
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, DC 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)

February 4, 2014

FLUIDIGM CORPORATION

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-34180
(Commission
File Number)

77-0513190
(IRS Employer
Identification No.)

7000 Shoreline Court, Suite 100
South San Francisco, California 94080
(Address of principal executive offices, including zip code)

(650) 266-6000
(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01 Entry into a Material Definitive Agreement.

On February 4, 2014, Fluidigm Corporation (the “Company”) closed the sale of \$201,250,000 aggregate principal amount of the Company’s 2.75% Senior Convertible Notes due 2034 (the “Notes”) pursuant to an underwriting agreement, dated January 29, 2014, by and between the Company and Piper Jaffray & Co. The Notes were offered and sold pursuant to the Company’s Registration Statement (the “Registration Statement”) on Form S-3ASR (Registration No. 333-193624), which became effective January 29, 2014, and the Prospectus, dated January 29, 2014, included in the Registration Statement, as supplemented by a prospectus supplement dated January 29, 2014, filed with the Securities and Exchange Commission pursuant to Rule 424(b) under the Securities Act of 1933, as amended (the “Securities Act”). In connection with this offering, the legal opinion as to the validity of the Notes sold is being filed as Exhibit 5.1 to this Current Report on Form 8-K and is incorporated herein and into the Registration Statement by reference.

The Notes are governed by an Indenture (the “Base Indenture”), dated as of February 4, 2014, by and between the Company and U.S. Bank National Association, as trustee (the “Trustee”), as amended and supplemented by the First Supplemental Indenture, dated as of February 4, 2014, by and between the Company and the Trustee (the “First Supplemental Indenture,” as such First Supplemental Indenture amends and supplements the Base Indenture, the “Indenture”). The Notes will accrue interest at a rate of 2.75% per year, payable semi-annually in arrears on February 1 and August 1 of each year, commencing August 1, 2014. The Notes will mature on February 1, 2034, unless earlier converted, redeemed or repurchased in accordance with the terms of the Indenture.

The initial conversion rate of the Notes is 17.8750 shares of the Company’s common stock, par value \$0.001 per share (“Common Stock”), per \$1,000 principal amount of Notes (which is equivalent to an initial conversion price of approximately \$55.94 per share). The conversion rate will be subject to adjustment upon the occurrence of certain specified events. In addition, if a holder converts its Notes in connection with a Fundamental Change (as defined in the Indenture) or a Provisional Redemption (as defined in the Indenture), the conversion rate will, in certain circumstances and for a limited period of time, be increased by a number of additional shares of Common Stock.

Holders may surrender their Notes for conversion at any time prior to the close of business on the business day immediately preceding the stated maturity date. Upon conversion of a Note, the Company will deliver a number of shares of its Common Stock, per \$1,000 principal amount of Notes, equal to the conversion rate (together with a cash payment in lieu of delivering any fractional shares).

The Company may not redeem the Notes prior to February 6, 2018. On or after February 6, 2018 and prior to February 6, 2021, the Company may redeem the Notes if the closing price of its Common Stock has been at least 130% of the conversion price then in effect for at least 20 trading days during any 30 consecutive trading day period ending within five trading dates prior to the date on which the Company provides notice of redemption, and on or after February 6, 2021, the Company may redeem the Notes without any such condition. In each case, the redemption price will be equal to 100% of the principal amount of the Notes to be redeemed plus accrued and unpaid interest to, but excluding, the redemption date.

Holders of the Notes may require the Company to repurchase all or a portion of their Notes on February 6, 2021, February 6, 2024 and February 6, 2029, or following a Fundamental Change, in each case, at a repurchase price in cash equal to 100% of the principal amount of the Notes being repurchased plus accrued and unpaid interest to, but excluding, the date of repurchase.

The Notes will be the Company’s senior unsecured obligations and will rank senior in right of payment to any of the Company’s indebtedness that is expressly subordinated in right of payment to the Notes, will rank equally in right of payment with any of the Company’s unsecured indebtedness that is not so subordinated, will be effectively junior in right of payment to any of the Company’s secured indebtedness to the extent of the value of the assets securing such indebtedness and will be structurally subordinated to all indebtedness and other liabilities of the Company’s subsidiaries.

The following events are considered “events of default,” which may result in the acceleration of the maturity of the Notes:

- the Company's failure to pay the principal amount or repurchase price or redemption price of any Note when Due;
- the Company's failure to deliver the settlement amount owing upon conversion of any Note when due, which failure continues for five business days;
- the Company's failure to pay any interest on any Note when due, and such failure continues for 30 days;
- the Company's failure to provide timely notice of a Fundamental Change or a Make-Whole Fundamental Change (as defined in the Indenture) in accordance with the terms of the Indenture;
- the Company's failure to perform any other covenants required of it under the Indenture, and such failure continues for 60 calendar days after notice is given in accordance with the Indenture;
- the Company's failure, or the failure of any of its significant subsidiaries (as defined in Regulation S-X under the Securities Act) to pay at maturity any Indebtedness (as defined in the Indenture) in a principal amount in excess of \$15 million, or the acceleration of Indebtedness of the company or any of its significant subsidiaries in an amount in excess of \$15 million (unless such Indebtedness is discharged or such acceleration has been cured, waived, rescinded or annulled, in either case, within a period of 30 days after written notice is provided to the company in accordance with the Indenture); and
- certain events of bankruptcy, insolvency or reorganization with respect to the Company or any of its significant subsidiaries.

The summary of the foregoing is qualified in its entirety by reference to the text of the Indenture, the Supplemental Indenture and the Form of Global Note included in the Supplemental Indenture, which are filed as Exhibits 4.1, 4.2 and 4.3, respectively, with this Current Report on Form 8-K and are incorporated herein and into the Registration Statement by reference.

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

The foregoing terms and conditions of the Notes and Indenture described in Item 1.01 of this Current Report on Form 8-K are incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
4.1	Indenture, dated as of February 4, 2014, by and between Fluidigm Corporation and U.S. Bank National Association
4.2	First Supplemental Indenture, dated as of February 4, 2014, by and between Fluidigm Corporation and U.S. Bank National Association
4.3	Form of Global Note (included in Exhibit 4.2)
5.1	Opinion of Wilson Sonsini Goodrich & Rosati, P.C.

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.

FLUIDIGM CORPORATION

By: /s/ Vikram Jog
Vikram Jog
Chief Financial Officer

Date: February 4, 2014

EXHIBIT INDEX

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Indenture

FLUIDIGM CORPORATION, as

ISSUER

and

U.S. BANK NATIONAL ASSOCIATION, as

INDENTURE TRUSTEE

INDENTURE

Dated as of February 4, 2014

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FLUIDIGM CORPORATION
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(b)		2.05
Section 318 (a)		10.01

Indenture dated as of February 4, 2014 between Fluidigm Corporation, a Delaware corporation (“*Company*”), and U.S. Bank National Association, as trustee (“*Trustee*”).

Each party agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Holders of the Securities issued under this Indenture.

ARTICLE I DEFINITIONS AND INCORPORATION BY REFERENCE

Section 1.01 Definitions.

“*Additional Amounts*” means any additional amounts which are required hereby or by any Security, under circumstances specified herein or therein, to be paid by the Company in respect of certain taxes imposed on Holders specified herein or therein and which are owing to such Holders, as calculated by the Company.

“*Affiliate*” of any specified person means any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person, whether through the ownership of voting securities or by agreement or otherwise.

“*Agent*” means any Registrar or Paying Agent.

“*Applicable Procedures*” means, with respect to any transfer or transaction involving a Global Security or beneficial interest therein, the rules and procedures of DTC or any successor Depositary, in each case to the extent applicable to such transaction and as in effect from time to time.

“*Board of Directors*” means the Board of Directors of the Company or any duly authorized committee thereof.

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

“*Business Day*” means any day other than a Saturday, Sunday or other day on which banking institutions are authorized or required by law, regulation or executive order to close or be closed in the State of New York.

“*Capital Interests*” means any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock, including, without limitation, with respect to partnerships, partnership interests (whether general or limited) and any other interest or participation that confers on a person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership.

“*Company*” means the party named as such above until a successor replaces it and thereafter means the successor.

“*Company Order*” means a written order signed in the name of the Company by two Officers, one of whom must be the Company’s principal executive officer, principal financial officer or principal accounting officer.

“*Company Request*” means a written request signed in the name of the Company by its Chief Executive Officer, Chief Financial Officer or a Vice President, and by its Treasurer, an Assistant Treasurer, its Secretary or an Assistant Secretary, and delivered to the Trustee.

“*Corporate Trust Office*” means the address of the Trustee specified in Section 10.02, or such other address as to which the Trustee may give notice to the Holders and the Company.

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

“*Depository*” means, with respect to the Securities of any Series issuable or issued in whole or part in the form of one or more Global Securities, the person designated as Depository for such Series by the Company, which Depository shall be a clearing agency registered under the Exchange Act; and if at any time there is more than one such person, “*Depository*” as used with respect to the Securities of any Series shall mean the Depository with respect to the Securities of such Series.

“*Discount Security*” means any Security that provides for an amount less than the stated principal amount thereof to be due and payable upon declaration of acceleration of the maturity thereof pursuant to Section 6.02.

“*Dollars*” and “*\$*” means the currency of The United States of America.

“*DTC*” means the Depository Trust Company, a New York corporation.

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

“*Foreign Currency*” means any currency or currency unit issued by a government other than the government of The United States of America.

