, costs and expenses incurred by the Purchasers in connection with (i) any inspections or visits in accordance with Section 4.6 and (ii) any litigation, dispute, suit or proceeding relating to any Financing Document or in connection with any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all Financing Documents (but limited, in the case of legal expenses, to the reasonable and documented fees, costs and expenses of (i) two (2) firms of counsel to the Purchasers in each relevant jurisdiction that is material to the interests of the Purchasers and (ii) if reasonably necessary, a local or special counsel for the Purchasers, in each relevant jurisdiction or specialty (including restructuring matters) that is material to the interest of such Persons (which may be a single local counsel acting in multiple material jurisdictions), additional counsel in each relevant jurisdiction to each group of affected Persons similarly situated taken as a whole). Without limiting the foregoing, if the Issuer is required to take any action under any Financing Document, such action shall be taken at the expense of the Issuer. Notwithstanding anything herein to the contrary, the aggregate amount of the Issuer's reimbursement obligations incurred pursuant to this Section 9.1 for legal expenses of the Purchasers shall not exceed \$140,000 up to the Closing.

Section 9.2 Indemnity. Subject to the provisions of this Section 9.2, the Company will indemnify and hold each Purchaser and its directors, officers, shareholders, members, partners, employees and agents (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title), each Person who controls such Purchaser (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers, shareholders, agents, members, partners or employees (and any other Persons with a functionally equivalent role of a Person holding such titles notwithstanding a lack of such title or any other title) of such controlling persons (each, a “Purchaser Party”) harmless from any and all losses, liabilities, obligations, claims, contingencies, damages, costs, awards, orders, penalties and expenses, including all judgments, amounts paid in settlements, court costs, interest and reasonable attorneys’ fees and costs of investigation that any such Purchaser Party may suffer or incur as a result of or relating to (i) any breach of any of the representations, warranties, covenants or agreements made by the Company in this Agreement or in the other Transaction Documents, (ii) any action instituted against the Purchaser Parties in any capacity, or any of them or their respective Affiliates by the Company, any Subsidiary, any shareholder or creditor of the Company or other third party who is not an Affiliate of such Purchaser Party, arising out of or relating to any of the transactions contemplated by the Transaction Documents, or (iii) any untrue statement or alleged untrue statement of a material fact contained in any registration statement for the resale of the Underlying Shares (including the Registration Statement) as originally filed or in any amendment thereof, or in any related prospectus, or in any amendment thereof or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. If any action shall be brought against any Purchaser Party in respect of which indemnity may be sought pursuant to this Agreement, such Purchaser Party shall promptly notify the Company in writing, and the Company shall have the right to assume the defense thereof with counsel of its own choosing reasonably acceptable to the Purchaser Party. Any Purchaser Party shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Purchaser Party except to the extent that (i) the employment thereof has been specifically authorized by the Company in writing, (ii) the Company has failed after a reasonable period of time to assume such defense and to employ counsel or (iii) in such action there is, in the reasonable opinion of counsel, a material conflict on any material issue between the position of the Company and the position of such Purchaser Party, in which case the Company shall reimburse the reasonable fees and expenses of no more than one such separate counsel. The Company will not be liable to any Purchaser Party under this Agreement (y) for any settlement by a Purchaser Party effected without the Company’s prior written consent, which shall not be unreasonably withheld or delayed; or (z) to the extent, but only to the extent that a loss, claim, damage or liability is finally judicially determined to be attributable to any Purchaser Party’s breach of any of the representations, warranties, covenants or agreements made by such Purchaser Party in this Agreement or in the other Transaction Documents. The indemnification required by this Section 9.2 shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as and when bills are received or are incurred. The indemnity agreements contained herein shall be in addition to any cause of action or similar right of any Purchaser Party against the Company or others and any liabilities the Company may be subject to pursuant to law.

ARTICLE 10
TAXES; YIELD PROTECTION

Section 10.1 Taxes.

(a) [Reserved]

(b) Other Taxes. The Issuer agrees to timely pay to the applicable Governmental Authority any present or future stamp, intangible, recording or documentary Taxes or any other similar Taxes that arise from any payment made hereunder or from the execution, delivery, performance, recordation, or filing of, or otherwise with respect to this Agreement or any other Financing Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (“**Other Taxes**”).

(c) Indemnification. The Issuer shall indemnify the Purchasers, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by the Purchasers or required to be withheld or deducted from a payment to the Purchasers and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Issuer by a Purchaser shall be conclusive absent manifest error.

(d) Foreign Purchasers. Each Foreign Purchaser that is a party hereto on the Closing Date or purports to become an assignee of an interest pursuant to Section 12.6(a) after the Closing Date (unless such Purchaser was already a Purchaser hereunder immediately prior to such assignment) shall execute and deliver to the Issuer United States Internal Revenue Service Forms W-8ECI, W-8BEN, W-8BEN-E, or W-8IMY (as applicable) and other applicable forms, certificates or documents prescribed by the United States Internal Revenue Service or reasonably requested as to such Purchaser’s entitlement to a complete exemption from withholding or deduction of Taxes, if any, on or prior the date on which such Foreign Purchaser becomes a party hereto or becomes an assignee of an interest pursuant to Section 12.6(a) (and from time to time thereafter upon the reasonable request of the Issuer). Any Foreign Purchaser that is relying on the portfolio interest exception of Section 871(h) or Section 881(c) of the Code, shall also provide each Issuer along with IRS Form W-8BEN or W-8BEN-E, as applicable, a certificate representing to each Issuer that such Foreign Purchaser is not a “bank” for purposes of Section 881(c) of the Code, is not a 10% holder of any Issuer described in Section 871(h)(3)(B) of the Code, is not a controlled foreign corporation receiving interest from a related person (within the meaning of Sections 881(c)(3)(C) and 864(d)(4) of the Code) and is not a conduit entity participating in a conduit financing arrangement as defined in Treasury Regulation Section 1.881-3, at such time (and from time to time thereafter upon the reasonable request of the Issuer). Each Purchaser shall provide new forms (or successor forms) or certificates upon the expiration or obsolescence of any previously delivered forms, to the extent legally entitled to do so, and to promptly notify each Issuer of any change in circumstances which would modify or render invalid any claimed exemption or reduction. If a payment made to a Purchaser under any Financing Document or any payment would be subject to U.S. federal withholding Tax imposed by FATCA if such Purchaser were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Purchaser shall deliver to the Issuer, at the time or times prescribed by law and at such time or times reasonably requested by the Issuer, such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Issuer as may be necessary for the Issuer to comply with its obligations under FATCA, to determine that such Purchaser has complied with such Purchaser’s obligations under FATCA, or to determine the amount to deduct and withhold from such payment. Solely for purposes of the preceding sentence, “FATCA” shall include any amendments made to FATCA after the date of this Agreement. Furthermore, any Foreign Purchaser shall, to the extent it is legally entitled to do so and to the extent in any Purchaser’s reasonable judgment such completion, execution or submission would not subject such Purchaser to any material unreimbursed cost or expense and would not materially prejudice the legal or commercial position of such Purchaser, deliver to the Issuer on or prior to the date on which such Foreign Purchaser becomes a Purchaser under this Agreement or becomes an assignee of an interest pursuant to Section 12.6(a) (and from time to time thereafter upon the reasonable request of the Issuer), executed originals of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Law to permit the Issuer to determine the withholding or deduction required to be made.

(e) United States Purchasers. Any Purchaser other than a Foreign Purchaser that is a party hereto on the Closing Date or purports to become an assignee of an interest pursuant to Section 12.6(a) after the Closing Date (unless such Purchaser was already a Purchaser hereunder immediately prior to such assignment) shall execute and deliver to the Issuer one or more (as the Issuer may reasonably request) United States Internal Revenue Service Form W-9, certifying to such Purchaser's U.S. Taxpayer Identification Number and that it is not subject to United States federal backup withholding taxes on or about the date on which such Purchaser becomes a party hereto or becomes an assignee of an interest pursuant to Section 12.6(a) (and from time to time thereafter upon the reasonable request of the Issuer). Each Purchaser shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms pursuant to this paragraph (e) and to promptly notify the Issuer of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

Section 10.2 Capital Adequacy. If any Purchaser shall reasonably determine that the adoption or taking effect of, or any change in, any applicable Law regarding capital adequacy, in each instance, after the Closing Date, or any change after the Closing Date in the interpretation, administration or application thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation, administration or application thereof, or the compliance by any Purchaser or any Person controlling such Purchaser with any request, guideline or directive regarding capital adequacy (whether or not having the force of Law) of any such Governmental Authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on such Purchaser's or such controlling Person's capital as a consequence of such Purchaser's obligations hereunder to a level below that which such Purchaser or such controlling Person could have achieved but for such adoption, phase-in, phase-opt, change, interpretation, administration, application or compliance (taking into consideration such Purchaser's or such controlling Person's policies with respect to capital adequacy) then from time to time, upon written demand by such Purchaser (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to each Purchaser), the Issuer shall promptly pay to such Purchaser such additional amounts as will compensate such Purchaser or such controlling Person for such reduction, so long as such amounts have accrued on or after the day which is one hundred eighty (180) days prior to the date on which such Purchaser first made demand therefor; provided that if the event giving rise to such amount has retroactive effect, such one hundred eighty (180) day period shall be extended to include the period of retroactive effect.

Section 10.3 Increased Costs. If any Purchaser shall reasonably determine that the adoption or taking effect of, or any change in, any applicable Law, in each instance, after the Closing Date, or any change after the Closing Date in the interpretation, administration or application of any Law by any Governmental Authority, central bank or comparable agency charged with the interpretation, administration or application thereof, or the compliance by any Purchaser or any Person controlling such Purchaser with any request, guideline or directive of any such authority, central bank or comparable agency: (a) shall impose, modify or deem applicable any reserve (including any reserve imposed by the Board of Governors of the Federal Reserve System, or any successor thereto), special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by any Purchaser, or (b) shall impose on any Purchaser any other condition affecting its Notes, any of its Notes (if any) or its obligation to make Notes; and the result of anything described in clauses (a) and (b) above is to increase the cost to (or to impose a cost on) such Purchaser of making or maintaining any Notes, or to reduce the amount of any sum received or receivable by such Purchaser under this Agreement or under any of its Notes (if any) with respect thereto, then upon demand by such Purchaser (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail), the Issuer shall promptly, and in any event within thirty (30) days of demand therefor, pay directly to such Purchaser such additional amount as will compensate such Purchaser or controlling Person for such increased cost or such reduction, so long as such amounts have accrued on or after the day which is one hundred eighty (180) days prior to the date on which such Purchaser first made demand therefor; provided that if the event giving rise to such amount has retroactive effect, such one hundred eighty (180) day period shall be extended to include the period of retroactive effect.

Section 10.4 Mitigation Obligations. If any Purchaser requests compensation under either Section 10.2 or Section 10.3, or requires Issuer to pay any additional amount to any Purchaser or any Governmental Authority for the account of any Purchaser pursuant to Section 10.1, then, upon the written request of the Issuer, such Purchaser shall use reasonable efforts to designate a different lending office for funding or booking its Notes hereunder or to assign its rights and obligations hereunder (subject to the provisions of Section 12.6) to another of its offices, branches or affiliates, if, in the judgment of such Purchaser, such designation or assignment (a) would eliminate or materially reduce amounts payable pursuant to any such Section, as the case may be, in the future, (b) would not subject such Purchaser to any unreimbursed cost or expense and (c) would not otherwise be disadvantageous to such Purchaser (as determined in its sole discretion). Without limitation of the provisions of Section 9.1, Issuer hereby agrees to pay all reasonable and documented out-of-pocket costs and expenses incurred by any Purchaser in connection with any such designation or assignment.

Section 10.5 Conclusiveness of Statements; Survival. Determinations and statements of any Purchaser pursuant to Sections 10.1, 10.2 and 10.3 shall be conclusive and binding absent manifest error. The Purchasers may use reasonable averaging and attribution methods in determining compensation under Sections 10.1, 10.2 and 10.3, and the provisions of such Sections shall survive repayment of the Notes and termination of this Agreement.

Section 10.6 Dodd-Frank. Notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all rules, regulations, guidelines and directives thereunder or issued in connection therewith (ii) all requests, rules, guidelines or directives concerning capital adequacy promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, shall be deemed, in each case, for all purposes of this Agreement, to be adopted after the date of this Agreement, regardless of the date actually enacted, adopted or issued.

ARTICLE 11
[RESERVED]

ARTICLE 12
MISCELLANEOUS

Section 12.1 Survival. All agreements, representations and warranties made herein and in every other Financing Document shall survive the execution and delivery of this Agreement and the other Financing Documents. The provisions of Articles 9, 10, and 12 shall survive the Payment in Full of the Obligations (both with respect to any Purchaser and all Purchasers collectively) and any termination of this Agreement.