“*Foreign Government Obligations*” means, with respect to Securities of any Series that are denominated in a Foreign Currency, (i) direct obligations of the government that issued or caused to be issued such currency for the payment of which obligations its full faith and credit is pledged or (ii) obligations of a person controlled or supervised by or acting as an agency or instrumentality of such government the timely payment of which is unconditionally guaranteed as a full faith and credit obligation by such government, which, in either case under clauses (i) or (ii), are not callable or redeemable at the option of the issuer thereof.

“*GAAP*” means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession.

“*Global Security*” or “*Global Securities*” means a Security or Securities, as the case may be, in the form established pursuant to Section 2.02 evidencing all or part of a Series of Securities, issued to the Depository for such Series or its nominee, and registered in the name of such Depository or nominee.

“*Holder*” means a person in whose name a Security is registered.

“*Indenture*” means this Indenture as amended or supplemented from time to time and shall include the form and terms of particular Series of Securities established as contemplated hereunder.

“*interest*” with respect to any Discount Security which by its terms bears interest only after Maturity means interest payable after Maturity.

“*Maturity*,” when used with respect to any Security or installment of principal thereof, means the date on which the principal of such Security or such installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise.

“*Officer*” means the Chief Executive Officer, Chief Financial Officer, any Vice-President, the Treasurer, the Secretary, any Assistant Treasurer or any Assistant Secretary of the Company.

“*Officers’ Certificate*” means a certificate signed by two Officers, one of whom must be the Company’s principal executive officer, principal financial officer or principal accounting officer.

“*Opinion of Counsel*” means a written opinion of legal counsel who is reasonably acceptable to the Trustee. The counsel may be an employee of or counsel to the Company.

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

“*principal*” of a Security means the principal of the Security plus, when appropriate, the premium, if any, on, and any Additional Amounts in respect of, the Security.

“*Responsible Officer*” means any officer of the Trustee in its Corporate Trust Office with direct responsibility for the administration of this Indenture and also means, with respect to a particular corporate trust matter, any other officer to whom any corporate trust matter is referred because of his or her knowledge of and familiarity with a particular subject.

“*SEC*” means the Securities and Exchange Commission.

“*Securities*” means the debentures, notes or other debt instruments of the Company of any Series authenticated and delivered under this Indenture.

“*Series*” or “*Series of Securities*” means each series of debentures, notes or other debt instruments of the Company created pursuant to Sections 2.01 and 2.02 hereof.

“*Stated Maturity*” means when used with respect to any Security or any installment of principal thereof or interest thereon, the date specified in such Security as the fixed date on which the principal of such Security or such installment of principal or interest is due and payable.

“*Subsidiary*” means, with respect to any person, any corporation, association or other business entity of which more than 50% of the total voting power of shares of Capital Interests entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof or, in the case of a partnership, more than 50% of the partners’ Capital Interests (considering all partners’ Capital Interests as a single class), is at the time owned or controlled, directly or indirectly, by such person or one or more of the other Subsidiaries of such person or combination thereof.

“*TIA*” means the Trust Indenture Act of 1939 (15 U.S. Code Sections 77aaa-77bbbb) as in effect on the date of this Indenture and the rules and regulations promulgated thereunder; provided, however, that in the event the Trust Indenture Act of 1939 is amended after such date, “*TIA*” means, to the extent required by any such amendment, the Trust Indenture Act as so amended.

“*Trustee*” means the person named as the “Trustee” in the first paragraph of this instrument until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Trustee” shall mean each person who is then a Trustee hereunder, and if at any time there is more than one such person, “Trustee” as used with respect to the Securities of any Series shall mean the Trustee with respect to Securities of that Series.

“*U.S. Government Obligations*” means securities which are (i) direct obligations of The United States of America for the payment of which its full faith and credit is pledged or (ii) obligations of a person controlled or supervised by and acting as an agency or instrumentality of The United States of America the payment of which is unconditionally guaranteed as a full faith and credit obligation by The United States of America, and which are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such U.S. Government Obligation or a specific payment of interest on or principal of any such U.S. Government Obligation held by such custodian for the account of the holder of a depository receipt, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the U.S. Government Obligation evidenced by such depository receipt.

Section 1.02 Other Definitions.

<u>TERM</u>	<u>DEFINED IN SECTION</u>
<i>Bankruptcy Law</i>	6.01
<i>Custodian</i>	6.01
<i>Event of Default</i>	6.01
<i>Legal Holiday</i>	10.07
<i>mandatory sinking fund payment</i>	11.01
<i>Market Exchange Rate</i>	10.15
<i>optional sinking fund payment</i>	11.01
<i>Paying Agent</i>	2.04
<i>Registrar</i>	2.04
<i>Successor Person</i>	5.01

Section 1.03 Incorporation by Reference of Trust Indenture Act.

Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture. The following TIA terms used in this Indenture have the following meanings:

“*Commission*” means the SEC.

“*indenture securities*” means the Securities.

“*indenture security holder*” means a Holder.

“*indenture to be qualified*” means this Indenture.

“*indenture trustee*” or “*institutional trustee*” means the Trustee.

“*obligor*” on the indenture securities means the Company and any successor obligor upon the Securities.

All other terms used in this Indenture that are defined by the TIA, defined by TIA reference to another statute or defined by SEC rule under the TIA and not otherwise defined herein are used herein as so defined.

Section 1.04 Rules of Construction.

Unless the context otherwise requires:

- (a) a term has the meaning assigned to it;
- (b) an accounting term not otherwise defined has the meaning assigned to it in accordance with generally accepted accounting principles;
- (c) references to “generally accepted accounting principles” and “GAAP” shall mean generally accepted accounting principles in effect as of the time when and for the period as to which such accounting principles are to be applied;
- (d) “or” is not exclusive;
- (e) words in the singular include the plural, and in the plural include the singular; and
- (f) provisions apply to successive events and transactions.

ARTICLE II THE SECURITIES

Section 2.01 Issuable in Series. The aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is unlimited. The Securities may be issued in one or more Series. All Securities of a Series shall be identical except as may be set forth or determined in the manner provided in a Board Resolution, supplemental indenture or Officers’ Certificate detailing the adoption of the terms thereof pursuant to authority granted under a Board Resolution. In the case of Securities of a Series to be issued from time to time, the Board Resolution, Officers’ Certificate or supplemental indenture detailing the adoption of the terms thereof pursuant to authority granted under a Board Resolution may provide for the method by which specified terms (such as interest rate, maturity date, record date or date from which interest shall accrue) are to be determined. Securities may differ between Series in respect of any matters, provided that all Series of Securities shall be equally and ratably entitled to the benefits of the Indenture.

Section 2.02 Establishment of Terms of Series of Securities. At or prior to the issuance of any Securities within a Series, the following shall be established (as to the Series generally, in the case of Subsection 2.02(a) and either as to such Securities within the Series or as to the Series generally in the case of Subsections 2.02(b) through 2.02(s)) by or pursuant to a Board Resolution, and set forth or determined in the manner provided in a Board Resolution, supplemental indenture or an Officers’ Certificate:

- (a) the form and title of the Series (which shall distinguish the Securities of that particular Series from the Securities of any other Series);
- (b) the price or prices (expressed as a percentage of the principal amount thereof) at which the Securities of the Series will be issued;

(c) any limit upon the aggregate principal amount of the Securities of the Series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the Series pursuant to Sections 2.07, 2.08, 2.11, 3.06 or 9.06);

(d) the date or dates on which the principal of the Securities of the Series is payable;

(e) the rate or rates (which may be fixed or variable) per annum or, if applicable, the method used to determine such rate or rates (including, but not limited to, any commodity, commodity index, stock exchange index or financial index) at which the Securities of the Series shall bear interest, if any, the date or dates from which such interest, if any, shall accrue, the date or dates on which such interest, if any, shall commence and be payable and any regular record date for the interest payable on any interest payment date;

(f) the place or places where the principal of and interest, if any, on the Securities of the Series shall be payable, where the Securities of such Series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Securities of such Series and this Indenture may be served, and the method of such payment, if by wire transfer, mail or other means;

(g) if applicable, the period or periods within which, the price or prices at which and the terms and conditions upon which the Securities of the Series may be redeemed, in whole or in part, at the option of the Company;

(h) the obligation, if any, of the Company to redeem or purchase the Securities of the Series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof and the period or periods within which, the price or prices at which and the terms and conditions upon which Securities of the Series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;

(i) the dates, if any, on which and the price or prices at which the Securities of the Series will be repurchased by the Company at the option of the Holders thereof and other detailed terms and provisions of such repurchase obligations;

(j) if other than denominations of \$1,000 and any integral multiple thereof, the denominations in which the Securities of the Series shall be issuable;

(k) if other than the principal amount thereof, the portion of the principal amount of the Securities of the Series that shall be payable upon declaration of acceleration of the maturity thereof pursuant to Section 6.02;

(l) the currency of denomination of the Securities of the Series, which may be Dollars or any Foreign Currency, and the agency or organization, if any, responsible for overseeing such composite currency;

(m) the provisions, if any, relating to any security provided for the Securities of the Series;

(n) any addition to or change in the Events of Default which applies to any Securities of the Series and any change in the right of the Trustee or the requisite Holders of such Securities to declare the principal amount thereof due and payable pursuant to Section 6.02;

(o) any addition to or change in the covenants set forth in Articles IV or V which applies to Securities of the Series;

(p) the provisions, if any, relating to conversion of any Securities of such Series, including, if applicable, the securities into which the Securities are convertible, the conversion price, the conversion period, provisions as to whether conversion will be mandatory, at the option of the Holders or at the option of the Company, the events requiring an adjustment of the conversion price and provisions affecting conversion if such Series of Securities are redeemed;

(q) whether the Securities of such Series will be senior debt securities or subordinated debt securities and, if applicable, a description of the subordination terms thereof;

(r) any depositaries, interest rate calculation agents, exchange rate calculation agents or other agents with respect to Securities of such Series if other than those appointed herein; and

(s) any other terms of the Securities of the Series (which may modify or delete any provision of this Indenture insofar as it applies to such Series).

All Securities of any one Series need not be issued at the same time and may be issued from time to time, consistent with the terms of this Indenture, if so provided by or pursuant to the Board Resolution, supplemental indenture hereto or Officers' Certificate referred to above, and, unless otherwise provided in such Board Resolution, a Series may be reopened, without the consent of the Holders, for increases in the aggregate principal amount of such Series and issuances of additional Securities of such Series.

Section 2.03 Execution and Authentication. At least one Officer shall sign the Securities for the Company by manual or facsimile signature. If an Officer whose signature is on a Security no longer holds that office at the time the Security is authenticated, the Security shall nevertheless be valid. A Security shall not be valid until authenticated by the manual signature of the Trustee or an authenticating agent. The signature shall be conclusive evidence that the Security has been authenticated under this Indenture. The Trustee shall at any time, and from time to time, authenticate Securities for original issue in the principal amount provided in the Board Resolution, supplemental indenture hereto or Officers' Certificate, upon receipt by the Trustee of a Company Order. Such Company Order may authorize authentication and delivery pursuant to electronic instructions in PDF from the Company or its duly authorized agent or agents. Each Security shall be dated the date of its authentication unless otherwise provided by a Board Resolution, a supplemental indenture hereto or an Officers' Certificate. The aggregate principal amount of Securities of any

Series outstanding at any time may not exceed any limit upon the maximum principal amount for such Series set forth in the Board Resolution, supplemental indenture hereto or Officers' Certificate delivered pursuant to Section 2.02, except as provided in Section 2.02 or 2.08. Prior to the issuance of Securities of any Series, the Trustee shall have received and (subject to Section 7.02) shall be fully protected in relying on: (a) the Board Resolution, supplemental indenture hereto or Officers' Certificate establishing the form of the Securities of that Series or of Securities within that Series and the terms of the Securities of that Series or of Securities within that Series, (b) an Officers' Certificate complying with Section 10.04 and (c)(1) an Opinion of Counsel complying with Section 10.04 or (2) an Opinion of Counsel (or reliance letter with respect to an Opinion of Counsel) that the Securities have been duly authorized, executed and delivered by the Company and such Securities will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with its terms. The Trustee may appoint an authenticating agent acceptable to the Company to authenticate Securities. An authenticating agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by such agent. An authenticating agent has the same rights as an Agent to deal with the Company or an Affiliate of the Company.

Section 2.04 Registrar and Paying Agent. The Company shall maintain, with respect to each Series of Securities, at the place or places specified with respect to such Series pursuant to Section 2.02, an office or agency where Securities of such Series may be presented or surrendered for payment ("*Paying Agent*"), and where Securities of such Series may be surrendered for registration of transfer or exchange ("*Registrar*"). The Registrar shall keep a register with respect to each Series of Securities and of their transfer and exchange. The Company hereby appoints the Trustee as Paying Agent and Registrar. The Company will give prompt written notice to the Trustee of the name and address, and any change in the name or address, of each Registrar or Paying Agent. The Company may also from time to time designate one or more co-registrars or additional paying agents and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligations to maintain a Registrar and a Paying Agent in each place so specified pursuant to Section 2.02 for Securities of any Series for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the name or address of any such co-registrar or additional paying agent. The term "Registrar" includes any co-registrar; and the term "Paying Agent" includes any additional paying agent. The Company hereby appoints the Trustee as the initial Registrar and Paying Agent for each Series unless another Registrar or Paying Agent, as the case may be, is appointed prior to the time Securities of that Series are first issued.

Section 2.05 Paying Agent to Hold Money in Trust. The Company shall require each Paying Agent other than the Trustee to agree in writing that the Paying Agent will hold in trust, for the benefit of Holders of any Series of Securities, or the Trustee, all money held by the Paying Agent for the payment of principal of or interest on the Series of Securities, and will notify the Trustee of any default by the Company in making any such payment. While any such default continues, the Trustee may require a Paying Agent to pay all money held by it to the Trustee. The Company at any time may require a Paying Agent to pay all money held by it to the Trustee. Upon payment over to the Trustee, the Paying Agent (if other than the Company or a Subsidiary of the Company) shall

have no further liability for the money. If the Company or a Subsidiary of the Company acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of Holders of any Series of Securities all money held by it as Paying Agent. Upon an Event of Default under Section 6.01(d) or (e), the Trustee shall be the Paying Agent.

Section 2.06 Holder Lists. The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders of each Series of Securities and shall otherwise comply with TIA Section 312(a). If the Trustee is not the Registrar, the Company shall furnish to the Trustee at least ten (10) days before each interest payment date and at such other times as the Trustee may request in writing a list, in such form and as of such date as the Trustee may reasonably require, of the names and addresses of Holders of each Series of Securities.

Section 2.07 Transfer and Exchange. Where Securities of a Series are presented to the Registrar or a co-registrar with a request to register a transfer or to exchange them for an equal principal amount of Securities of the same Series, the Registrar shall register the transfer or make the exchange if its requirements for such transactions are met. To permit registrations of transfers and exchanges, the Trustee shall authenticate Securities at the Registrar's request. No service charge shall be made for any registration of transfer or exchange (except as otherwise expressly permitted herein), but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer tax or similar governmental charge payable upon exchanges pursuant to Sections 2.11, 3.06 or 9.06). Neither the Company nor the Registrar shall be required (a) to issue, register the transfer of, or exchange Securities of any Series for the period beginning at the opening of business fifteen days immediately preceding the delivery of a notice of redemption of Securities of that Series selected for redemption and ending at the close of business on the day of such delivery, or (b) to register the transfer of or exchange Securities of any Series selected, called or being called for redemption as a whole or the portion being redeemed of any such Securities selected, called or being called for redemption in part.

Section 2.08 Mutilated, Destroyed, Lost and Stolen Securities.

(a) If any mutilated Security is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and make available for delivery in exchange therefor a new Security of the same Series and of like tenor and principal amount and bearing a number not contemporaneously outstanding. If there shall be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a protected purchaser, the Company shall execute and upon its request the Trustee shall authenticate and make available for delivery, in lieu of any such destroyed, lost or stolen Security, a new Security of the same Series and of like tenor and principal amount and bearing a number not contemporaneously outstanding. In case any such mutilated, destroyed, lost or stolen Security has become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security.

(b) Upon the issuance of any new Security under this Section, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith. Every new Security of any Series issued pursuant to this Section in lieu of any destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of that Series duly issued hereunder. The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

Section 2.09 Outstanding Securities. The Securities outstanding at any time are all the Securities authenticated by the Trustee except for those canceled by it, those delivered to it for cancellation, those reductions in the interest on a Global Security effected by the Trustee in accordance with the provisions hereof and those described in this Section as not outstanding. If a Security is replaced pursuant to Section 2.08, it ceases to be outstanding until the Trustee receives proof satisfactory to it that the replaced Security is held by a protected purchaser. If the Paying Agent (other than the Company, a Subsidiary of the Company or an Affiliate of the Company) holds on the Maturity of Securities of a Series money sufficient to pay such Securities payable on that date, then on and after that date such Securities of the Series cease to be outstanding and interest on them ceases to accrue. A Security does not cease to be outstanding because the Company or an Affiliate of the Company holds the Security. In determining whether the Holders of the requisite principal amount of outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, the principal amount of a Discount Security that shall be deemed to be outstanding for such purposes shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon a declaration of acceleration of the Maturity thereof pursuant to Section 6.02.

Section 2.10 Treasury Securities. In determining whether the Holders of the required principal amount of Securities of a Series have concurred in any request, demand, authorization, direction, notice, consent or waiver, Securities of a Series owned by the Company shall be disregarded, except that for the purposes of determining whether the Trustee shall be protected in relying on any such request, demand, authorization, direction, notice, consent or waiver, only Securities of a Series that a Responsible Officer of the Trustee knows are so owned shall be so disregarded.

Section 2.11 Temporary Securities. Until definitive Securities are ready for delivery, the Company may prepare and the Trustee shall authenticate temporary Securities upon a Company Order. Temporary Securities shall be substantially in the form of definitive Securities but may have variations that the Company considers appropriate for temporary Securities. Without unreasonable delay, the Company shall prepare and the Trustee upon request shall authenticate definitive Securities of the same Series and date of maturity in exchange for temporary Securities. Until so exchanged, temporary securities shall have the same rights under this Indenture as the definitive Securities.

Section 2.12 Cancellation. The Company at any time may deliver Securities to the Trustee for cancellation. The Registrar and the Paying Agent shall forward to the Trustee any Securities surrendered to them for registration of transfer, exchange or payment. The Trustee shall cancel all Securities surrendered for registration of transfer, exchange, payment, replacement or cancellation in accordance with its customary procedures. The Company may not issue new Securities to replace Securities that it has paid or delivered to the Trustee for cancellation.