Section 12.2 No Waivers; Remedies Cumulative. No failure or delay by any Purchaser in exercising any right, power or privilege under any Financing Document shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein and therein provided shall be cumulative and not exclusive of any rights or remedies provided by Law. Any reference in any Financing Document to the “continuing” nature of any Event of Default shall not be construed as establishing or otherwise indicating that the Issuer has the independent right to cure any such Event of Default, but is rather presented merely for convenience should such Event of Default be waived in accordance with the terms of the applicable Financing Documents.

Section 12.3 Notices.

(a) All notices, requests and other communications to any party hereunder shall be in writing (including prepaid overnight courier, facsimile transmission, e-mail, electronic submissions or similar writing, but in no event by text message) and shall be given to such party at its address, facsimile number or e-mail address set forth on the signature pages hereof or by electronic submissions, as provided below, or at such other address, facsimile number or e-mail address as such party may hereafter specify for the purpose by notice to each other Purchaser and the Issuer; provided, that notices, requests or other communications shall be permitted by e-mail or other electronic submissions (but in no event by text message) only in accordance with the provisions of Section 12.3(b). Each such notice, request or other communication shall be effective (i) if given by facsimile, when such notice is transmitted to the facsimile number specified by this Section and the sender receives a confirmation of transmission from the sending facsimile machine, (ii) if given by e-mail or other electronic submissions, as set forth in Section 12.3(c) or (iii) if given by mail, prepaid overnight courier or any other means, when received at the applicable address specified by this Section.

(b) Notices and other communications to the parties hereto may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites, but in no event by text message); provided, that the foregoing shall not apply to notices sent directly to any party hereto if such party has notified the other parties in writing that it has elected not to receive notices by electronic communication (which election may be limited to particular notices).

(c) (i) Notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor, provided, that if any such notice or other communication is not sent or posted during normal business hours, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day.

Section 12.4 Severability. In case any provision of or obligation under this Agreement or any other Financing Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 12.5 Amendments and Waivers.

(a) General Provisions. No provision of this Agreement or any other Financing Document may be amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by the Issuer and the Required Purchasers, and, if any amendment, waiver or other modification would either (i) increase a Purchaser's funding obligations in respect of any Note, or (ii) (A) reduce the principal of, rate of interest on, or any fees with respect to the Notes or forgive any principal, interest, or fees, other than (1) as a result of a waiver of an Event of Default, or (2) as a result of the implementation of any pricing grid with respect to interest rate margins and fees, (B) defer, extend or postpone the date fixed for, or waive or forgive, any payment of principal of the Notes, or of interest on the Notes or fees hereunder or defer, extend or postpone the date of termination of the commitment of any Purchaser hereunder, (C) change the definition of the term Required Purchasers, (D) amend Article 2 or Section 8.4 in a manner that would alter the pro rata sharing of payments required thereby, or (E) amend, waive or otherwise modify this Section 12.5(a) or the definitions of the terms used in this Section 12.5(a) insofar as the definitions affect the substance of this Section 12.5(a), by such Purchaser; provided that, notwithstanding anything herein to the contrary, (x) the waiver of (or amendment to the terms of) any mandatory prepayment of the Notes shall not constitute a postponement of any date scheduled for the payment of principal or interest and (y) a waiver of any condition precedent set forth in Article 7 or the waiver of any Default or Event of Default (in each case other than pursuant to Section 8.1(a)) shall not constitute a postponement of any date scheduled for, or a reduction in the amount of, any payment of interest or any payment of fees. It is hereby understood and agreed that all Purchasers shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), or (E) of the preceding sentence. Any waiver of any provision of this Agreement or any other Financing Document shall be effective only in the specific instance and for the specific purpose for which it is given. No delay on the part of any Purchaser in the exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by any of them of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy.

(a) Assignments.

(i) Subject to Section 4.13, any Purchaser may at any time assign to one or more assignees all or any portion of such Purchaser's Notes, together with all related rights and obligations of such Purchaser hereunder.

(b) Participations. Subject to Section 4.13, any Purchaser may at any time, without the consent of, or notice to, the Issuer, sell to one or more Persons participating interests in its Notes, commitments or other interests hereunder (any such Person, a "**Participant**"). In the event of a sale by a Purchaser of a participating interest to a Participant, (i) such Purchaser's obligations hereunder shall remain unchanged for all purposes, (ii) the Issuer shall continue to deal solely and directly with such Purchaser in connection with such Purchaser's rights and obligations hereunder and (iii) all amounts payable by each Issuer shall be determined as if such Purchaser had not sold such participation and shall be paid directly to such Purchaser. Notwithstanding the foregoing, however, the Issuer agrees that each Participant shall be entitled to the benefits of Section 10.1 as if it were a Purchaser (provided that such Participant complies with the requirements of Section 10.1(d) and (e) as if it were a Purchaser; provided further, that no Participant shall receive any greater compensation pursuant to Section 10.1 than would have been paid to the participating Purchaser if no participation had been sold). No Participant shall have any direct or indirect voting rights hereunder except with respect to any event described in Section 12.5 expressly requiring the unanimous vote of all Purchasers or, as applicable, all affected Purchasers. The Issuer agrees that if amounts outstanding under this Agreement are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of setoff in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Purchaser under this Agreement; provided that such right of setoff shall be subject to the obligation of each Participant to share with the Purchasers, as provided in Section 8.3. In the event that a Purchaser sells a participation, the Purchaser, as a non-fiduciary agent on behalf of the Issuer, shall maintain (or cause to be maintained) in the United States a register (the "**Participant Register**") on which it enters the name and addresses of all participants in the Obligations held by it and the rights of such participants in the Obligations (including principal amount, interest thereon, and fees of the portion of such Obligations that is subject to such participations). No Purchaser shall have an obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any Note or any Obligation), except as otherwise required by applicable Law and to the Issuer at its reasonable request and then, solely to the extent that such disclosure is required to establish that such participation, Note or Obligation is in registered form under Sections 5f.103-1(c) and 1.871-14(c) of the Treasury Regulations. Any participation or transfer thereof may be effected only by the registration of such participation on the Participant Register.

(c) Issuer Assignment. The Issuer may not assign, delegate or otherwise transfer any of its rights or other obligations hereunder or under any other Financing Document without the prior written consent of each Purchaser.

Section 12.7 Headings. Headings and captions used in the Financing Documents (including the Exhibits, Schedules and Annexes hereto and thereto) are included for convenience of reference only and shall not be given any substantive effect.

Section 12.8 RESERVED

Section 12.9 Waiver of Consequential and Other Damages. To the fullest extent permitted by applicable Law, the Issuer shall not assert, and hereby waives, any claim against any Purchaser Party, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of this Agreement, any other Financing Document or any agreement or instrument contemplated hereby or thereby, the transactions contemplated hereby or thereby, any Notes or the use of the proceeds thereof. No Purchaser Party shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Financing Documents or the transactions contemplated hereby or thereby.

Section 12.10 [Reserved]

Section 12.11 **GOVERNING LAW; SUBMISSION TO JURISDICTION. THIS AGREEMENT AND EACH OTHER FINANCING DOCUMENT, AND ALL MATTERS RELATING HERETO OR THERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES. EACH PARTY HERETO HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE CITY OF WILMINGTON, NEW CASTLE COUNTY, STATE OF DELAWARE AND IRREVOCABLY AGREES THAT, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER FINANCING DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS. EACH PARTY HERETO EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. EACH PARTY HERETO HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON SUCH PARTY BY CERTIFIED OR REGISTERED MAIL, ADDRESSED TO SUCH PARTY AT THE ADDRESS SET FORTH IN OR IN ACCORDANCE WITH THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.**

Section 12.12 **WAIVER OF JURY TRIAL**. THE ISSUER AND EACH PURCHASER HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE FINANCING DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THE ISSUER AND EACH PURCHASER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT IT HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS, AND THAT IT WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. THE ISSUER AND EACH PURCHASER WARRANTS AND REPRESENTS THAT IT HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

Section 12.13 [Reserved].

Section 12.14 **Counterparts; Signatures; Integration**. This Agreement and the other Financing Documents may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Signatures by facsimile or other electronic communication to any Financing Document shall bind the parties to the same extent as would a manually executed counterpart. This Agreement and the other Financing Documents constitute the entire agreement and understanding among the parties hereto and supersede any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

Section 12.15 **No Strict Construction**. The parties hereto have participated jointly in the negotiation and drafting of this Agreement and each of the other Financing Documents. In the event an ambiguity or question of intent or interpretation arises, this Agreement and each of the other Financing Documents shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement or any other Financing Document.

Section 12.16 **USA PATRIOT Act Notification**. Each Purchaser hereby notifies the Issuer that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record certain information and documentation that identifies the Issuer, which information includes the name and address of the Issuer and such other information that will allow such Purchaser, as applicable, to identify the Issuer in accordance with the USA PATRIOT Act.

Section 12.17 Equal Treatment. The Company covenants and agrees that it shall not, directly or indirectly, (a) amend, modify, supplement, or waive any provision of any Transaction Document with respect to any holder of Notes issued hereunder in a manner that is more favorable in any material respect to such holder than the terms applicable to any other Purchaser, or (b) pay or offer to pay any consideration to any holder of Notes issued hereunder in connection with obtaining any consent, waiver, or amendment under any Transaction Document, unless such consideration is concurrently offered and paid on a pro rata basis to all Purchasers, in each case unless the Company shall concurrently offer and grant to each Purchaser the same or more favorable rights, terms, conditions, or consideration, as applicable. Without limiting the generality of the foregoing, the Company shall not (i) grant to any holder of Notes issued hereunder a lower conversion price, more favorable conversion mechanics, or more favorable anti-dilution protections than those applicable to any other Purchaser or (ii) amend, waive, or otherwise modify any covenant, default, or event of default provision under any Transaction Document (as defined herein) in a manner that is more favorable to any holder than to any other Purchaser, unless, in each case, the Purchasers are concurrently offered equivalent or more favorable terms.

ARTICLE 13 REPRESENTATIONS AND WARRANTIES OF THE PURCHASERS

Each Purchaser hereby represents and warrants as follows:

Section 13.1 Authorization; No Contravention. The execution, delivery and performance by each Purchaser of this Agreement and each other Financing Document to which it is a party: (a) is within its power and authority and has been duly authorized by all necessary action; (b) does not contravene the terms of its Organizational Documents or any amendment thereof; and (c) will not violate, conflict with or result in any breach or contravention of any of its contractual obligations, or any order or decree directly relating to it.

Section 13.2 Binding Effect. This Agreement has been duly executed and delivered by the Purchasers and this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

Section 13.3 No Legal Bar. The execution, delivery and performance of this Agreement by each Purchaser will not violate any requirement of Law applicable to it.

Section 13.4 Securities Laws. At the time such Purchaser was offered the Securities, it was, and as of the date hereof it is, and on each date on which it converts any Notes, it will be either: (i) an "accredited investor" as defined in Rule 501(a)(1), (a)(2), (a)(3), (a)(7), (a)(8), (a)(9), (a)(12), or (a)(13) under the Securities Act or (ii) a "qualified institutional buyer" as defined in Rule 144A(a) under the Securities Act. Such Purchaser is acquiring the Securities, for its own account for investment purposes only and not with a view toward, or for sale in connection with, any distribution thereof, or with any present intention of distributing or selling the same.

Section 13.5 Governmental Authorization; Third Party Consent. No approval, consent, compliance, exemption or authorization of any Governmental Authority or any other Person in respect of any requirement of Law, and no lapse of a waiting period under a requirement of Law, is necessary or required in connection with the execution, delivery or performance by it or enforcement against the Purchasers of this Agreement or the transactions contemplated hereby. No consent is required to be obtained under any contractual obligation applicable to the Purchasers in connection with the execution, delivery or performance of this Agreement or any of the other Financing Documents to which it is a party.

Section 13.6 No Related Party Relationships. Except as set forth in Schedule 13.6, each Purchaser and its direct or indirect equityholders and their respective affiliates are not affiliates or direct or indirect equityholders of, have no direct or indirect economic interest in, and have not directly or indirectly entered into any agreement, arrangement or understanding (except as expressly set forth in the preceding sentence) with, any director, officer, employee, manager, partner or equityholder (or any of their respective immediate family members (as defined in 40 CFR § 170.305) or any affiliate or spouse of any such director, officer, employee, manager, partner, equityholder or immediate family member) of any other Purchaser, FF Global Partners LLC, FF Top Holding LLC, or any of their respective affiliates (each, a “**Related Person**”; provided however, for the avoidance of doubt, that the Issuer shall not be considered a “Related Person” for the purposes of this Section 13.6). The transactions contemplated by or related to this Agreement will not directly or indirectly increase any Related Person’s ownership or voting power of the Issuer, and no Related Person will, directly or indirectly, participate in any of the post-closing operations or decisions of or have any other rights or obligations with respect to such Purchaser or any of its direct or indirect equityholders or any of their respective affiliates.

Section 13.7 Organization. Each Purchaser is duly organized, validly existing and in good standing under the laws of its state of organization, and except as has not had or would not reasonably be expected to have a material adverse effect on such Purchaser’s ability to perform its obligations under the Agreement or to consummate the transactions contemplated hereby on a timely basis. Each Purchaser is duly qualified to do business and is in good standing in all jurisdictions where its ownership or leasing of property or the conduct of its business requires it to be so qualified.

Section 13.8 Independent Investment Decision.

(a) No Purchaser has relied on any statements, representations, warranties or other information provided by the Placement Agent, any of its affiliates or any control persons, officers, directors, employees, partners, agents or representatives of any of the foregoing, concerning the Company or the Securities. Nothing contained in this Agreement or any other Transaction Document shall be deemed to constitute the Purchasers as a partnership, group, association, joint venture or any other kind of entity, or create a presumption that the Purchasers are in any way acting in concert or as a group

(b) Neither the Placement Agent nor any affiliate of the Placement Agent has provided any advice or recommendation to the Purchaser in connection with the Company’s offer and sale of the Securities, and the Placement Agent will not have any responsibility with respect to (i) any representations, warranties or agreements made by any person or entity under or in connection with the offer and sale of the Securities or any of the documents furnished pursuant thereto or in connection therewith, or the execution, legality, validity or enforceability (with respect to any person) or any thereof, or (ii) the business, affairs, financial condition, operations, properties or prospects of, or any other matter concerning the Company or the Securities or the quality or value thereof. In connection with the issuance of the Securities to each Purchaser, neither the Placement Agent nor any of its affiliates has acted as an underwriter with respect to the Securities or the transactions contemplated by this Agreement, or as a financial advisor or fiduciary to any Purchaser.

Section 13.9 No Governmental Review. Each Purchaser understands that no U.S. federal or state agency or any other government or governmental agency has passed on or made any recommendation or endorsement of the Securities or the fairness or suitability of the investment in the Securities nor have such authorities passed upon or endorsed the merits of the offering of the Securities.

Section 13.10 Reserved.

Section 13.11 Reserved.

Section 13.12 No Brokers. Other than with respect to the Placement Agent, no Person will have, as a result of the transactions contemplated by this Agreement, any valid right, interest or claim against or upon the Issuer or any Purchaser for any commission, fee or other compensation pursuant to any agreement, arrangement or understanding entered into by or on behalf of any Purchaser.

Section 13.13 No Reliance. Each Purchaser is not relying upon, and has not relied upon, any statement, representation or warranty made by any Person, except for the representations and warranties by the Issuer contained in this Agreement.

Section 13.14 Financial Capacity. Each Purchaser has, and as of the Closing Date will have, sufficient cash on hand in a U.S. or foreign bank account or uncalled capital commitments from creditworthy parties without any condition to fund the Purchaser's Note Commitment Amount on the terms and conditions set forth in this Agreement. Such cash has been obtained by such Purchaser in compliance with all applicable Laws.

Section 13.10 . No Liability of Placement Agent; Placement Agent Reliance.

(a) Each Purchaser agrees that neither the Placement Agent nor any of its affiliates nor any of their respective control persons, officers, directors or employees shall be liable to such Purchaser (including in contract, tort, under federal or state securities laws or otherwise) for any action heretofore or hereafter taken or omitted to be taken by any of them or have any liability or obligation (including without limitation, for or with respect to any losses, claims, damages, obligations, penalties, judgments, awards, liabilities, costs, expenses or disbursements incurred by the Placement Agent, the Company or any other person or entity), whether in contract, tort or otherwise, to such Purchaser, or to any person claiming through such Purchaser, in respect of the offer and sale of Securities hereunder, as expressly provided herein, or for any actual or alleged inaccuracies, misstatements or omissions with respect to any information or materials of any kind provided to the Purchaser concerning the Company, the Securities, this Agreement or the transactions contemplated hereby. On behalf of it and their respective affiliates, each Purchaser releases the Placement Agent in respect of any losses, claims, damages, obligations, penalties, judgments, awards, liabilities, costs, expenses or disbursements related to the offer and sale of the Securities. Each Purchaser agrees not to commence any litigation or bring any claim against the Placement Agent in any court or any other forum which relates to, may arise out of, or is in connection with, the offer and sale of the of Securities. Each Purchaser confirms that the undertakings in this paragraph is given freely and after obtaining independent legal advice.

(b) The Placement Agent may rely upon these representations and warranties of the Purchasers in this Agreement.

Section 13.15 Non-Recourse. Each Purchaser's contractual obligations hereunder shall be without recourse to its Affiliates, and the officers, directors, employees, managers, trustees and other agents of such Purchaser or its Affiliates. The Issuer's contractual obligations hereunder or under any Financing Document shall be without recourse to its Affiliates, and the officers, directors, employees, managers, trustees and other agents of the Issuer or its Affiliates.

[Signature Pages Follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

Address for Notices:

1990 E Grand Ave.
El Segundo, California 90245
Attention: Legal Department
Email: legal@ff.com

*with a copy
(which shall not constitute notice) to:*

Pryor Cashman LLP

7 Times Square, 40th Floor
New York, New York 10036
Attention: M. Ali Panjwani
Email: ali.panjwani@pryorcashman.com

Attention: _____
Phone: _____
Email: _____

*with a copy
(which shall not constitute notice) to:*

Attention: _____
Phone: _____
Email: _____

Issuer

**FARADAY FUTURE INTELLIGENT
ELECTRIC INC.**

By: /s/ Jiawei Wang
Name: Jiawei Wang
Title: Global Executive Chairman

Purchaser

By: _____
Name: _____
Title: _____

[Signature Page]

Annex A

Definitions

“**Agreement**” means this Securities Purchase Agreement, as the same may be amended, supplemented, restated or otherwise modified from time to time.

“**Anti-Terrorism Laws**” means any Laws relating to terrorism or money laundering, including Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the Laws comprising or implementing the Bank Secrecy Act, the Laws administered by OFAC, the *Criminal Code* (Canada), and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) (as any of the foregoing laws may from time to time be amended, renewed, extended, or replaced).

“**Blocked Person**” means any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) with which any Purchaser is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) that commits, threatens or conspires to commit or supports “terrorism” as defined in Executive Order No. 13224; or (e) that is named, or owned or controlled by, a “specially designated national” or “blocked person” on the most current list published by OFAC or other similar list.

“**Business Day**” means any day except Saturday, Sunday and any day which shall be a federal legal holiday in the United States or a day on which the Federal Reserve Bank of New York is closed and/or any of the following exchanges on which the Common Stock is traded and listed, or any successor(s) thereto, is not open for at least five (5) hours of trading: the Nasdaq Capital Market; the Nasdaq Global Market; the Nasdaq Global Select Market; the New York Stock Exchange; or the NYSE American; and any successor to any of the foregoing markets or exchanges.

“**Capitalized Lease Obligations**” shall mean any obligation under a Capital Lease.

“**Capital Lease**” of any Person means any lease of any property by such Person as lessee which would, in accordance with GAAP, be required to be accounted for as a capital lease on the balance sheet of such Person and shall include, without limitation, all operating leases that are not leases for real property.

“**Capital Stock**” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“**Cash Equivalents**” means (a) direct obligations of the United States, or obligations guaranteed by the United States with a maturity date of no more than six (6) months from the date of acquisition, (b) commercial paper with a duration of not more than three (3) months rated at least A 1 by Standard & Poor’s Ratings Service and P 1 by Moody’s Investors Services, Inc., which is issued by a Person (other than the Issuer or an Affiliate of the Issuer) organized under the laws of any state of the United States or of the District of Columbia, (c) time deposits, certificates of deposit and banker’s acceptances with a duration of not more than six (6) months issued by any office located in the United States, or is licensed to conduct a banking business in the United States, and has capital, surplus and undivided profits of at least \$500,000,000 and which issues (or the parent of which issues) certificates of deposit or commercial paper with a rating described in clause (b) above, (d) repurchase agreements and reverse repurchase agreements with a duration of not more than 30 days with respect to securities described in clause (a) above entered into with an office of a bank or trust company meeting the criteria specified in clause (c) above, (e) any money market or mutual fund provided that substantially all of the assets of such fund consist of the foregoing types of investments, and provided that such fund has assets in excess of \$500,000,000 and has obtained from either Standard & Poor’s Ratings Service or Moody’s Investors Services, Inc. the highest rating obtainable for money market funds in the United States or any province thereof, or (f) other short-term liquid investments approved in writing by Required Purchasers.

“**CERCLA**” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

“**CFC**” means a controlled foreign corporation within the meaning of Section 957 of the Code.

“**CFPOA**” means the *Corruption of Foreign Public Officials Act* (Canada), as amended.

“**Closing Checklist**” means Annex C to this Agreement.

“**Closing Date**” means the date of Closing.

“**Closing Date Transactions**” shall mean the consummation of the transactions contemplated by this Agreement to occur on the Closing Date and the payment of fees and expenses in connection therewith.

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

“**Commitment Annex**” means Annex B to this Agreement, as it may be amended from time to time prior to the Closing.

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

“**Common Stock Equivalents**” means any securities of the Issuer or the Subsidiaries which would entitle the holder thereof to acquire at any time 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.

“**Company Competitor**” means any company engaged in the business of designing, manufacturing or producing automobiles or similar vehicles and any company engaged in the business of supplying components for the design, manufacturing or production of automobiles or similar vehicles.

“**continuing**” means, with respect to any default or event of default, that it has not been remedied, cured or waived.

“**Controlled Account Agreement**” is as defined in the Note.

“**Controlled Group**” means any organization which is a member of a controlled, affiliated or otherwise related group of entities within the meaning of Code Sections 414(b), (c), (m), or (o)).

“**Conversion Price**” shall have the meaning ascribed to such term in the Notes.

“**Debt**” shall mean, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

(a) all obligations for borrowed money, whether current or long-term (including the Obligations hereunder and all Capitalized Lease Obligations), all obligations evidenced by bonds, debentures, notes or other similar instruments;

(b) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business);

(c) all non-contingent obligations under letters of credit (including standby and commercial), bankers’ acceptances and similar instruments (including bank guaranties);

(d) the attributable principal amount of Capital Leases, Synthetic Leases, Securitization Transaction and Sale Leaseback Transactions;

(e) all Disqualified Stock;

(f) all Debt of others secured by (or for which the holder of such Debt has an existing right, contingent or otherwise, to be secured by) any Lien on, or payable out of the proceeds of production from, property owned or acquired by such Person, whether or not the obligations secured thereby have been assumed;

(g) all Guarantees in respect of Debt of another Person; and

(h) Debt of any partnership or joint venture or other similar entity in which such Person is a general partner or joint venturer, and, as such, has personal liability for such obligations, but only to the extent there is recourse to such Person for payment thereof.

For purposes hereof, the amount of Debt shall be determined (w) based on the outstanding principal amount in the case of borrowed money indebtedness under clause (a) and purchase money indebtedness and the deferred purchase obligations under clause (b), (x) based on the maximum amount available to be drawn in the case of letter of credit obligations and the other obligations under clause (c), (y) based on the amount of Debt that is the subject of the Guarantees and for which there is recourse to such Person in the case of Guarantees under clause (g) and (z) based on the lesser of the amount of Debt secured by such lien or the fair market value of the assets pledged in the case of Debt under clause (f).

“**Default**” means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

“**Disqualified Stock**” means with respect to any Person, any Capital Stock which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder) or upon the happening of any event: (a) matures or is mandatorily redeemable (other than redeemable only for Capital Stock of such Person which is not itself Disqualified Stock) pursuant to a sinking fund obligation or otherwise; (b) is convertible or exchangeable at the option of the holder for Debt or Disqualified Stock (excluding Capital Stock which is convertible or exchangeable solely at the option of the Issuer); or (c) is mandatorily redeemable or must be purchased for cash or Cash Equivalents upon the occurrence of certain events or otherwise, in whole or in part; in each case prior to the date that is one hundred eighty (180) days after the final scheduled amortization installment payment date for the Notes, in each case, valued at, in the case of redeemable preferred Capital Stock, the greater of the voluntary liquidation preference and the involuntary liquidation preference of such Stock plus accrued and unpaid dividends.

“**Domestic Subsidiary**” means any Subsidiary of the Issuer organized, incorporated or otherwise formed under the laws of the United States or any state thereof, other than any such Subsidiary that has no assets (other than de minimis amounts) other than the Capital Stock or other equity interests of Foreign Subsidiaries that are CFCs.

“**Environmental Laws**” means any and all Laws relating to the environment or the effect of the environment on human health or to emissions, discharges or releases of pollutants, contaminants, Hazardous Materials or wastes into the environment, including ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, Hazardous Materials or wastes or the clean up or other remediation thereof.

“**ERISA**” means the Employee Retirement Income Security Act of 1974.

“**ERISA Plan**” means any “employee benefit plan”, as such term is defined in Section 3(3) of ERISA (other than a Multiemployer Plan), which the Issuer or any Subsidiary maintains, sponsors or contributes to, or, in the case of an employee benefit plan which is subject to Section 412 of the Code or Title IV of ERISA, to which the Issuer or any Subsidiary or any member of the Controlled Group may have any liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

“**Event of Default**” has the meaning set forth in the Notes.