Section 2.13 Defaulted Interest. If the Company defaults in a payment of interest on a Series of Securities, it shall pay the defaulted interest at the rate established for the particular Series, if any, plus, to the extent permitted by law, any interest payable on the defaulted interest, to the persons who are Holders of the Series on a subsequent special record date. The Company shall fix the special record date and payment date; provided that if no rate for defaulted interest is specified for any Series of Securities, then the defaulted interest rate shall be the interest rate specified for such Series of Securities. At least ten (10) days before the special record date, the Company shall deliver to the Trustee and to each Holder of the Series a notice that states the record date, the related payment date and the amount of interest to be paid. The Company may also pay defaulted interest in any other lawful manner.

Section 2.14 Global Securities

(a) **Terms of Securities.** A Board Resolution, a supplemental indenture hereto or an Officers' Certificate shall establish whether the Securities of a Series shall be issued in whole or in part in the form of one or more Global Securities and the Depositary for such Global Security or Securities.

(b) **Transfer and Exchange.** Notwithstanding any provisions to the contrary contained in Section 2.07 of the Indenture and in addition thereto, any Global Security shall be exchangeable pursuant to Section 2.07 of the Indenture for Securities registered in the names of Holders other than the Depositary for such Security or its nominee only if (i) such Depositary notifies the Company that it is unwilling or unable to continue as Depositary for such Global Security or if at any time such Depositary ceases to be a clearing agency registered under the Exchange Act, and, in either case, the Company fails to appoint a successor Depositary registered as a clearing agency under the Exchange Act within 90 days of such event, (ii) the Company executes and delivers to the Trustee an Officers' Certificate to the effect that such Global Security shall be so exchangeable or (iii) an Event of Default with respect to the Securities represented by such Global Security shall have happened and be continuing. Any Global Security that is exchangeable pursuant to the preceding sentence shall be exchangeable for Securities registered in such names as the Depositary shall direct in writing in an aggregate principal amount equal to the principal amount of the Global Security with like tenor and terms.

(c) Except as provided in this Section 2.14(c), a Global Security may not be transferred except as a whole by the Depositary with respect to such Global Security to a nominee of such Depositary, by a nominee of such Depositary to such Depositary or another nominee of such Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such a successor Depositary.

(d) Legend. Any Global Security issued hereunder shall bear a legend in substantially the following form:

“This Security is a Global Security within the meaning of the Indenture hereinafter referred to and is registered in the name of the Depositary or a nominee of the Depositary. This Security is exchangeable for Securities registered in the name of a person other than the Depositary or its nominee only in the limited circumstances described in the Indenture, and may not be transferred except as a whole by the Depositary to a nominee of the Depositary, by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such a successor Depositary.”

(e) Acts of Holders. The Depositary, as a Holder, may appoint agents and otherwise authorize participants to give or take any request, demand, authorization, direction, notice, consent, waiver or other action which a Holder is entitled to give or take under the Indenture.

(f) Payments. Notwithstanding the other provisions of this Indenture, unless otherwise specified as contemplated by Section 2.02, payment of the principal of and interest, if any, on any Global Security shall be made to the Holder thereof.

(g) Consents, Declaration and Directions. Except as provided in Section 2.14(g), the Company, the Trustee and any Agent shall treat a person as the Holder of such principal amount of outstanding Securities of such Series represented by a Global Security as shall be specified in a written statement of the Depositary with respect to such Global Security, for purposes of obtaining any consents, declarations, waivers or directions required to be given by the Holders pursuant to this Indenture.

(h) The Depositary or its nominee, as registered owner of a Global Security, shall be the Holder of such Global Security for all purposes under the Indenture and the Securities, and owners of beneficial interests in a Global Security shall hold such interests pursuant to the Applicable Procedures. Accordingly, any such owner's beneficial interest in a Global Security will be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Depositary or its nominee and such owners of beneficial interests in a Global Security will not be considered the owners or holders thereof. Notwithstanding any other provision of this Indenture or any Security, where this Indenture or any Global Security provides for notice of any event (including any notice of redemption or repurchase) to a Holder of a Global Security (whether by mail or otherwise), such notice shall be sufficiently given if given to the Depositary (or its designee) pursuant to the standing instructions from the Depositary or its designee, including by electronic mail in accordance with applicable Depositary procedures.

Section 2.15 CUSIP Numbers. The Company in issuing the Securities may use “CUSIP” numbers (if then generally in use), and, if so, the Trustee shall use “CUSIP” numbers in notices of redemption as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other elements of identification printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company shall promptly notify the Trustee of any change in “CUSIP” numbers of which the Company becomes aware.

ARTICLE III REDEMPTION

Section 3.01 Notice to Trustee. The Company may, with respect to any Series of Securities, reserve the right to redeem and pay the Series of Securities or may covenant to redeem and pay the Series of Securities or any part thereof prior to the Stated Maturity thereof at such time and on such terms as provided for in such Securities. If a Series of Securities is redeemable and the Company wants or is obligated to redeem prior to the Stated Maturity thereof all or part of the Series of Securities pursuant to the terms of such Securities, it shall notify the Trustee of the redemption date and the principal amount of the Series of Securities to be redeemed.

Section 3.02 Selection of Securities to be Redeemed. Unless otherwise indicated for a particular Series by a Board Resolution, a supplemental indenture or an Officers’ Certificate, if less than all the Securities of a Series are to be redeemed, the Trustee shall select the Securities of the Series to be redeemed in any manner that the Trustee deems fair and appropriate. The Trustee shall make the selection from Securities of the Series outstanding not previously called for redemption. Securities of a Series and portions selected for redemption shall be in amounts of \$1,000 or whole multiples of \$1,000 or, with respect to Securities of any Series issuable in other denominations pursuant to Section 2.02(j), the minimum principal denomination for each Series and integral multiples thereof. Provisions of this Indenture that apply to Securities of a Series called for redemption also apply to portions of Securities of that Series called for redemption. The Trustee shall not be liable for the selection made in accordance with this Section 3.02.

Section 3.03 Notice of Redemption.

(a) Unless otherwise specified for a particular Series by a Board Resolution, a supplemental indenture or an Officers’ Certificate, at least 30 days but not more than 60 days before a redemption date, the Company shall deliver notice of redemption to each Holder whose Securities are to be redeemed. The notice shall identify the Securities of the Series to be redeemed and shall state:

- (i) the redemption date;
- (ii) the redemption price or the manner of the calculation of the redemption price;

- (iii) the name and address of the Paying Agent;
- (iv) that Securities of the Series called for redemption must be surrendered to the Paying Agent to collect the redemption price;
- (v) that interest on Securities of the Series called for redemption ceases to accrue on and after the redemption date;
- (vi) the CUSIP number, if any; and
- (vii) any other information as may be required by the terms of the particular Series or the Securities of a Series being redeemed.

At the Company's request, the Trustee shall give the notice of redemption in the Company's name and at its expense; provided that the Company shall have delivered to the Trustee, at least five Business Days (or such shorter period as the Trustee may consent to in writing) before notice of redemption is required to be delivered or caused to be delivered to Holders pursuant to this Section 3.03, an Officers' Certificate of the Company requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the preceding paragraph.

Section 3.04 Effect of Notice of Redemption. Once notice of redemption is delivered as provided in Section 3.03, Securities of a Series called for redemption become due and payable on the redemption date and at the redemption price. A notice of redemption may not be conditional. Upon surrender to the Paying Agent, such Securities shall be paid at the redemption price plus accrued interest to the redemption date; provided that installments of interest whose Stated Maturity is on or prior to the redemption date shall be payable to the Holders of such Securities (or one or more predecessor Securities) registered at the close of business on the relevant record date therefor according to their terms and the terms of this Indenture.

Section 3.05 Deposit of Redemption Price. Unless otherwise indicated for a particular Series by a Board Resolution, a supplemental indenture or an Officers' Certificate, on or before 11:00 a.m., New York City time, on the redemption date, the Company shall deposit with the Paying Agent money sufficient to pay the redemption price of and accrued interest, if any, on all Securities to be redeemed on that date.

Section 3.06 Securities Redeemed in Part. Upon surrender of a Security that is redeemed in part, the Company shall issue and the Trustee shall authenticate for the Holder a new Security of the same Series and the same maturity equal in principal amount to the unredeemed portion of the Security surrendered.

ARTICLE IV COVENANTS

Section 4.01 Payment of Principal and Interest. The Company covenants and agrees for the benefit of the Holders of each Series of Securities that it will duly and punctually pay the principal of and interest, if any, on the Securities of that Series in accordance with the terms of such Securities and this Indenture.

Section 4.02 SEC Reports. Any information, documents or other reports that the Company shall file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act shall be filed with the Trustee within 15 days after the same is filed with the Commission; provided that any such information, documents or reports filed or furnished with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval (or EDGAR) system shall be deemed filed with the Trustee as of the time such information, documents or reports are filed or furnished via EDGAR.

Section 4.03 Compliance Certificate. The Company shall, so long as any of the Securities are outstanding, deliver to the Trustee, within 120 days after the end of each fiscal year of the Company, an Officers' Certificate stating whether or not to the knowledge of the signers thereof the Company is in default in the performance and observance of any of the terms, provisions and conditions hereof (without regard to any period of grace or requirement of notice provided hereunder), and if a Default or Event of Default shall have occurred, specifying all such Defaults or Events of Default and the nature and status thereof of which they may have knowledge.

Section 4.04 Stay, Extension and Usury Laws. The Company covenants (to the extent that it may lawfully do so) 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 enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture or the Securities or any other law that would prohibit or forgive the Company from paying all or any portion of the principal of, or interest on, the Securities as contemplated in the Indenture, any indenture supplemental thereto relating to the Securities or the Securities and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law has been enacted.

Section 4.05 Maintenance of Corporate Existence. The Company will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

ARTICLE V SUCCESSORS

Section 5.01 When Company May Merge, Etc. The Company shall not consolidate with or merge with or into, or convey, transfer or lease all or substantially all of its properties and assets to, another person (a "Successor Person") unless:

(a) the Company is the surviving corporation or the Successor Person (if other than the Company) is organized and validly existing under the laws of any U.S. domestic jurisdiction and expressly assumes the Company's obligations on the Securities and under this Indenture; and

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

The Company shall deliver to the Trustee prior to the consummation of the proposed transaction an Officers' Certificate to the foregoing effect and an Opinion of Counsel stating that the proposed transaction and any supplemental indenture comply with this Indenture.

Section 5.02 Successor Corporation Substituted. Upon any consolidation or merger, or any sale, lease, conveyance or other disposition of all or substantially all of the assets of the Company in accordance with Section 5.01, the successor corporation formed by such consolidation or into or with which the Company is merged or to which such sale, lease, conveyance or other disposition is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such Successor Person has been named as the Company herein; provided, however, that the predecessor Company in the case of a sale, conveyance or other disposition (other than a lease) shall be released from all obligations and covenants under this Indenture and the Securities.

ARTICLE VI DEFAULTS AND REMEDIES

Section 6.01 Events of Default.

"*Event of Default*," wherever used herein with respect to Securities of any Series, means any one of the following events, unless in the establishing Board Resolution, supplemental indenture or Officers' Certificate, it is provided that such Series shall not have the benefit of said Event of Default or the terms of such Event of Default have been modified or superceded as set forth in the Board Resolution, supplemental indenture or Officers' Certificate for such Securities of any Series:

(a) default in the payment of any interest on any Security of that Series when it becomes due and payable, and continuance of such default for a period of 30 days (unless the entire amount of such payment is deposited by the Company with the Trustee or with a Paying Agent prior to the expiration of such period of 30 days); or

(b) default in the payment of principal of any Security of that Series at its Maturity; or

(c) default in the performance or breach of any covenant or warranty of the Company in this Indenture (other than a covenant or warranty for which the consequences of nonperformance or breach are addressed elsewhere in this Section 6.01 and other than a covenant or warranty that has been included in this Indenture solely for the benefit of a Series of Securities other than that Series), which default continues uncured for a period of 60 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of not less than a majority in principal amount of the outstanding Securities of that Series a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder; or

(d) the Company pursuant to or within the meaning of any Bankruptcy Law:

- (i) commences a voluntary case or proceeding;
- (ii) consents to the entry of an order for relief against it in an involuntary case,
- (iii) consents to the appointment of a Custodian of it or for all or substantially all of its property,
- (iv) makes a general assignment for the benefit of its creditors, or
- (v) makes an admission in writing that it is generally unable to pay its debts as the same become due; or

(e) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

- (i) is for relief against the Company in an involuntary case,
- (ii) appoints a Custodian of the Company or for all or substantially all of its property, or
- (iii) orders the liquidation of the Company, and the order or decree remains unstayed and in effect for 90 days; or

(f) any other Event of Default provided with respect to Securities of that Series, which is specified in a Board Resolution, a supplemental indenture hereto or an Officers' Certificate, in accordance with Section 2.02(n).

The term "*Bankruptcy Law*" means Title 11 of the U.S. Code or any similar federal or state law for the relief of debtors. The term "*Custodian*" means any receiver, trustee, assignee, liquidator or similar official under any Bankruptcy Law.

Section 6.02 Acceleration of Maturity; Rescission and Annulment. If an Event of Default with respect to Securities of any Series at the time outstanding occurs and is continuing (other than an Event of Default referred to in Section 6.01(d) or (e)), then in every such case the Trustee or the Holders of not less than a majority in principal amount of the outstanding Securities of that Series may declare the principal amount (or, if any Securities of that Series are Discount Securities, such portion of the principal amount as may be specified in the terms of such Securities) of and accrued and unpaid interest, if any, on all of the Securities of that Series to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration such principal amount (or specified amount) and accrued and unpaid interest, if any, shall become immediately due and payable. If an Event of Default specified in Section 6.01(d) or (e) shall occur, the principal amount (or specified amount) of and accrued and

unpaid interest, if any, on all outstanding Securities shall be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder. At any time after such a declaration of acceleration with respect to any Series has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article; provided that the Holders of a majority in principal amount of the outstanding Securities of that Series, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if all Events of Default with respect to Securities of that Series, other than the non-payment of the principal and interest, if any, of Securities of that Series which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 6.13. No such rescission shall affect any subsequent Default or impair any right consequent thereon.

Section 6.03 Collection of Indebtedness and Suits for Enforcement by Trustee.

The Company covenants that if:

(a) default is made in the payment of any interest on any Security when such interest becomes due and payable and such default continues for a period of 30 days, or

(b) default is made in the payment of principal of any Security at the Maturity thereof,

then the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal and interest and, to the extent that payment of such interest shall be legally enforceable, interest on any overdue principal and any overdue interest at the rate or rates prescribed therefor in such Securities and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon such Securities and collect the moneys adjudged or deemed to be payable in the manner provided by law out of the property of the Company or any other obligor upon such Securities, wherever situated.

If an Event of Default with respect to any Securities of any Series occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities of such Series by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

Section 6.04 Trustee May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Securities or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of overdue principal or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise, (a) to file and prove a claim for the whole amount of principal and interest owing and unpaid in respect of the Securities and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceeding, and (b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same, and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07. Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.05 Trustee May Enforce Claims Without Possession of Securities. All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Securities in respect of which such judgment has been recovered.

Section 6.06 Application of Money Collected.

Any money collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal or interest, upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

First: To the payment of all amounts due the Trustee under Section 7.07; and

Second: To the payment of the amounts then due and unpaid for principal of and interest on the Securities in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal and interest, respectively; and

Third: To the Company.

Section 6.07 Limitation on Suits. No Holder of any Security of any Series shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

- (a) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Securities of that Series;
- (b) the Holders of at least a majority in principal amount of the outstanding Securities of that Series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;
- (c) such Holder or Holders shall have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities to be incurred in compliance with such request;
- (d) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and
- (e) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the outstanding Securities of that Series;

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other of such Holders, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all such Holders.

Section 6.08 Unconditional Right of Holders to Receive Principal and Interest. Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and interest, if any, on such Security on the Stated Maturity or Stated Maturities expressed in such Security (or, in the case of redemption, on the redemption date) and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

Section 6.09 Restoration of Rights and Remedies. If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

Section 6.10 Rights and Remedies Cumulative. Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in Section 2.08, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not, to the extent permitted by law, prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 6.11 Delay or Omission Not Waiver. No delay or omission of the Trustee or of any Holder of any Securities to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

Section 6.12 Control by Holders. Subject to Section 7.02(f), the Holders of a majority in principal amount of the outstanding Securities of any Series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the Securities of such Series, provided that:

(a) such direction shall not be in conflict with any rule of law or with this Indenture,

(b) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction, and

(c) subject to the provisions of Section 7.01, the Trustee shall have the right to decline to follow any such direction if the Trustee in good faith shall, by a Responsible Officer of the Trustee, determine that the proceeding so directed would involve the Trustee in personal liability.

Section 6.13 Waiver of Past Defaults. The Holders of not less than a majority in principal amount of the outstanding Securities of any Series may on behalf of the Holders of all the Securities of such Series waive any past Default hereunder with respect to such Series and its consequences, except a Default (i) in the payment of the principal of or interest on any Security of such Series (provided, however, that the Holders of a majority in principal amount of the outstanding Securities of any Series may rescind an acceleration and its consequences, including any related payment default that resulted from such acceleration) or (ii) in respect of a covenant or provision hereof which cannot be modified or amended without the consent of the Holder of each outstanding Security of such Series affected. Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 6.14 Undertaking for Costs. All parties to this Indenture agree, and each Holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Company, to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the outstanding Securities of any Series, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or interest on any Security on or after the Stated Maturity or Stated Maturities expressed in such Security (or, in the case of redemption, on the redemption date).

ARTICLE VII TRUSTEE

Section 7.01 Duties of Trustee.

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(b) Except during the continuance of an Event of Default:

(i) The Trustee need perform only those duties that are specifically set forth in this Indenture and no others and no implied covenants or obligations shall be read into this Indenture against the Trustee.

(ii) In the absence of bad faith on its part, the Trustee may conclusively rely and is fully protected, as to the truth of the statements and the correctness of the opinions expressed therein, upon Officers' Certificates or Opinions of Counsel furnished to the Trustee and conforming to the requirements of this Indenture; however, in the case of any such Officers' Certificates or Opinions of Counsel which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall examine such Officers' Certificates and Opinions of Counsel to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) This paragraph does not limit the effect of paragraph (b) of this Section.

(ii) The Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts.

(iii) The Trustee shall not be liable with respect to any action taken, suffered or omitted to be taken by it with respect to Securities of any Series in good faith in accordance with the direction of the Holders of a majority in principal amount of the outstanding Securities of such Series relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture with respect to the Securities of such Series.

(d) Every provision of this Indenture that in any way relates to the Trustee is subject to paragraph (a), (b) and (c) of this Section.

(e) The Trustee may refuse to perform any duty or exercise any right or power at the request or direction of any Holder unless it receives indemnity reasonably satisfactory to it against any loss, liability or expense.