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

“**Excluded Taxes**” means any of the following Taxes: (A) Taxes imposed on or measured by any Purchaser’s net income, franchise taxes, branch profits taxes and alternative minimum taxes, in each case imposed by the jurisdiction (or any political subdivision thereof) under which such Purchaser (i) is organized, has its principal office in or, in the case of any Purchaser, its applicable lending office located in, or (ii) has a present or former connection (other than a connection resulting from entering into any of the Financing Documents, receiving any payment thereunder, or taking any action thereunder) (“**Other Connection Taxes**”), (B) any United States federal withholding Taxes to the extent imposed on the amounts payable to such Purchaser with respect to an applicable interest in a Note pursuant to a law in effect at the time such Purchaser becomes a party to this Agreement or changes its lending office, unless in the case of an assignee, the applicable assigning person would have been entitled to receive additional amounts with respect to such Taxes at the time of such assignment or, in the case of a change in lending office, such Purchaser would have been entitled to receive additional amounts with respect to such Taxes immediately before it changed its lending office, (C) any withholding Taxes or deductions imposed under FATCA, or (D) any United States federal withholding Taxes that would not have been imposed but for such Purchaser’s failure to comply with Sections 10.1(d), (e) or (f).

“**Exempt Accounts**” means, collectively, (a) payroll accounts, (b) tax withholding accounts, (c) employee benefit accounts, (d) escrow, trust and fiduciary accounts, (e) zero balance accounts and (f) any other accounts (including deposit accounts) with a maximum balance of less than \$250,000, individually, or \$1,000,000 in the aggregate for all such accounts.

“**FATCA**” means Sections 1471 through 1474 of the Code as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any applicable agreements entered into pursuant to Section 1471(b)(1) of the Code, and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

“**FCPA**” means the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

“**Financing Documents**” means this Agreement, the Notes, the Controlled Account Agreement (or terms or provisions, as applicable) applicable to the Notes and all other documents, instruments and agreements contemplated herein or thereby and heretofore executed, executed concurrently herewith or executed at any time and from time to time hereafter, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

“**Fiscal Quarter**” means a fiscal quarter of the Issuer, ending on March 31, June 30, September 30 or December 31 of each calendar year.

“**Fiscal Year**” means a fiscal year of the Issuer, ending on December 31 of each calendar year.

“**Flow of Funds**” means the flow of funds for the Closing pursuant to the terms hereof and thereof, in a form mutually agreed between the Issuer and the applicable Purchaser(s).

“**Foreign Government Benefit Plan**” has the meaning set forth in Section 3.14(c).

“**Foreign Purchaser**” means any Purchaser that is not a “United States person” as defined in Code Section 7701(a)(30).

“**Foreign Plan**” has the meaning set forth in Section 3.14(c).

“**Foreign Subsidiary**” means any Subsidiary other than a Domestic Subsidiary.

“**Governmental Authority**” means any nation or government, any state or other political subdivision thereof, and any agency, department or Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other Person owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing, whether domestic or foreign.

“**Guarantee**” by any Person means any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep well, to purchase assets, goods, securities or services, to take or pay, or to maintain financial statement conditions or otherwise) or (b) entered into for the purpose of assuring in any other manner the obligee of such Debt or other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part), provided that the term Guarantee shall not include endorsements for collection or deposit in the Ordinary Course of Business. The term “Guarantee” used as a verb has a corresponding meaning.

“**Hazardous Materials**” means (a) any “hazardous substance” as defined in CERCLA, (b) any “hazardous waste” as defined in RCRA, (c) asbestos, (d) polychlorinated biphenyls, (e) petroleum, its derivatives, by products and other hydrocarbons, (f) toxic mold and (g) any other pollutant, toxic, radioactive, caustic or otherwise hazardous substance regulated under Environmental Laws.

“**Hazardous Materials Contamination**” means contamination (whether now existing or hereafter occurring) of the improvements, buildings, facilities, personalty, soil, groundwater, air or other elements on or of the relevant property by Hazardous Materials, or any derivatives thereof, or on or of any other property as a result of Hazardous Materials, or any derivatives thereof, generated on, emanating from or disposed of in connection with the relevant property.

“**Indemnified Taxes**” means Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Issuer under any Financing Document.

“**Issuer**” has the meaning set forth in the Preamble to this Agreement.

“**Laws**” means any and all federal, state, provincial, territorial, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, codes, injunctions, permits, concessions, grants, franchises, governmental agreements and governmental restrictions, whether now or hereafter in effect.

“**Liens**” means any mortgage, lien, pledge, charge, security interest or other encumbrance upon or in any property or assets (including accounts and contract rights) owned by the Company or any of its Subsidiaries.

“**Litigation**” means any claim, investigation, action, suit or proceeding before any court, mediator, arbitrator or Governmental Authority.

“**Margin Stock**” has the meaning assigned thereto in Regulation U of the Federal Reserve Board.

“**Material Adverse Effect**” means, with respect to any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences, whether or not related, a material adverse change in, or a material adverse effect upon, any of (a) the business, operations, properties, prospects or condition (financial or otherwise) of the Issuer, (b) the rights and remedies of any Purchasers under any Financing Document, or the ability of the Issuer, taken as a whole, to perform any of their obligations under any Financing Document to which it is a party, or (c) the legality, validity or enforceability of any Financing Document, or (d) the existence, perfection or priority of any security interest granted to any Purchaser in any Financing Document.

“**Multiemployer Plan**” means a multiemployer plan, that is intended to meet the definition set forth in Section 3(37) or 4001(a)(3) of ERISA, to which the Issuer or any member of the Controlled Group may have any liability.

“**Note Commitment Amount**” means, as to any Purchaser, the amount set forth opposite such Purchaser’s name on the Commitment Annex under the column “Note Commitment Amount”.

“**Notes**” has the meaning set forth in the recitals hereto.

“**Obligations**” means all loans (including the Notes), debts, principal, interest (including any interest that accrues after the commencement of any bankruptcy, insolvency or other enforcement proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such proceeding), premiums, obligations (including indemnification obligations), fees, costs, expenses and other charges (including any costs, fees, expenses or other charges that accrue after the commencement of any bankruptcy, insolvency or other enforcement proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such proceeding), guaranties, and all covenants and duties of any other kind and description owing by the Issuer arising out of, under, pursuant to, in connection with, or evidenced by this Agreement or any of the other Financing Documents and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including all interest not paid when due and all other expenses or other amounts that the Issuer is required to pay or reimburse by the Financing Documents or by law or otherwise in connection with the Financing Documents. Without limiting the generality of the foregoing, the Obligations of the Issuer under the Financing Documents include the obligation to pay (a) the principal of the Notes, (b) interest accrued on the Notes, (c) costs, fees, premiums, expenses and other charges payable under this Agreement or any of the other Financing Documents, and (d) indemnities and other amounts payable by the Issuer under any Financing Document. Any reference in this Agreement or in the Financing Documents to the Obligations shall include all or any portion thereof and any extensions, modifications, renewals, or alterations thereof, both prior and subsequent to any bankruptcy, insolvency or other enforcement proceeding.

“**OFAC**” means the U.S. Department of Treasury Office of Foreign Assets Control.

“**Ordinary Course of Business**” means, in respect of any action or omission taken or not taken by any Person, the ordinary course of such Person’s business, as conducted by such Person in good faith and may include past practice, industry standards or customs, requirements of law or as may otherwise be determined from time to time in good faith by the board of directors (or other governing body) of such Person.

“**Organizational Documents**” means, with respect to any Person other than a natural person, the documents by which such Person was organized (such as a certificate of incorporation, certificate of limited partnership or articles of formation or organization, and including, without limitation, any certificates of designation for preferred stock or other forms of preferred equity) and the documents which relate to the internal governance of such Person (such as by-laws, a partnership agreement or an operating, limited liability company or members agreement).

“**Other Connection Taxes**” has the meaning set forth in the definition of Excluded Taxes.

“**Other Taxes**” has the meaning set forth in [Section 10.1\(b\)](#).

“**Paid in Full**” or “**Payment in Full**” means, with respect to any Obligations, (a) the payment in full in cash of all such Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted) and (b) the termination of all obligations of the Purchasers to provide any additional credit or extensions or credit.

“**Participant**” has the meaning set forth in [Section 12.6\(b\)](#).

“**Participant Register**” has the meaning set forth in [Section 12.6\(b\)](#).

“**PBGC**” means the Pension Benefit Guaranty Corporation and any Person succeeding to any or all of its functions under ERISA.

“**Pension Plan**” means any ERISA Plan that is subject to Section 412 of the Code or Title IV of ERISA to which the Issuer or any member of the Controlled Group may have a liability.

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

“**Permits**” has the meaning set forth in [Section 3.1](#).

“**Permitted Contest**” means a contest maintained in good faith by appropriate proceedings promptly instituted and diligently conducted and with respect to which such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made; provided that compliance with the obligation that is the subject of such contest is effectively stayed during such challenge.

“**Placement Agent**” means Univest Securities LLC.

“**Published Rate**” shall mean the rate of interest published on any applicable Business Day in The Wall Street Journal “Money Rates” listing under the caption “London Interbank Offered Rates” for a one (1) month period (or, if no such rate is published therein for any reason, then the Published Rate shall be the prevailing benchmark Eurodollar rate for a one (1) month period as published in another leading national or international financial or business publication determined by the Required Purchasers in its reasonable discretion, consistent with market practice).

“**Purchaser**” means each of (a) each Person party hereto in its capacity as a purchaser and holder of Securities issued hereunder and (b) the respective successors and assigns of all of the foregoing, and “**Purchasers**” means all of the foregoing.

“**Purchaser Parties**” has the meaning set forth in Section 9.2.

“**RCRA**” means the Resource Conservation and Recovery Act of 1976.

“**Required Maximum**” means, as of any date, the maximum aggregate number of shares of Common Stock then issued or potentially issuable in the future pursuant to the Transaction Documents, including without limitation all Underlying Shares issuable upon conversion in full of all Notes (including Underlying Shares issuable as payment of interest on the Notes) at the floor price prescribed under the Notes, ignoring any conversion or exercise limits set forth therein.

“**Registration Statement**” has the meaning set forth in Section 4.12(d).

“**Required Purchasers**” means, at any time, the Purchasers holding more than sixty seven (67%) of the aggregate principal amount of Notes outstanding under this Agreement, which must include Alto Opportunity Master Fund, SPC – Segregated Master Portfolio B so long as it owns any Securities.

“**Responsible Officer**” means, with respect to the Issuer, any of the Global President, Co-Global Chief Executive Officers, Chief Financial Officer, Treasurer or any other officer of the Issuer reasonably acceptable to the Required Purchasers.

“**Sale Leaseback Transaction**” shall mean, with respect to the Issuer, any arrangement, directly or indirectly, with any Person (other than the Issuer) whereby the Issuer shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property being sold or transferred.

“**Sanctions**” has the meaning set forth in Section 3.27.

“**SEC Reports**” means all reports, schedules, forms, statements and other documents required to be filed by the Issuer under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof, for the two years (or such shorter period as the Company was required by law or regulation to file such material) preceding the date hereof or the Closing Date, as applicable.

“**Securities**” means the Notes and the Underlying Shares.

“**Securities Act**” means the Securities Act of 1933, as amended, or any similar federal statute, and the rules and regulations thereunder as the same shall be in effect at the time.

“**Securitization Transaction**” shall mean any financing or factoring or similar transaction (or series of such transactions) entered by the Issuer or any of its Subsidiaries pursuant to which the Issuer or any of its Subsidiary may sell, convey or otherwise transfer, or grant a security interest in, accounts, payments, receivables, rights to future lease payments or residuals or similar rights to payment to a special purpose subsidiary or affiliate or any other Person.

“**Stockholder Approval**” means such approval as may be required by the applicable rules and regulations of the Nasdaq Stock Market from the stockholder of the Issuer with respect to the transactions contemplated by the Transaction Documents, including for purposes of Nasdaq Rule 5635(d).

“**Subsidiary**” means, with respect to any Person, any other Person of which an aggregate of more than 50% of the outstanding Capital Stock having ordinary voting power to elect a majority of the board of directors (or other applicable governing body) of such other Person is at the time, directly or indirectly, owned legally or beneficially by such Person or one or more Subsidiaries of such Person, or a combination thereof, or with respect to which any such Person has the right to vote or designate the vote of more than 50% of such Capital Stock whether by proxy, agreement, operation of Law or otherwise. Unless the context otherwise requires, each reference to a Subsidiary shall mean a Subsidiary of the Issuer.

“**Synthetic Lease**” shall mean a lease transaction under which the parties intend that (a) the lease will be treated as an “operating lease” by the lessee pursuant to Statement of Financial Accounting Standards No. 13, as amended and (b) the lessee will be entitled to various tax and other benefits ordinarily available to owners (as opposed to lessees) of like property.

“**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 shares of Common Stock are 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, the New York Stock Exchange (or any successors to any of the foregoing).

“**Transfer Agent**” means Continental Stock Transfer & Trust Issuer, the current transfer agent of the Issuer and any successor transfer agent of the Issuer.

“**Transaction Documents**” shall mean this Agreement, the Notes, the Controlled Account Agreement, all exhibits and schedules thereto and hereto and any other documents or agreements executed in connection with the transactions contemplated hereunder.

“**Underlying Shares**” means the shares of Common Stock issued and issuable pursuant to the terms of the Notes, including without limitation, shares of Common Stock issued and issuable in lieu of the cash payment of interest on the Notes in accordance with the terms of the Notes, as the case may be, in each case without respect to any limitation or restriction on the conversion of the Notes.

“**U.S.**” or “**United States**” means the United States of America.

“**VWAP**” has the meaning set forth in the Notes.

“**Wholly-Owned Subsidiary**” means, with respect to any Person, any Subsidiary of such Person of which all of the Capital Stock (other than, in the case of a Foreign Subsidiary, directors’ qualifying shares, to the extent legally required) are directly or indirectly owned and controlled by such Person or one or more Wholly-Owned Subsidiaries.

Annex B

Commitment Annex

Purchaser	Note Commitment Amount
Alto Opportunity Master Fund, SPC-Segregated Master Portfolio B	\$ 15,000,000
About Investment PTE.	\$ 10,000,000

Annex C

Closing Checklist

- Note for each Purchaser
- Legal Opinion
- Officer's Certificate
- Funds of Flow Letter
- Good standing certificate of the Issuer
- Controlled Account Agreements

EXHIBIT A
FORM OF CONVERTIBLE NOTE
(see attached)

[Exhibit A – Page 1]

**DEPOSIT ACCOUNT CONTROL AGREEMENT
(Blocked Account)**

This Deposit Account Control Agreement (Blocked Account) (this “Agreement”) is entered into as of May [], 2026, by Faraday Future Intelligent Electric Inc. (“Borrower”), [] (“Lender”), and East West Bank, a California banking corporation (“Deposit Holder”).

RECITALS

A. Lender has a first-priority security interest in the account(s) listed under Schedule A to this Agreement and related rights and property (collectively, the “Accounts”) pursuant to a Senior Convertible Note dated as of May [], 2026 (the “Security Agreement”) executed by Borrower in favor of Lender.

B. Borrower and Lender are requesting that Deposit Holder enter into this Agreement to perfect Lender’s security interests in the Accounts by control.

C. Deposit Holder is willing to act as Deposit Holder, but only under the terms of this Agreement. Deposit Holder has no obligation or duties with respect to any other agreements between Lender and Borrower.

AGREEMENT

1. Security Interest

Deposit Holder acknowledges Lender’s security interest in the Accounts. Borrower ratifies and confirms the security interests it has granted to Lender in the Accounts. This Agreement evidences Lender’s control over the Accounts.

2. Control of Account by Lender; Borrower’s Rights in Account

2.1 Notwithstanding any separate agreement Borrower may have with Deposit Holder, Lender shall be entitled at any time to give Deposit Holder instructions as to the withdrawal or disposition of available funds from time to time credited to the Accounts, or as to any other matters relating to the Accounts, all without further consent of Borrower. Deposit Holder shall, and is fully entitled to, rely upon any such instructions from Lender even if such instructions are contrary to any instructions or demands that Borrower may give to Deposit Holder.

2.2 Deposit Holder acknowledges and agrees that (i) in accordance with paragraph 2.1 above, it shall comply with the instructions originated by Lender directing disposition of any available funds from time to time credited to the Accounts without further consent of Borrower; (ii) Lender now has exclusive control of the Accounts for purposes of Sections 9312(b) and 9314 of the Uniform Commercial Code, (iii) Borrower does not have a right to make withdrawals or otherwise transact on the Accounts, (iv) the Accounts will be maintained as “deposit accounts” as defined in Section 9102(a)(29) of the Uniform Commercial Code in effect in the State of California, and (v) the Deposit Holder is engaged in the business of banking and is a “bank” as such term is defined in Section 9102(a)(8) of the Uniform Commercial Code in effective in the State of California. Notwithstanding anything to the contrary contained herein, if at any time Deposit Holder shall receive conflicting orders or instructions from Lender and Borrower, Deposit Holder shall follow the orders or instructions of Lender, and not the orders or instructions of Borrower.

2.3 Borrower represents and warrants to Lender and Deposit Holder that it has not assigned or granted a security interest in the Accounts, except to Lender. Borrower will not permit the Accounts to become subject to any other pledge, assignment, lien, charge or encumbrance of any kind, other than Lender's security interests referred to herein.

2.4 The signatures below represent the authorized signers who may give Deposit Holder instructions as to the withdrawal or disposition of available funds in the Accounts:

Name	Telephone #	Email	Signature
[]	[]	[]	[]
[]	[]	[]	[]

3. Deposit Holder's Responsibility

3.1 Deposit Holder shall have no duty to inquire or determine whether Borrower's obligations to Lender are in default or whether Lender or Borrower is entitled, under any separate agreement between Lender and Borrower, to give any instructions relating to the Accounts. Deposit Holder shall have no responsibility or liability to Lender or Borrower for complying with any order or instruction, whether oral or written, concerning the Accounts, except to the extent such compliance would violate the provisions of this Agreement, or Deposit Holder acted with gross negligence or engaged in willful misconduct. Deposit Holder shall have no responsibility or liability to Lender or Borrower for losses or liabilities resulting from any failure to comply with instructions relating to the Accounts or delay in complying with such instructions if the failure or delay is due to circumstances beyond Deposit Holder's reasonable control, including without limitation interruptions of communications facilities, civil unrest, acts of God, wars, or terrorist attacks, and provided Deposit Holder had reasonable opportunity to act thereon. Without limiting the foregoing, in no event shall Deposit Holder have any liability for indirect, punitive, exemplary or consequential loss or damages, including without limitation lost profits, whether or not any claim for such loss or such damages is based on tort or contract or Deposit Holder knew or should have known the likelihood of such damages in any circumstances.

3.2 Upon reasonable opportunity for Deposit Holder to act after receipt of Lender's instructions to that effect and continuing on each Business Day thereafter, Deposit Holder shall transfer all available balances in the Accounts to Lender at its account specified in such instructions. Any disposition of funds Deposit Holder makes in response to instructions from Lender is subject to Deposit Holder's standard policies, procedures and documentation governing the type of disposition made. Lender agrees to pay all fees for the transfer of funds as per instructions. Funds are not available if, in the reasonable determination of Deposit Holder, they are subject to a dispute or legal process preventing their withdrawal until the Deposit Holder receives an appropriate court order or other assurances acceptable to the Deposit Holder establishing that funds may be disbursed according to instructions then applicable to the Accounts. A "Business Day" is each day except Saturdays, Sundays, or federal or state holidays on which commercial banks in California are authorized or required by law to remain closed.

3.3 Deposit Holder may rely on notices and communications it believes in good faith to be genuine and given by the appropriate party.

4. Priority of Lender's Security Interests; Rights Reserved by Deposit Holder

Deposit Holder agrees that all of its present and future rights against the Accounts are subordinate to Lender's security interests therein; provided, however, that Lender agrees that nothing herein subordinates or waives, and that Deposit Holder expressly reserves, all of its present and future rights (whether described as rights of setoff, banker's lien, chargeback or otherwise, and whether available to Deposit Holder under the law or under any other agreement between Deposit Holder and Borrower concerning the Account or otherwise) with respect to (a) items deposited to the Accounts and returned unpaid, whether for insufficient funds or for any other reason, and without regard to the timeliness of return of any such item; (b) overdrafts on the Accounts; (c) automated clearing house entries; (d) claims of breach of the Uniform Commercial Code's transfer or presentment warranties made against Deposit Holder in connection with items deposited to the Accounts; and (e) Deposit Holder's usual and customary charges for services rendered in connection with the Accounts, to the extent that, in each case, Borrower has not separately paid or reimbursed Deposit Holder therefor. To the extent any of the Accounts is a certificate of deposit or time deposit, Deposit Holder will be entitled to deduct any applicable early withdrawal penalty prior to disbursing funds from such Account in response to instructions from Lender.

5. Statements

In addition to the original deposit account statement for the Accounts which is provided to Borrower, Deposit Holder will send duplicate statements to Lender. Borrower authorizes Deposit Holder to provide any additional information relating to the Accounts to Lender upon its request without Borrower's further consent.

6. Notice of Adverse Claims; Record of Security Interest

6.1 Deposit Holder represents to Lender that Deposit Holder has not received notice of any lien, encumbrance or other claim to the Accounts from any other person and has not entered into, and covenants with Lender that it will not enter into, any agreement with any other person by which Deposit Holder is obligated to comply with instructions from such other person as to the disposition of funds from the Accounts or other dealings with the Accounts. Deposit Holder will use commercially reasonable efforts, subject to applicable law, to promptly notify Lender if any other person claims that it has a property interest in the Accounts or seeks to enter into a deposit account control agreement or similar agreement with respect to the Accounts.

6.2 Deposit Holder further represents and warrants that it has marked its books and records to indicate Lender's security interests in and liens upon the Accounts.

7. Returned Items

Borrower and Lender understand and agree that Deposit Holder will pay returned items by debiting the applicable Account to the extent that Borrower has not separately paid or reimbursed Deposit Holder therefor. Borrower agrees to pay the amount of any returned item immediately upon demand to the extent that there are not sufficient funds in the applicable Account to cover such amount on the day of the debit. If the Borrower has failed to pay the Bank the full amount of such returned items after demand by the Deposit Holder, Lender agrees that Lender will pay any unpaid amount within twenty (20) days after demand on Lender by Deposit Holder, up to the amount of any proceeds received by Lender under this Agreement. "Returned item" means (i) any item deposited to an Account and returned unpaid, whether for insufficient funds or for any other reason and without regard to timeliness of the return or on any drawee's notice of non-payment; (ii) any time subject to a Commercial Code or Regulation CC (12 CFR Section 229), as in effect from time to time; (iii) any automated clearing house entry credited to an Account and returned unpaid or subject to an adjustment entry under applicable clearing house rules, whether for insufficient funds or any other reason, (iv) any credit to an Account from a merchant card transaction, against which a contractual demand of chargeback has been made; and (v) any credit made to an Account in error.

8. Indemnity.

Borrower and Lender, jointly and individually, agree to indemnify Deposit Holder its officers, directors, employees, and agents against claims, demands, losses, liabilities, damages, costs and expenses arising out of this Agreement including all fees and costs incurred by Deposit Holder in complying with instructions' or requests given by Lender hereunder, and including reasonable attorneys' fees and disbursements and the reasonable out of pocket costs and expenses of legal counsel, except to the extent the claims, losses, liabilities, damages, costs or expenses are caused by Deposit Holder's gross negligence or willful misconduct. IN NO EVENT WILL DEPOSIT HOLDER BE LIABLE TO ANY PARTY FOR PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES.

9. Termination

Lender shall terminate this Agreement by written notice to Deposit Holder and Borrower in the event that all obligations secured by the Security Agreement by Borrower in favor of Lender have been satisfied in full or at any other time. Deposit Holder may terminate this Agreement on thirty (30) days' prior written notice to Lender and Borrower. Borrower may not terminate this Agreement except with written consent of Lender.

10. Governing Law.

10.1 This Agreement will be governed by the internal laws of California, without regard to principles of conflict of laws.

10.2 Deposit Holder's jurisdiction for purposes of Section 9304 of the Uniform Commercial Code shall be California.

11. Entire Agreement.

This Agreement is the entire agreement among the parties regarding the subject matter hereof and supersedes any prior agreements and contemporaneous oral agreements of the parties concerning its subject matter. This Agreement will control over any conflicting agreement between Deposit Holder and Borrower.

12. Amendments.

No amendment of, or waiver of a right under, this Agreement will be binding unless it is in writing and signed by Borrower, Lender and Deposit Holder.

13. Severability.

To the extent a provision of this Agreement is invalid or unenforceable, this Agreement will be construed as if the invalid or unenforceable provisions were omitted.

19. Judicial Reference

ALL DISPUTES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL BE RESOLVED BY A JUDICIAL REFERENCE PROCEEDING PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE § 638. THE JUDICIAL REFEREE APPOINTED TO DECIDE THE JUDICIAL REFERENCE PROCEEDING SHALL BE EMPOWERED TO HEAR AND RESOLVE ANY OR ALL ISSUES IN THE PROCEEDING, WHETHER OF FACT OR LAW.

To evidence the parties' agreement to this Agreement's terms, they have signed it on the date set forth in the preamble.