(f) The Trustee shall not be liable for interest on any money received by it except as the Trustee may agree in writing with the Company. Money held in trust by the Trustee need not be segregated from other funds except to the extent required by law.

(g) No provision of this Indenture shall require the Trustee to risk its own funds or otherwise incur any financial liability in the performance of any of its duties, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk is not reasonably assured to it.

(h) The rights, privileges, protections, immunities and benefits given to the Trustee, including the right to be indemnified, are extended to, and shall be enforceable by the Trustee in each of its capacities hereunder and to its agents. The provisions set forth in paragraphs (a), (b) and (c) of this Section shall apply to the Trustee in each of its capacities hereunder and its agents.

Section 7.02 Rights of Trustee.

(a) The Trustee may conclusively rely on and shall be protected in acting or refraining from acting upon any document believed by it to be genuine and to have been signed or presented by the proper person. The Trustee need not investigate any fact or matter stated in the document.

(b) Before the Trustee acts or refrains from acting at the direction of the Company, it may require an Officers' Certificate. The Trustee shall not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate.

(c) The Trustee may act through agents and shall not be responsible for the misconduct or negligence of any agent appointed with due care. No Depositary shall be deemed an agent of the Trustee, and the Trustee shall not be responsible for any act or omission by any Depositary.

(d) The Trustee shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers, provided that the Trustee's conduct does not constitute negligence or willful misconduct.

(e) The Trustee may consult with counsel, and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder without negligence and in good faith and in reliance thereon.

(f) The Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders of Securities unless such Holders shall have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

(g) The Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by the Trustee to be genuine and to have been signed or delivered by the proper person.

(h) The Trustee shall not be deemed to have notice of any Default or Event of Default, other than a failure by the Company to make any payment hereunder when due if the Trustee is the Paying Agent, unless a Responsible Officer of the Trustee has actual knowledge thereof or unless written notice of any event which is in fact such a default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Securities generally or the Securities of a particular Series and this Indenture and states that it is a "notice of default."

(i) The permissive rights of the Trustee enumerated herein shall not be construed as duties.

(j) In no event shall the Trustee be responsible or liable for any special, indirect, punitive, incidental or consequential loss or damage of any kind whatsoever (including, but not limited to, lost profits) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(k) Neither the Trustee nor any Agent shall be responsible or liable for any failure or delay in the performance of its obligation under this Indenture arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; wars; acts of terrorism; civil or military disturbances; sabotage;

epidemic; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications services; accidents; labor disputes; acts of civil or military authority or governmental action; it being understood that each of the Trustee and Agents shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

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

Section 7.03 Individual Rights of Trustee. The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or an Affiliate of the Company with the same rights it would have if it were not Trustee. Any Agent may do the same with like rights. The Trustee is also subject to Sections 7.10 and 7.11.

Section 7.04 Trustee's Disclaimer. The Trustee makes no representation as to the validity or adequacy of this Indenture or the Securities, it shall not be accountable for the Company's use of the proceeds from the Securities, and it shall not be responsible for any statement in the Securities other than its authentication.

Section 7.05 Notice of Defaults. If a Default or Event of Default occurs and is continuing with respect to the Securities of any Series and if it is known to a Responsible Officer of the Trustee, the Trustee shall deliver to each Holder of the Securities of that Series notice of a Default or Event of Default within 90 days after it occurs or, if later, after a Responsible Officer of the Trustee has knowledge of such Default or Event of Default. Except in the case of a Default or Event of Default in payment of principal of or interest on any Security of any Series, the Trustee may withhold the notice if and so long as it in good faith determines that withholding the notice is in the interests of Holders of that Series.

Section 7.06 Reports by Trustee to Holders. Within 60 days after March 15 in each year, the Trustee shall transmit by deliver to all Holders, as their names and addresses appear on the register kept by the Registrar a brief report dated as of such March 15, in accordance with, and to the extent required under, TIA Section 313. A copy of each report at the time of its delivery to Holders of any Series shall be filed with the SEC and each stock exchange on which the Securities of that Series are listed. The Company shall promptly notify the Trustee when Securities of any Series are listed on any stock exchange.

Section 7.07 Compensation and Indemnity. The Company shall pay to the Trustee from time to time compensation for its services as the Company and the Trustee shall from time to time agree upon in writing. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Company shall reimburse the Trustee upon request for all reasonable out-of-pocket expenses incurred by it. Such expenses shall include the reasonable compensation and expenses of the Trustee's agents and counsel. The Company shall indemnify each of the Trustee and any predecessor Trustee (including the cost of defending itself) against any loss, liability or expense, including taxes (other than taxes based upon, measured by or determined by the income of the Trustee) incurred by it except as set forth in this Section 7.07 in the performance of its

duties under this Indenture as Trustee or Agent. The Trustee shall notify the Company promptly of any claim for which it may seek indemnity. Failure or delay by the Trustee to so notify the Company of any claim for which it may seek indemnity shall not relieve the Company of its obligations hereunder except to the extent such failure or delay shall have materially prejudiced the Company. The Company shall defend the claim and the Trustee shall cooperate in the defense. The Trustee may have one separate counsel and the Company shall pay the reasonable fees and expenses of such counsel. The Company need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld. This indemnification shall apply to officers, directors, employees, shareholders and agents of the Trustee. The Company need not reimburse any expense or indemnify against any loss or liability incurred by the Trustee or by any officer, director, employee, shareholder or agent of the Trustee through the gross negligence or willful misconduct of any such persons as determined by a final order of a court of competent jurisdiction. When the Trustee incurs expenses or renders services after an Event of Default specified in Section 6.01(d) or (e) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any insolvency, bankruptcy or similar law. The provisions of this Section shall survive the resignation or removal of the Trustee and the termination or discharge of this Indenture.

Section 7.08 Replacement of Trustee. A resignation or removal of the Trustee and appointment of a successor Trustee shall become effective only upon the successor Trustee's acceptance of appointment as provided in this Section. The Trustee may resign with respect to the Securities of one or more Series by so notifying the Company at least 30 days prior to the date of the proposed resignation. The Holders of a majority in principal amount of the Securities of any Series may remove the Trustee with respect to that Series by so notifying the Trustee and the Company. The Company may remove the Trustee with respect to Securities of one or more Series if:

- (a) the Trustee fails to comply with Section 7.10;
- (b) the Trustee is adjudged bankrupt or insolvent or an order for relief is entered with respect to the Trustee under any insolvency, bankruptcy or similar law;
- (c) a custodian or public officer takes charge of the Trustee or its property; or
- (d) the Trustee becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint a successor Trustee.

If a successor Trustee with respect to the Securities of any one or more Series does not take office within 60 days after the retiring Trustee resigns or is removed, the retiring Trustee, the Company or the Holders of at least a majority in principal amount of the Securities of the applicable Series may petition any court of competent jurisdiction for the appointment of a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company. Immediately after that, the retiring Trustee shall transfer all property held by it as Trustee to the successor Trustee subject to the lien provided for in Section 7.07, the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee with respect to each Series of Securities for which it is acting as Trustee under this Indenture. A successor Trustee shall deliver a notice of its succession to each Holder of each such Series. Notwithstanding replacement of the Trustee pursuant to this Section 7.08, the Company's obligations under Section 7.07 hereof shall continue for the benefit of the retiring Trustee with respect to expenses and liabilities incurred by it prior to the date of such replacement.

Section 7.09 Successor Trustee by Merger, etc. If the Trustee consolidates with, merges or converts into, or transfers all or substantially all of its corporate trust business (including administration of this Indenture) to, another corporation, the successor corporation without any further act shall be the successor Trustee.

Section 7.10 Eligibility; Disqualification. This Indenture shall always have a Trustee who satisfies the requirements of TIA Section 310(a)(1), (2) and (5) and has a combined capital and surplus of at least \$50,000,000. The Trustee shall comply with TIA Section 310(b).

Section 7.11 Preferential Collection of Claims Against Company. The Trustee is subject to TIA Section 311(a), excluding any creditor relationship listed in TIA Section 311(b). A Trustee who has resigned or been removed shall be subject to TIA Section 311(a) to the extent indicated.

ARTICLE VIII SATISFACTION AND DISCHARGE; DEFEASANCE

Section 8.01 Satisfaction and Discharge of Indenture.

This Indenture shall upon Company Order cease to be of further effect (except as hereinafter provided in this Section 8.01), and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(a) any of the following shall have occurred:

(i) no Securities have been issued hereunder;

(ii) all Securities theretofore authenticated and delivered (other than Securities that have been destroyed, lost or stolen and that have been replaced or paid) have been delivered to the Trustee for cancellation; or

(iii) all such Securities not theretofore delivered to the Trustee for cancellation (1) have become due and payable, or (2) will become due and payable at their Stated Maturity within one year, or (3) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company;

and the Company has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust an amount sufficient for the purpose of paying and discharging the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal and interest to the date of such deposit (in the case of Securities which have become due and payable on or prior to the date of such deposit) or to the Stated Maturity or redemption date, as the case may be;

(b) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and

(c) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 7.07 and, if money shall have been deposited with the Trustee pursuant to clause (a) of this Section, the provisions of Sections 2.04, 2.05, 2.07, 2.08, 8.01, 8.02 and 8.05 shall survive.

Section 8.02 Application of Trust Funds; Indemnification.

(a) Subject to the provisions of Section 8.05, all money deposited with the Trustee pursuant to Section 8.01, all money and U.S. Government Obligations or Foreign Government Obligations deposited with the Trustee pursuant to Section 8.03 or 8.04 and all money received by the Trustee in respect of U.S. Government Obligations or Foreign Government Obligations deposited with the Trustee pursuant to Section 8.03 or 8.04, shall be held in trust and applied by it, in accordance with the provisions of the Securities and this Indenture, to the payment, either directly or through any Paying Agent (other than the Company acting as its own Paying Agent) as the Trustee may determine, to the persons entitled thereto, of the principal and interest for whose payment such money has been deposited with or received by the Trustee or analogous payments as contemplated by Sections 8.03 or 8.04.

(b) The Company shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against U.S. Government Obligations or Foreign Government Obligations deposited pursuant to Sections 8.03 or 8.04 or the interest and principal received in respect of such obligations other than any payable by or on behalf of Holders.

(c) The Trustee shall deliver or pay to the Company from time to time upon Company Request any U.S. Government Obligations or Foreign Government Obligations or money held by it as provided in Sections 8.03 or 8.04 which, in the opinion of a nationally recognized firm of independent certified public accountants expressed in a written certification thereof delivered to the Trustee, are then in excess of the amount thereof which then would have been required to be deposited for the purpose for which such U.S. Government Obligations or Foreign Government Obligations or money were deposited or received. This provision shall not authorize the sale by the Trustee of any U.S. Government Obligations or Foreign Government Obligations held under this Indenture.

Section 8.03 Legal Defeasance of Securities of any Series. Unless this Section 8.03 is otherwise specified, pursuant to Section 2.02(s), to be inapplicable to Securities of any Series, the Company shall be deemed to have paid and discharged the entire indebtedness on all the outstanding Securities of any Series on the 91st day after the date of the deposit referred to in subparagraph (d) hereof, and the provisions of this Indenture, as it relates to such outstanding Securities of such Series, shall no longer be in effect (and the Trustee, at the expense of the Company, shall, at Company Request, execute such instruments reasonably requested by the Company acknowledging the same), except as to:

(a) the rights of Holders of Securities of such Series to receive, from the trust funds described in subparagraph (d) hereof, (i) payment of the principal of and each installment of principal of and interest on the outstanding Securities of such Series on the Stated Maturity of such principal or installment of principal or interest, and (ii) the benefit of any mandatory sinking fund payments applicable to the Securities of such Series on the day on which such payments are due and payable in accordance with the terms of this Indenture and the Securities of such Series; and

(b) the provisions of Sections 2.04, 2.05, 2.07, 2.08, 8.02, 8.03 and 8.05; and

(c) the rights, powers, trust and immunities of the Trustee hereunder; provided that, the following conditions shall have been satisfied:

(d) with reference to this Section 8.03, the Company shall have deposited or caused to be irrevocably deposited (except as provided in Section 8.02(c)) with the Trustee as trust funds in trust for the purpose of making the following payments, specifically pledged as security for and dedicated solely to the benefit of the Holders of such Securities (i) in the case of Securities of such Series denominated in Dollars, cash in Dollars and/or U.S. Government Obligations, or (ii) in the case of Securities of such Series denominated in a Foreign Currency (other than a composite currency), money and/or Foreign Government Obligations, which through the payment of interest and principal in respect thereof in accordance with their terms, will provide (and without reinvestment and assuming no tax liability will be imposed on such Trustee), not later than one day before the due date of any payment of money, an amount in cash, sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge each installment of principal of and interest, if any, on and any mandatory sinking fund payments in respect of all the Securities of such Series on the dates such installments of interest or principal and such sinking fund payments are due;

(e) such deposit will not result in a breach or violation of, or constitute a default under, this Indenture or any other agreement or instrument to which the Company is a party or by which it is bound;

(f) no Default or Event of Default with respect to the Securities of such Series shall have occurred and be continuing on the date of such deposit or during the period ending on the 91st day after such date;

(g) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel to the effect that (i) the Company has received from, or there has been published by, the Internal Revenue Service a ruling, or (ii) since the date of execution of this Indenture, there has been a change in the applicable Federal income tax law, in either case to the effect that, and based thereon such Opinion of Counsel shall confirm that, the Holders of the Securities of such Series will not recognize income, gain or loss for Federal income tax purposes as a result of such deposit, defeasance and discharge and will be subject to Federal income tax on the same amounts and in the same manner and at the same times as would have been the case if such deposit, defeasance and discharge had not occurred;

(h) the Company shall have delivered to the Trustee an Officers' Certificate stating that the deposit was not made by the Company with the intent of preferring the Holders of the Securities of such Series over any other creditors of the Company or with the intent of defeating, hindering, delaying or defrauding any other creditors of the Company;

(i) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent provided for relating to the defeasance contemplated by this Section have been complied with; and

(j) such defeasance shall not result in the trust arising from such deposit constituting an investment company within the meaning of the Investment Company Act of 1940, as amended, unless such trust shall be registered under such Act or exempt from registration thereunder.

Section 8.04 Covenant Defeasance. Unless this Section 8.04 is otherwise specified, pursuant to Section 2.02(s), to be inapplicable to Securities of any Series, on and after the 91st day after the date of the deposit referred to in subparagraph (a) hereof, the Company may omit to comply with respect to the Securities of any Series with any term, provision or condition set forth under Sections 4.02, 4.03, and 5.01 as well as any additional covenants specified in a supplemental indenture for such Series of Securities or a Board Resolution or an Officers' Certificate delivered pursuant to Section 2.02 (and the failure to comply with any such covenants shall not constitute a Default or Event of Default with respect to such Series under Section 6.01) and the occurrence of any event specified in a supplemental indenture for such Series of Securities or a Board Resolution or an Officers' Certificate delivered pursuant to Section 2.02 and designated as an Event of Default shall not constitute a Default or Event of Default hereunder, with respect to the Securities of such Series, provided that the following conditions shall have been satisfied:

(a) with reference to this Section 8.04, the Company has deposited or caused to be irrevocably deposited (except as provided in Section 8.02(c)) with the Trustee as trust funds in trust for the purpose of making the following payments specifically pledged as security for, and dedicated solely to, the benefit of the Holders of such Securities (i) in the case of Securities of such Series denominated in Dollars, cash in Dollars and/or U.S. Government Obligations, or (ii) in the case of Securities of such Series denominated in a Foreign Currency (other than a composite currency), money and/or Foreign Government Obligations, which through the payment of interest

and principal in respect thereof in accordance with their terms, will provide (and without reinvestment and assuming no tax liability will be imposed on such Trustee), not later than one day before the due date of any payment of money, an amount in cash, sufficient, in the opinion of a nationally recognized firm of independent certified public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge each installment of principal of and interest, if any, on and any mandatory sinking fund payments in respect of the Securities of such Series on the dates such installments of interest or principal and such sinking fund payments are due;

(b) such deposit will not result in a breach or violation of, or constitute a default under, this Indenture or any other agreement or instrument to which the Company is a party or by which it is bound;

(c) no Default or Event of Default with respect to the Securities of such Series shall have occurred and be continuing on the date of such deposit or during the period ending on the 91st day after such date;

(d) the Company shall have delivered to the Trustee an Opinion of Counsel to the effect that Holders of the Securities of such Series will not recognize income, gain or loss for federal income tax purposes as a result of such deposit and covenant defeasance and will be subject to federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such deposit and covenant defeasance had not occurred;

(e) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the covenant defeasance contemplated by this Section have been complied with; and

(f) Such defeasance shall not result in the trust arising from such deposit constituting an investment company within the meaning of the Investment Company Act of 1940, as amended, unless such trust shall be registered under such Act or exempt from registration thereunder.

Section 8.05 Repayment to Company. The Trustee and the Paying Agent shall pay to the Company upon written request any money held by them for the payment of principal and interest that remains unclaimed for two years, and after such time, Holders entitled to the money must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person.

Section 8.06 Reinstatement. If the Trustee or the Paying Agent is unable to apply any money deposited with respect to Securities of any series in accordance with Section 8.01 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the obligations of the Company under this Indenture with respect to the Securities of such series and under the Securities of such series shall be revived and reinstated as though no deposit had occurred pursuant to Section 8.01 until such time as the Trustee or the Paying Agent is permitted to apply all such money in accordance with Section 8.01; provided, however, that if the Company has made any payment of

principal of, premium (if any) or interest on any Additional Amounts with respect to any Securities because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Securities to receive such payment from the money held by the Trustee or the Paying Agent.

ARTICLE IX AMENDMENTS AND WAIVERS

Section 9.01 Without Consent of Holders. Unless otherwise specified for a particular Series by a Board Resolution, a supplemental indenture or an Officers' Certificate, the Company and the Trustee may amend or supplement this Indenture or the Securities of one or more Series without the consent of any Holder:

- (a) to evidence the succession of another person to the Company under this Indenture and the Securities and the assumption by any such Successor Person of the obligations of the Company hereunder and under the Securities;
- (b) to add covenants of the Company for the benefit of the Holders of all or any series of Securities (and if such covenants are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included for the benefit of such series) or to surrender any right or power herein conferred upon the Company provided such action does not adversely affect the interests of the Holders;
- (c) to add any additional Events of Default;
- (d) to add to or change any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the issuance of Securities in bearer form, registrable or not registrable as to principal, and with or without interest coupons, or to permit or facilitate the issuance of Securities in uncertificated form;
- (e) to add to, change or eliminate any of the provisions of this Indenture in respect of one or more series of Securities, provided that any such addition, change or elimination (A) shall neither (i) apply to any Security of any series created prior to the execution of such supplemental indenture and entitled to the benefit of such provision nor (ii) modify the rights of the Holder of any such Security with respect to such provision or (B) shall become effective only when there is no such Security Outstanding;
- (f) to establish the forms or terms of the Securities of any series issued pursuant to the terms hereof;
- (g) to cure any ambiguity or correct any inconsistency in this Indenture;
- (h) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee;

(i) to qualify this Indenture under the Trust Indenture Act;

(j) to provide for uncertificated securities in addition to certificated securities;

(k) to supplement any provisions of this Indenture necessary to permit or facilitate the defeasance and discharge of any series of Securities, provided that such action does not adversely affect the interests of the Holders of Securities of such series or any other series;

(l) to conform the Indenture to any Description of Securities for a particular Series of Securities; and

(m) to comply with the rules or regulations of any securities exchange or automated quotation system on which any of the Securities may be listed or traded.