LENDER

By: _____
Name: _____
Title: _____

BORROWER

Faraday Future Intelligent Electric Inc., a Delaware Corporation

By: _____
Name: Jiawei Wang
Title: Global Executive Chairman

DEPOSIT HOLDER

East West Bank,
a California Banking Corporation

By: _____
Name: _____
Title: _____

Schedule A
(List of Accounts)

Bank Name: East West Bank
ABA No.: 322070381
Account Name:
Account No.:

PLACEMENT AGENCY AGREEMENT

May 16, 2026

Univest Securities, LLC
75 Rockefeller Plaza, 25A
New York, New York 10019

Ladies and Gentlemen:

Subject to the terms and conditions herein (this “Agreement”) and the Transaction Documents (defined below), Faraday Future Intelligent Electric Inc., a Delaware corporation (the “Company”), has agreed to issue and sell senior convertible notes of the Company (the “Notes”) directly to one or more investors (each, an “Investor” and, collectively, the “Investors”) through Univest Securities, LLC (the “Placement Agent”), as placement agent. The Securities (as defined below) shall be offered and sold by the Company pursuant to Section 4(a)(2) under the Securities Act of 1933, as amended (the “Securities Act”). The documents executed and delivered by the Company and the Investors in connection with the Offering (as defined below), including, without limitation, a securities purchase agreement (the “Purchase Agreement”), the Notes, and all other agreements executed in connection therewith, shall be collectively referred to herein as the “Transaction Documents.” The Placement Agent may retain other brokers or dealers to act as sub-agents or selected-dealers on its behalf in connection with the Offering (as defined below). The Notes and the shares of Class A Common Stock of the Company (the “Common Stock”) issuable upon conversion of the Notes are hereafter collectively referred to as the “Securities.”

The Company hereby confirms its agreement with the Placement Agent as follows:

Section 1. Agreement to Act as Placement Agent.

(a) On the basis of the representations, warranties and agreements of the Company herein contained, and subject to all the terms and conditions of this Agreement, the Placement Agent shall be the exclusive Placement Agent in connection with the offering and sale by the Company of the Securities pursuant to Section 4(a)(2) under the Securities Act, with the terms of such offering (the “Offering”) to be subject to market conditions and negotiations between the Company, the Placement Agent and the prospective Investors. The Placement Agent will act on a reasonable best efforts basis and the Company agrees and acknowledges that there is no guarantee of the successful placement of the Securities, or any portion thereof, in the prospective Offering. Under no circumstances will the Placement Agent or any of its “Affiliates” (as defined below) be obligated to underwrite or purchase any of the Securities for its own account or otherwise provide any financing. The Placement Agent shall act solely as the Company’s agent and not as principal. The Placement Agent shall have no authority to bind the Company with respect to any prospective offer to purchase Securities and the Company shall have the sole right to accept offers to purchase Securities and may reject any such offer, in whole or in part. Subject to the terms and conditions hereof, payment of the purchase price for, and delivery of, the Securities shall be made at one or more closings (each a “Closing” and the date on which each Closing occurs, a “Closing Date”). As compensation for services rendered, on each Closing Date, the Company shall pay to the Placement Agent the fees and expenses set forth below:

(i) With respect to Investor 1 identified on Schedule I, a cash fee equal to 8% of (A) the gross proceeds received by the Company from the sale of Notes to Investor 1 at such Closing paid to the Company’s operating account(s) *plus* (B) amounts transferred to the Company’s operations account(s) from one or more controlled deposit accounts associated with Investor 1 in accordance with the terms of the Transaction Documents (*provided*, that such amounts described in this clause (B) shall be payable within three (3) Business Days from the date such amounts are so transferred from the controlled deposit account).

(ii) With respect to Investor 2 identified on Schedule I, a cash fee equal to 2% of (A) the gross proceeds received by the Company from the sale of Notes to Investor 2 at such Closing paid to the Company's operating account(s) plus (B) amounts transferred to the Company's operating account(s) from one or more controlled deposit accounts associated with Investor 2 in accordance with the terms of the Transaction Documents (*provided*, that such amounts described in this clause (B) shall be payable within three (3) Business Days from the date such amounts are so transferred from the controlled deposit account).

(iii) The Company also agrees to pay to the Placement Agent \$125,000 for out-of-pocket expenses, including the reasonable fees and expenses of Placement Agent's counsel and due diligence analysis, and provided, however, that in the event that the Offering is terminated prior to any Closing, the Company agrees to reimburse the Placement Agent pursuant to Section 6 hereof.

(b) The term of the Placement Agent's exclusive engagement will be until the earlier of the completion of the Offering and May 31, 2026 (the "Exclusive Term"). Either the Company or the Placement Agent may elect to terminate the engagement hereunder for any reason prior to the First Closing, but in the event the Company terminates this Agreement without Cause, the Company will remain responsible for the fees set forth herein. Notwithstanding anything to the contrary contained herein, the provisions concerning confidentiality, indemnification and contribution contained herein and the Company's obligations contained in the indemnification provisions will survive any expiration or termination of this Agreement, and the Company's obligation to pay fees actually earned and payable and to reimburse expenses actually incurred and reimbursable pursuant to Section 1 hereof and which are permitted to be reimbursed under FINRA Rules, will survive any expiration or termination of this Agreement. Nothing in this Agreement shall be construed to limit the ability of the Placement Agent or its Affiliates to pursue, investigate, analyze, invest in, or engage in investment banking, financial advisory or any other business relationship with Persons (as defined herein) other than the Company. As used herein (i) "Persons" 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, (ii) "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 and (iii) "Cause" with respect to a termination by the Company means the gross negligence, fraud or willful misconduct of the Placement Agent in the performance of the services that are the subject to this Agreement. The Placement Agent agrees not to use any confidential information concerning the Company provided to the Placement Agent by the Company for any purposes other than those contemplated under this Agreement.

Section 2. Representations and Warranties of the Company. The Company represents and warrants to the Placement Agent, as of the date hereof and as of each Closing Date, all of the representations, warranties and agreements of the Company that were made by the Company to the Investors (as defined in the Purchase Agreement) in Section 3 of the Purchase Agreement are true and correct with the same force and effect as of the date hereof and as of each Closing Date as if made on the date hereof and each Closing Date, and that such representations and warranties set forth in Section 3 thereof are hereby incorporated by reference herein. The Company agrees to all of the agreements and covenants with respect to the Company in Article 4 of the Purchase Agreement and that such agreements and covenants set forth in Article 4 thereof are incorporated by reference herein. In addition to the foregoing, the Company represents and warrants to the Placement Agent that:

(a) (i) the Company has full right, power and authority to enter into this Agreement and to perform all of its obligations hereunder and consummate the transactions contemplated hereby and thereby; (ii) this Agreement has been duly executed and delivered by the Company and this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms; (iii) the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and thereby have been duly authorized by the Company's Board of Directors and no further consent or authorization of the Company, its Board of Directors, or its shareholders is required except as set forth in the Transaction Documents; and (iv) the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and thereby does not conflict with or result in a breach of (x) the Company's certificate of incorporation or bylaws or other charter documents, or (y) any agreement to which the Company is a party or by which any of its property or assets is bound.

(b) All disclosure provided by the Company to the Placement Agent regarding the Company, its business and the transactions contemplated hereby, taken together with all reports, schedules, forms, statements and other documents required to be filed by it with the Securities and Exchange Commission (the "Commission") pursuant to the reporting requirements of the Exchange Act (all of the foregoing filed prior to the date hereof and all exhibits included therein and financial statements and schedules thereto and documents (other than exhibits to such documents) incorporated by reference therein, being hereinafter referred to herein as the "SEC Filings"), is true and correct in all material aspects and does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. To the best of the Company's knowledge and belief, other than the current capital raising (of which this Agreement forms part), no event or circumstance has occurred or information exists with respect to the Company or its business, properties, prospects, operations or financial conditions, which, under the applicable laws, rules or regulations of the Commission, requires public disclosure or announcement by the Company but which has not been so publicly announced or disclosed.

(c) The Company has not taken and will not take any action, directly or indirectly, so as to cause the Offering to fail to be entitled to rely upon the exemption from registration afforded by Section 4(a)(2) of the Securities Act. In effecting the Offering, the Company agrees to comply in all material respects with applicable provisions of the Securities Act and any regulations thereunder and any applicable laws, rules, regulations and requirements (including, without limitation, all U.S. state law and all national, provincial, city or other legal requirements).

Section 3. Delivery and Payment. The Closing shall occur virtually via exchange of documents and signatures (or at such other place as shall be agreed upon by the Placement Agent and the Company). Subject to the terms and conditions hereof, at the Closing payment of the purchase price for the Securities sold on the Closing Date shall be made by Federal Funds wire transfer, against delivery of such Securities, and such Securities shall be registered in such name or names and shall be in such denominations, as the Placement Agent may request at least one (1) Business Day before the time of purchase.

Deliveries of the documents with respect to the purchase of the Securities, if any, shall be made at the offices of Placement Agent. All actions taken at the Closing shall be deemed to have occurred simultaneously.

Section 4. Covenants and Agreements of the Company. The Company further covenants and agrees with the Placement Agent as follows:

(a) Blue Sky Compliance. The Company will cooperate with the Placement Agent and the Investors in endeavoring to qualify the Securities for sale under the securities laws of such jurisdictions (United States and foreign) as the Placement Agent and the Investors may reasonably request and will make such applications, file such documents, and furnish such information as may be reasonably required for that purpose, provided the Company shall not be required to qualify as a foreign corporation or to file a general consent to service of process in any jurisdiction where it is not now so qualified or required to file such a consent, and provided further that the Company shall not be required to produce any new disclosure document other than the Transaction Documents. The Company will, from time to time, prepare and file such statements, reports and other documents as are or may be required to continue such qualifications in effect for so long a period as the Placement Agent may reasonably request for distribution of the Securities. The Company will advise the Placement Agent promptly of the suspension of the qualification or registration of (or any such exemption relating to) the Securities for offering, sale or trading in any jurisdiction or any initiation or threat of any proceeding for any such purpose, and in the event of the issuance of any order suspending such qualification, registration or exemption, the Company shall use its best efforts to obtain the withdrawal thereof at the earliest possible moment.

(b) Amendments and Supplements to the Transaction Documents and Other Matters. The Company will comply with the Securities Act and the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules and regulations of the Commission thereunder, so as to permit the completion of the distribution of the Securities as contemplated in this Agreement and the Transaction Documents. If, prior to the termination of the Offering, any event shall occur as a result of which, in the judgment of the Company or in the opinion of the Placement Agent or Placement Agent Counsel, it becomes necessary to amend or supplement the Transaction Documents in order to make the statements therein, in the light of the circumstances under which they were made, as the case may be, not misleading, or if it is necessary at any time to amend or supplement the Transaction Documents, the Company will promptly prepare and furnish at its own expense to the Placement Agent and to dealers, an appropriate amendment or supplement to the Transaction Documents that is necessary in order to make the statements therein as so amended or supplemented, in the light of the circumstances under which they were made, as the case may be, not misleading, or so that the Transaction Documents, as so amended or supplemented, will comply with applicable laws related to the Offering. Before amending or supplementing Transaction Documents in connection with the Offering, the Company will furnish the Placement Agent with a copy of such proposed amendment or supplement and will not disseminate any such amendment or supplement to which the Placement Agent reasonably objects. Notwithstanding any provision of this Section 4(b), the Company and its counsel shall be afforded a reasonable opportunity to demonstrate why such amendment or supplement may not be necessary or advisable.

(c) Copies of any Amendments and Supplements to the Transaction Documents. The Company will furnish the Placement Agent, without charge, during the period beginning on the date hereof and ending on the later of the last Closing Date of the Offering, as many copies of the Transaction Documents and any amendments and supplements thereto as the Placement Agent may reasonably request.

(d) [Reserved].

(e) Transfer Agent. The Company will maintain, at its expense, a registrar and transfer agent for the Common Stock until such date as no Securities are outstanding.

(f) Registration of Securities; Exchange Approval. The Common Stock is registered under the Exchange Act and, as of the Closing Date, the Underlying Securities shall be listed and admitted and authorized for trading on the Nasdaq Capital Market (the "Trading Market") or other applicable U.S. national exchange and satisfactory evidence of such action shall have been provided to the Placement Agent. For a period of three (3) years, the Company shall take no action designed to, or likely to have the effect of terminating the registration of the Common Stock under the Exchange Act or delisting or suspending from trading the Common Stock from the Trading Market or other applicable U.S. national exchange and the Company has not received any information suggesting that the Commission or the Trading Market or other U.S. applicable national exchange is contemplating terminating such registration or listing.

(g) Additional Documents. The Company will enter into any subscription, purchase or other customary agreements as the Placement Agent or the Investors reasonably deem necessary or appropriate to consummate the Offering, all of which will be in form and substance reasonably acceptable to the Placement Agent and the Investors. The Company agrees that the Placement Agent may rely upon, and each is a third-party beneficiary of, the representations and warranties, and applicable covenants, set forth in any such purchase, subscription or other agreement with Investors in the Offering.

(h) No Manipulation of Price. The Company will not take, directly or indirectly, any action designed to cause or result in, or that has constituted or might reasonably be expected to constitute, the stabilization or manipulation of the price of any securities of the Company.

(i) Acknowledgment. The Company acknowledges that any advice given by the Placement Agent to the Company is solely for the benefit and use of the Board of Directors of the Company and may not be used, reproduced, disseminated, quoted or referred to, without the Placement Agent's prior written consent.

Section 5. Conditions of the Obligations of the Placement Agent. The obligations of the Placement Agent hereunder shall be subject to the accuracy of the representations and warranties on the part of the Company set forth in Section 2 hereof, in each case as of the date hereof and as of each Closing Date as though then made, to the timely performance by each of the Company of its covenants and other obligations hereunder on and as of such dates, and to each of the following additional conditions:

(a) No Untrue Statements. The Placement Agent shall not have discovered and disclosed to the Company on or prior to the Closing Date that the SEC Filings contains an untrue statement of a fact which, in the opinion of Placement Agent's Counsel, is material or omits to state any fact which, in the opinion of such counsel, is material and is required to be stated therein or is necessary to make the statements therein not misleading.

(b) Compliance with Regulatory Requirements. No order having the effect of ceasing or suspending the distribution of the Securities or any other securities of the Company shall have been issued by any securities commission, securities regulatory authority or stock exchange and no proceedings for that purpose shall have been instituted or shall be pending or, to the knowledge of the Company, contemplated by any securities commission, securities regulatory authority or stock exchange.

(c) Corporate Proceedings. All corporate proceedings and other legal matters in connection with this Agreement, the Transaction Documents, and the registration or exemption therefrom, sale and delivery of the Securities, shall have been completed or resolved in a manner reasonably satisfactory to the Placement Agent Counsel, and such counsel shall have been furnished with such papers and information as it may reasonably have requested to enable such counsel to pass upon the matters referred to in this Section 5.

(d) No Material Adverse Change. Subsequent to the execution and delivery of this Agreement and prior to the Closing Date (if there shall be more than one Closing Date then prior to each Closing Date), in the Placement Agent's sole judgment after consultation with the Company, there shall not have occurred any Material Adverse Effect (as defined in the Purchase Agreement).

(e) Opinion of Counsel for the Company. The Placement Agent shall have received on each Closing Date the favorable opinion of Pryor Cashman LLP, legal counsel to the Company, dated as of such Closing Date, addressed to the Placement Agent and in form and substance satisfactory to the Placement Agent.

(f) [Reserved].

(g) Stock Exchange Listing. The Common Stock shall be registered under the Exchange Act and shall be listed on the Trading Market, and the Company shall not have taken any action designed to terminate, or likely to have the effect of terminating, the registration of the Common Stock under the Exchange Act or delisting or suspending from trading the Common Stock from the Trading Market, nor, except as disclosed in the Company's reports filed under the Exchange Act, shall the Company have received any information suggesting that the Commission or the Trading Market is contemplating terminating such registration or listing.

(h) Additional Documents. On or before each Closing Date, the Placement Agent and counsel for the Placement Agent shall have received such information and documents as they may reasonably require for the purposes of enabling them to pass upon the issuance and sale of the Securities as contemplated herein, or in order to evidence the accuracy of any of the representations and warranties, or the satisfaction of any of the conditions or agreements, herein contained.

If any condition specified in this Section 5 is not satisfied when and as required to be satisfied, this Agreement may be terminated by the Placement Agent by notice to the Company at any time on or prior to a Closing Date, which termination shall be without liability on the part of any party to any other party, except that Section 6 (Payment of Expenses), Section 7 (Indemnification and Contribution) and Section 8 (Representations and Indemnities to Survive Delivery) shall at all times be effective and shall survive such termination.

Section 6. Payment of Expenses. The Company agrees to pay all costs, fees and expenses incurred by the Company in connection with the performance of its obligations hereunder and in connection with the transactions contemplated hereby, including, without limitation: (i) all expenses incident to the issuance, delivery and qualification of the Securities (including all printing and engraving costs); (ii) all fees and expenses of the registrar and transfer agent of the Common Stock; (iii) all necessary issue, transfer and other stamp taxes in connection with the issuance and sale of the Securities; (iv) all fees and expenses of the Company's counsel, independent public or certified public accountants and other advisors; (v) all costs and expenses incurred in connection with the preparation, printing, filing, shipping and distribution of the Transaction Documents, and all amendments and supplements thereto, and this Agreement; (vi) all filing fees, reasonable attorneys' fees and expenses incurred by the Company or the Placement Agent in connection with qualifying or registering (or obtaining exemptions from the qualification or registration of) all or any part of the Securities for offer and sale under the state securities or blue sky laws or the securities laws of any other country; (vii) the fees and expenses associated with including the Securities on the Trading Market; and (viii) the fees and expenses of out-of-pocket expenses, including the reasonable fees and expenses of Placement Agent's counsel and due diligence analysis not to exceed \$125,000; provided, however, if this Agreement is terminated without an offering then such amount shall not exceed \$75,000.

Section 7. Indemnification and Contribution.

(a) The Company agrees to indemnify and hold harmless the Placement Agent, its Affiliates and each person controlling the Placement Agent (within the meaning of Section 15 of the Securities Act), and the directors, officers, agents and employees of the Placement Agent, its Affiliates and each such controlling person (the Placement Agent, and each such entity or person, an “Indemnified Person”) from and against any losses, claims, damages, judgments, assessments, costs and other liabilities (collectively, the “Liabilities”), and shall reimburse each Indemnified Person for all documented fees and expenses (including the documented fees and expenses of one counsel for all Indemnified Persons, except as otherwise expressly provided herein) (collectively, the “Expenses”) as they are incurred by an Indemnified Person in investigating, preparing, pursuing or defending any Actions, whether or not any Indemnified Person is a party thereto, (i) caused by, or arising out of or in connection with, any untrue statement or alleged untrue statement of a material fact contained in any Transaction Document or by any omission or alleged omission to state therein a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading (other than untrue statements or alleged untrue statements in, or omissions or alleged omissions from, information relating to an Indemnified Person furnished in writing by or on behalf of such Indemnified Person expressly for use in the Transaction Documents) or (ii) otherwise arising out of or in connection with advice or services rendered or to be rendered by any Indemnified Person pursuant to this Agreement, the transactions contemplated thereby or any Indemnified Person’s actions or inactions in connection with any such advice, services or transactions; provided, however, that, the Company shall not be responsible for any Liabilities or Expenses of any Indemnified Person that are finally judicially determined to have resulted solely from such Indemnified Person’s (x) gross negligence, fraud or willful misconduct in connection with any of the advice, actions, inactions or services referred to above or (y) use of any offering materials or information concerning the Company in connection with the offer or sale of the Securities in the Offering which were not authorized for such use by the Company. The Company also agrees to reimburse each Indemnified Person for all Expenses as they are incurred in connection with enforcing such Indemnified Person’s rights under this Agreement.

(b) Upon receipt by an Indemnified Person of actual notice of an Action against such Indemnified Person with respect to which indemnity may be sought under this Agreement, such Indemnified Person shall promptly notify the Company in writing; provided that failure by any Indemnified Person so to notify the Company shall not relieve the Company from any liability which the Company may have on account of this indemnity or otherwise to such Indemnified Person, except to the extent the Company shall have been prejudiced by such failure. The Company shall, if requested by the Placement Agent or if the Company so elects, assume the defense of any such Action including the employment of counsel reasonably satisfactory to the Placement Agent, which counsel may also be counsel to the Company. Any Indemnified Person shall have the right to employ separate counsel in any such action and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless: (i) the Company has failed to promptly assume the defense and employ counsel or (ii) the named parties to any such Action (including any impeded parties) include such Indemnified Person and the Company, and such Indemnified Person shall have been advised in the reasonable opinion of counsel that there is an actual conflict of interest that prevents the counsel selected by the Company from representing both the Company (or another client of such counsel) and any Indemnified Person; provided that the Company shall not in such event be responsible hereunder for the fees and expenses of more than one firm of separate counsel for all Indemnified Persons in connection with any Action or related Actions (as defined herein), in addition to any local counsel. The Company shall not be liable for any settlement of any Action effected without its written consent (which shall not be unreasonably withheld). In addition, the Company shall not, without the prior written consent of the Placement Agent (which shall not be unreasonably withheld), settle, compromise or consent to the entry of any judgment in or otherwise seek to terminate any pending or threatened Action in respect of which indemnification or contribution may be sought hereunder (whether or not such Indemnified Person is a party thereto) unless such settlement, compromise, consent or termination includes an unconditional release of each Indemnified Person from all Liabilities arising out of such Action for which indemnification or contribution may be sought hereunder. The indemnification required hereby shall be made by periodic payments of the amount thereof during the course of the investigation or defense, as such expense, loss, damage or liability is incurred and is due and payable. “Action” means any action, suit, inquiry, notice of violation, proceeding or investigation affecting the Company, any Subsidiary or any of their respective properties before or by any court, arbitrator, governmental or administrative agency or regulatory authority (federal, state, county, local or foreign).

(c) In the event that the foregoing indemnity is unavailable to an Indemnified Person other than in accordance with this Agreement, the Company shall contribute to the Liabilities and Expenses paid or payable by such Indemnified Person in such proportion as is appropriate to reflect (i) the relative benefits to the Company, on the one hand, and to the Placement Agent and any other Indemnified Person, on the other hand, of the matters contemplated by this Agreement or (ii) if the allocation provided by the immediately preceding clause is not permitted by applicable law, not only such relative benefits but also the relative fault of the Company, on the one hand, and the Placement Agent and any other Indemnified Person, on the other hand, in connection with the matters as to which such Liabilities or Expenses relate, as well as any other relevant equitable considerations; provided that in no event shall the Company contribute less than the amount necessary to ensure that all Indemnified Persons, in the aggregate, are not liable for any Liabilities and Expenses in excess of the amount of fees actually received by the Placement Agent pursuant to this Agreement. For purposes of this paragraph, the relative benefits to the Company, on the one hand, and to the Placement Agent on the other hand, of the matters contemplated by this Agreement shall be deemed to be in the same proportion as (a) the total value paid or contemplated to be paid to or received or contemplated to be received by the Company in the transaction or transactions that are within the scope of this Agreement, whether or not any such transaction is consummated, bears to (b) the fees paid to the Placement Agent under this Agreement. Notwithstanding the above, no person guilty of fraudulent misrepresentation within the meaning of Section 11(f) of the Securities Act, as amended, shall be entitled to contribution from a party who was not guilty of fraudulent misrepresentation.

(d) The Company also agrees that no Indemnified Person shall have any liability (whether direct or indirect, in contract or tort or otherwise) to the Company for or in connection with advice or services rendered or to be rendered by any Indemnified Person pursuant to this Agreement, the transactions contemplated thereby or any Indemnified Person's actions or inactions in connection with any such advice, services or transactions except for Liabilities (and related Expenses) of the Company that are finally judicially determined to have resulted solely from such Indemnified Person's gross negligence, fraud or willful misconduct in connection with any such advice, actions, inactions or services.

(e) The reimbursement, indemnity and contribution obligations of the Company set forth herein shall apply to any modification of this Agreement and shall remain in full force and effect regardless of any termination of, or the completion of any Indemnified Person's services under or in connection with, this Agreement.

Section 8. Representations and Indemnities to Survive Delivery. The respective indemnities, agreements, representations, warranties and other statements of the Company or any person controlling the Company, of its officers, and of the Placement Agent set forth in or made pursuant to this Agreement will remain in full force and effect, regardless of any investigation made by or on behalf of the Placement Agent, the Company, or any of its or their partners, officers or directors or any controlling person, as the case may be, and will survive delivery of and payment for the Securities sold hereunder and any termination of this Agreement. A successor to the Placement Agent, or to the Company, its directors or officers or any person controlling the Company, shall be entitled to the benefits of the indemnity, contribution and reimbursement agreements contained in this Agreement.

Section 9. Notices. All communications hereunder shall be in writing and shall be mailed, hand delivered, emailed or telecopied and confirmed to the parties hereto as follows:

If to the Placement Agent to:

Univest Securities, LLC
75 Rockefeller Plaza, 25A
New York, NY 10019
Attention: Edric Yi Guo, Chief Executive Officer
Email: yguo@univest.us

If to the Company:

Faraday Future Intelligent Electric Inc.
1990 E Grand Ave.
El Segundo, California 90245
Attention: Legal Department
Email: legal@ff.com

with a copy (for informational purposes only) to:

Pryor Cashman LLP
7 Times Square
New York, NY 10036
Attention: Ali Panjwani, Esq.
Email: ali.panjwani@pryorcashman.com

Any party hereto may change the address for receipt of communications by giving written notice to the others.

Section 10. [Reserved].

Section 11. Successors. This Agreement will inure to the benefit of and be binding upon the parties hereto, and to the benefit of the employees, officers and directors and controlling persons referred to in Section 7 hereof, and to their respective successors, and personal representative, and no other person will have any right or obligation hereunder.

Section 12. Partial Unenforceability. The invalidity or unenforceability of any section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other section, paragraph or provision hereof. If any Section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable.

Section 13. Governing Law Provisions. This Agreement shall be deemed to have been made and delivered in New York City and both this Agreement and the transactions contemplated hereby shall be governed as to validity, interpretation, construction, effect and in all other respects by the internal laws of the State of New York, without regard to the conflict of laws principles thereof. Each of the Placement Agent and the Company: (i) agrees that any legal suit, action or proceeding arising out of or relating to this Agreement and/or the transactions contemplated hereby shall be instituted exclusively in New York Supreme Court, County of New York, or in the United States District Court for the Southern District of New York, (ii) waives any objection which it may have or hereafter to the venue of any such suit, action or proceeding, and (iii) irrevocably consents to the jurisdiction of the New York Supreme Court, County of New York, and the United States District Court for the Southern District of New York in any such suit, action or proceeding. Each of the Placement Agent and the Company further agrees to accept and acknowledge service of any and all process which may be served in any such suit, action or proceeding in the New York Supreme Court, County of New York, or in the United States District Court for the Southern District of New York and agrees that service of process upon the Company mailed by certified mail to the Company's address shall be deemed in every respect effective service of process upon the Company, in any such suit, action or proceeding, and service of process upon the Placement Agent mailed by certified mail to the Placement Agent's address shall be deemed in every respect effective service process upon the Placement Agent, in any such suit, action or proceeding. Notwithstanding any provision of this Agreement to the contrary, the Company agrees that neither the Placement Agent nor its Affiliates, and the respective officers, directors, employees, agents and representatives of the Placement Agent, its Affiliates and each other person, if any, controlling the Placement Agent or any of its Affiliates, shall have any liability (whether direct or indirect, in contract or tort or otherwise) to the Company for or in connection with the engagement and transaction described herein except for any such liability for losses, claims, damages or liabilities incurred by us that are finally judicially determined to have resulted from the gross negligence, fraud, violation of law or willful misconduct of such individuals or entities. If either party shall commence an action or proceeding to enforce any provision of this Agreement, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its reasonable attorney's fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

Section 14. General Provisions.

(a) This Agreement constitutes the entire agreement of the parties to this Agreement and supersedes all prior written or oral and all contemporaneous oral agreements, understandings and negotiations with respect to the subject matter hereof. This Agreement may be executed in two or more counterparts, each one of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement may not be amended or modified unless in writing by all of the parties hereto, and no condition herein (express or implied) may be waived unless waived in writing by each party whom the condition is meant to benefit. Section headings herein are for the convenience of the parties only and shall not affect the construction or interpretation of this Agreement.

(b) The Company acknowledges that in connection with the offering of the Securities: (i) the Placement Agent has acted at arms' length, are not agents of, and owe no fiduciary duties to the Company or any other person, (ii) the Placement Agent owes the Company only those duties and obligations set forth in this Agreement and (iii) the Placement Agent may have interests that differ from those of the Company. The Company waives to the full extent permitted by applicable law any claims it may have against the Placement Agent arising from an alleged breach of fiduciary duty in connection with the offering of the Securities.

Section 15. Fee Tail. The Placement Agent shall be entitled to the Cash Fee calculated in the manner described in Section 1 hereto with respect to any private or public offering or other financing or capital raising transaction of any kind consummated within 6 months of the termination or expiration of this Agreement with Investor 1 identified on Schedule I hereto or any Affiliates thereof.

[The remainder of this page has been intentionally left blank.]

If the foregoing is in accordance with your understanding of our agreement, please sign below whereupon this instrument, along with all counterparts hereof, shall become a binding agreement in accordance with its terms.

Very truly yours,

FARADAY FUTURE INTELLIGENT ELECTRIC INC.

By: /s/ Jiawei Wang

Name: Jiawei Wang

Title: Global President

Address for notice:

Faraday Future Intelligent Electric Inc.
1990 E Grand Ave.
El Segundo, California 90245
Attention: Legal Department
Email: legal@ff.com

Accepted and Agreed to as of
the date first written above:

UNIVEST SECURITIES, LLC

By: /s/ Edric Yi Guo

Name: Edric Yi Guo

Title: CEO and Head of Investment Banking

Address for notice:

75 Rockefeller Plaza, 25A
New York, New York 10019
Attention: Edric Yi Guo
Email: yguo@univest

Schedule I

1. About Investment Pte Ltd (“Investor 1”)
 2. Alto Opportunity Master Fund, SPC- Segregated Master Portfolio B (“Investor 2”)
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Faraday Future Announces \$25 million in New Financing, Demonstrating Institutional Investors' Confidence in the Company's Prospects; Recent Total of \$70 million in Financing to Sufficiently Support the Phase I Goals of Its Robotics Business Plan

- Combined with the \$45 million announced in April, the Company has secured a total of \$70 million in financing over the past two months, enough to fully support the Phase 1 (by end of 2026) objective of FF EAI robotics strategy. Driven by rising demand across the FF's four primary product lines and key application scenarios, including education, security inspection, reception and guided tours, performance, and university research, as well as the upcoming new products, the Company raised the full-year shipment target to 1,500 units.
- With improved strategy, fundamentals, and the latest recent financing, for the first time in years, FF has the room to shift financing decisions from liquidity-driven to capital-structure-driven. With near-term runway pressure materially eased, the Company believes it is now positioned to systematically select the financing mix that best serves long-term stockholder value, rather than accept terms dictated by short-term liquidity needs. For its EAI Vehicle business, FF expects to gradually move away from a high-cost short-term funding approach toward a business-phase fit financing mix of operating cash flow, industry partnerships, and long-term capital to accelerate returns for its stockholders.
- Following the conclusion of the SEC investigation with no penalties and the full return of the founding team, FF is upgrading its previous "Ten-Punch Combo" strategy into "Five Key Transformations" under AI-First philosophy. The full strategic plan set to be unveiled in YT's Investor Weekly Report this coming Sunday.

Los Angeles, CA (May 15, 2026) -- Faraday Future Intelligent Electric Inc. (Nasdaq: FFAI) ("FF", "Faraday Future", or the "Company"), a California-based global Embodied AI (EAI) ecosystem company, today announced it has entered into a Securities Purchase Agreement (the "Agreement") with investors to issue convertible promissory notes in an aggregate principal amount of \$25 million USD. The Company expects proceeds from the financing to accelerate the implementation of FF's EAI strategy to maintain FF's first-mover advantage as the first U.S. company to deliver both humanoid and bionic robots.

Pursuant to the Agreement, the investors purchased from the Company convertible promissory notes in an aggregate principal amount of \$25 million USD. The shares of common stock underlying the convertible promissory notes issued in the financing are currently unregistered, subject to trading restrictions, and not immediately tradable. Of this amount, \$12.5 million will be remitted directly to the Company's operating account. The remaining \$12.5 million will be deposited, pursuant to controlled account agreements with each investor, into control accounts under the control of such investor and will be released to the Company upon satisfaction of certain conditions. For more information on the key terms of this financing, please refer to the Company's Form 8-K to be filed with the U.S. Securities and Exchange Commission (SEC) on or about May 15, 2026.

Combined with the \$45 million financing announced in April, the Company has secured a total of \$70 million in financing over the past two months, enough to fully support the Phase 1 (by end of 2026) objective of FF EAI robotics strategy. Driven by rising demand across the FF's four primary product lines and key application scenarios, including education, security inspection, reception and guided tours, performance, and university research, as well as the upcoming new products, the Company raised the full-year shipment target to 1,500 units.

Evolving into a Physical AI company with the "AI First" philosophy, FF is focusing on two product engines: Embodied AI (EAI) humanoid and bionic robots, and EAI automotive robots. By building a "Three-in-One ecosystem" of "Device, Data, and Brain & Open-Source and Open Developer Platform," the Company aims to create an evolutionary flywheel, with the goal of maximizing commercial value.

The significance of this financing is not the amount itself, but that — for the first time in years with near-term runway pressure materially eased — the Company believes it can shift financing decisions from liquidity-driven to capital-structure-governance-driven. With improved strategy and fundamentals, FF expects to gradually move its EAI Vehicle business away from high-cost short-term funding approach, toward a business-phase fit financing mix of operating cash flow, industry partnerships, and long-term capital to accelerate returns for its stockholders.

ABOUT FARADAY FUTURE

Founded in 2014, Faraday Future (FF) is a U.S.-based Physical AI ecosystem company dedicated to reshaping the future of robotics and mobility solutions through AI innovation and technologies. FF focuses on two major product strategies within the Embodied AI (EAI) robotics business: EAI humanoid and bionic robots, and EAI automotive-focused robots. By building a Three-in-One ecosystem of "Device, Data, EAI Brain & Open-Source and Open Platform," FF aims to create an evolutionary flywheel: scaled device delivery, data collection and training, continuous evolution of the EAI Brain, stronger product capability, and even larger-scale delivery and deployment. Through this flywheel, FF seeks to maximize its commercial value and lead to the advancement of Physical AI. For more information, please visit Faraday Future's official website: <https://www.ff.com/>

FORWARD LOOKING STATEMENTS

This press release includes "forward looking statements" within the meaning of the safe harbor provisions of the United States Private Securities Litigation Reform Act of 1995. When used in this press release, the words "plan to," "can," "will," "should," "future," "potential," and variations of these words or similar expressions (or the negative versions of such words or expressions) are intended to identify forward-looking statements. These forward-looking statements, which include statements regarding FF's entry into the embodied AI robotics market, involve a number of known and unknown risks, uncertainties, assumptions and other important factors, many of which are outside the Company's control, which could cause actual results or outcomes to differ materially from those discussed in the forward-looking statements.

Important factors, among others, that may affect actual results or outcomes include, among others: the Company's ability to maintain its listing on Nasdaq; the availability of sufficient share capital to execute on its strategy, which the Company currently lacks; the agreement of stockholders to substantially increase the Company's share capital, which could result in substantial additional dilution; the Company's ability to homologate FX vehicles for sale; the Company's ability to secure the necessary funding to execute on the FX strategy, which will be substantial; demand for the Super One; demand for the Company's robotics products; competition in the robotics industry, which includes companies with far superior experience, funding and name recognition; the Company's reliance on a single OEM for most of its robotics products; the Company's ability to get the planned robotics products to comply with all applicable U.S. rules and regulations; the ability of the robotics OEM to timely supply robotics to the Company; tariff uncertainty for imported products, particularly from China; the ability of the U.S. Department of Commerce to review, condition, or prohibit robotics-related transactions with a China OEM; demand from automobile dealers for robotics products; the Company's ability to maintain its listing on Nasdaq; the Company's ability to timely regain compliance with Nasdaq's \$1.00 minimum bid price requirement; that the Company's common stock will be suspended from trading on Nasdaq if the closing price of its Class A common stock is \$0.10 or less for 10 consecutive trading days; the availability of sufficient share capital to execute on its strategy, which the Company currently lacks; the agreement of stockholders to substantially increase the Company's share capital, which could result in substantial additional dilution; the ability to secure the necessary agreements to upgrade the Super One to an 800V architecture or to develop the AIHER model, none of which have been finalized; the Company's ability to design and develop AIHER technology; the Company's ability to secure financing for the 800V architecture of the Super One; the Company's ability to secure an occupancy certificate for its Hanford facility; the Company's ability to continue as a going concern and improve its liquidity and financial position; the Company's ability to pay its outstanding obligations; the Company's ability to remediate its material weaknesses in internal control over financial reporting and the risks related to the restatement of previously issued consolidated financial statements; the Company's limited operating history and the significant barriers to growth it faces; the Company's history of losses and expectation of continued losses; the success of the Company's payroll expense reduction plan; the Company's ability to execute on its plans to develop and market its vehicles and robots and the timing of these development programs; the Company's estimates of the size of the markets for its vehicles and robots and cost to bring those vehicles to market; the rate and degree of market acceptance of the Company's vehicles; the Company's ability to cover future warranty claims; the success of other competing manufacturers; the performance and security of the Company's vehicles; current and potential litigation involving the Company; the Company's ability to receive funds from, satisfy the conditions precedent of and close on the various financings described elsewhere by the Company; the result of future financing efforts, the failure of any of which could result in the Company seeking protection under the Bankruptcy Code; the Company's indebtedness; the Company's ability to use its "at-the-market" program; insurance coverage; general economic and market conditions impacting demand for the Company's products; potential negative impacts of a reverse stock split; potential cost, headcount and salary reduction actions may not be sufficient or may not achieve their expected results; circumstances outside of the Company's control, such as natural disasters, climate change, health epidemics and pandemics, terrorist attacks, and civil unrest; risks related to the Company's operations in China; the success of the Company's remedial measures taken in response to the Special Committee findings; the Company's dependence on its suppliers and contract manufacturer; the Company's ability to develop and protect its technologies; the Company's ability to protect against cybersecurity risks; and the ability of the Company to attract and retain employees, any adverse developments in existing legal proceedings or the initiation of new legal proceedings, and volatility of the Company's stock price. You should carefully consider the foregoing factors and the other risks and uncertainties described in the "Risk Factors" section of the Company's Form 10-K for the year ended December 31, 2025 filed with the SEC on March 31, 2026, and other documents filed by the Company from time to time with the SEC.

CONTACTS

Investors (English): ir@ff.com

Investors (Chinese): cn-ir@faradayfuture.com

Media: john.schilling@ff.com