Section 9.02 With Consent of Holders. The Company and the Trustee may enter into a supplemental indenture with the written consent of the Holders of at least a majority in principal amount of the outstanding Securities of each Series affected by such supplemental indenture (including consents obtained in connection with a tender offer or exchange offer for the Securities of such Series), for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture or of modifying in any manner the rights of the Holders of each such Series. Except as provided in Section 6.13, the Holders of at least a majority in principal amount of the outstanding Securities of any Series by notice to the Trustee (including consents obtained in connection with a tender offer or exchange offer for the Securities of such Series) may waive compliance by the Company with any provision of this Indenture or the Securities with respect to such Series. It shall not be necessary for the consent of the Holders of Securities under this Section 9.02 to approve the particular form of any proposed supplemental indenture or waiver, but it shall be sufficient if such consent approves the substance thereof. After a supplemental indenture or waiver under this section becomes effective, the Company shall deliver to the Holders of Securities affected thereby a notice briefly describing the supplemental indenture or waiver. Any failure by the Company to deliver such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture or waiver.

Section 9.03 Limitations. Unless otherwise specified for a particular Series by a Board Resolution, a supplemental indenture or an Officers' Certificate, without the consent of each Holder affected, an amendment or waiver may not:

(a) reduce the amount of Securities whose Holders must consent to an amendment, supplement or waiver;

(b) reduce the rate of or extend the time for payment of interest (including default interest) on any Security;

(c) reduce the principal or change the Stated Maturity of any Security or reduce the amount of, or postpone the date fixed for, the payment of any sinking fund or analogous obligation;

(d) reduce the principal amount of Discount Securities payable upon acceleration of the maturity thereof;

(e) waive a Default or Event of Default in the payment of the principal of or interest, if any, on any Security (except a rescission of acceleration of the Securities of any Series by the Holders of at least a majority in principal amount of the outstanding Securities of such Series and a waiver of the payment default that resulted from such acceleration);

(f) make the principal of or interest, if any, on any Security payable in any currency other than that stated in the Security;

(g) make any change in Sections 6.08, 6.13, or 9.03; or

(h) waive a redemption payment with respect to any Security.

Section 9.04 Compliance with Trust Indenture Act. Every amendment to this Indenture or the Securities of one or more Series shall be set forth in a supplemental indenture hereto that complies with the TIA as then in effect.

Section 9.05 Revocation and Effect of Consents. Until an amendment is set forth in a supplemental indenture or a waiver becomes effective, a consent to it by a Holder of a Security is a continuing consent by the Holder and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security, even if notation of the consent is not made on any Security. However, any such Holder or subsequent Holder may revoke the consent as to his Security or portion of a Security if the Trustee receives the notice of revocation before the date of the supplemental indenture or the date the waiver becomes effective. Any amendment or waiver once effective shall bind every Holder of each Series affected by such amendment or waiver unless it is of the type described in any of clauses (a) through (h) of Section 9.03. In that case, the amendment or waiver shall bind each Holder of a Security who has consented to it and every subsequent Holder of a Security or portion of a Security that evidences the same debt as the consenting Holder's Security.

Section 9.06 Notation on or Exchange of Securities. The Trustee may place an appropriate notation about an amendment or waiver on any Security of any Series thereafter authenticated. The Company in exchange for Securities of that Series may issue and the Trustee shall authenticate upon request new Securities of that Series that reflect the amendment or waiver.

Section 9.07 Trustee Protected. In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall receive, in addition to the documents required by Section 10.04, and (subject to Section 7.01) shall be fully protected in relying upon, an Opinion of

Counsel stating that all conditions precedent in this Indenture to the execution of such supplemental indenture, if any, have been complied with, such supplemental indenture is authorized hereunder, and, that such supplemental indenture is the valid and legally binding obligation of the Company. The Trustee shall sign all supplemental indentures, except that the Trustee need not sign any supplemental indenture that adversely affects its rights.

**ARTICLE X
MISCELLANEOUS**

Section 10.01 Trust Indenture Act Controls. If any provision of this Indenture limits, qualifies or conflicts with another provision which is required or deemed to be included in this Indenture by the TIA, such required or deemed provision shall control.

Section 10.02 Notices.

(a) Any notice or communication by the Company or the Trustee to the other, or by a Holder to the Company or the Trustee, is duly given if in writing and delivered in person or mailed by first-class mail or sent by telecopier transmission or electronic transmission in PDF addressed as follows:

if to the Company:

Fluidigm Corporation
7000 Shoreline Court, Suite 100
South San Francisco, CA 94080
Attention: Vikram Jog, Chief Financial Officer
Telephone: (650) -26-6000

if to the Trustee:

U.S. Bank National Association
Global Corporate Trust Services
633 West Fifth Street, 24th Floor
Los Angeles, CA 90071
Attention: Paula Oswald (Fluidigm Convertible Senior Notes due 2034)
Telephone: (213) 615-6043

(b) The Company or the Trustee by notice to the other may designate additional or different addresses for subsequent notices or communications. Any notice or communication to a Holder shall be delivered to his address shown on the register kept by the Registrar. Failure to deliver a notice or communication to a Holder of any Series or any defect in it shall not affect its sufficiency with respect to other Holders of that or any other Series. If a notice or communication is delivered in the manner provided above, within the time prescribed, it is duly given, whether or not the Holder receives it. If the Company delivers a notice or communication to Holders, it shall deliver a copy to the Trustee and each Agent at the same time.

(c) Any notice or demand that by any provision of this Indenture is required or permitted to be given or served by the Company may, at the Company's written request received by the Trustee not fewer than five (5) Business Days prior (or such shorter period of time as may be acceptable to the Trustee) to the date on which such notice must be given or served, be given or served by the Trustee in the name of and at the expense of the Company.

Section 10.03 Communication by Holders with Other Holders. Holders of any Series may communicate pursuant to TIA Section 312(b) with other Holders of that Series or any other Series with respect to their rights under this Indenture or the Securities of that Series or all Series. The Company, the Trustee, the Registrar and anyone else shall have the protection of TIA Section 312(c).

Section 10.04 Certificate and Opinion as to Conditions Precedent. Upon any request or application by the Company to the Trustee to take any action under this Indenture, the Company shall furnish to the Trustee:

- (a) an Officers' Certificate stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and
- (b) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Section 10.05 Statements Required in Certificate or Opinion. Each certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than a certificate provided pursuant to TIA Section 314(a)(4)) shall comply with the provisions of TIA Section 314(e) and shall include:

- (a) a statement that the person making such certificate or opinion has read such covenant or condition;
- (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (c) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (d) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

Section 10.06 Rules by Trustee and Agents. The Trustee may make reasonable rules for action by or a meeting of Holders of one or more Series. Any Agent may make reasonable rules and set reasonable requirements for its functions.

Section 10.07 Legal Holidays. Unless otherwise provided by Board Resolution, Officers' Certificate or supplemental indenture hereto for a particular Series, a "Legal Holiday" is any day that is not a Business Day. If a payment date is a Legal Holiday at a place of payment, payment may be made at that place on the next succeeding day that is not a Legal Holiday, and no interest shall accrue for the intervening period.

Section 10.08 No Recourse Against Others. A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. Each Holder by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Securities.

Section 10.09 Counterparts. This Indenture may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 10.10 Governing Laws. This Indenture and the Securities will be governed by, and construed in accordance with, the internal laws of the State of New York.

Section 10.11 No Adverse Interpretation of Other Agreements. This Indenture may not be used to interpret another indenture, loan or debt agreement of the Company or a Subsidiary of the Company. Any such indenture, loan or debt agreement may not be used to interpret this Indenture.

Section 10.12 Successors. All agreements of the Company in this Indenture and the Securities shall bind its successor. All agreements of the Trustee in this Indenture shall bind its successor.

Section 10.13 Severability. In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 10.14 Table of Contents, Headings, Etc. The Table of Contents, Cross-Reference Table, and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 10.15 Securities in a Foreign Currency. Unless otherwise specified in a Board Resolution, a supplemental indenture hereto or an Officers' Certificate delivered pursuant to Section 2.02 of this Indenture with respect to a particular Series of Securities, whenever for purposes of this Indenture any action may be taken by the Holders of a specified percentage in aggregate

principal amount of Securities of all Series or all Series affected by a particular action at the time outstanding and, at such time, there are outstanding Securities of any Series which are denominated in a coin or currency other than Dollars, then the principal amount of Securities of such Series which shall be deemed to be outstanding for the purpose of taking such action shall be that amount of Dollars that could be obtained for such amount at the Market Exchange Rate at such time. For purposes of this Section 10.15, "*Market Exchange Rate*" shall mean the noon Dollar buying rate in New York City for cable transfers of that currency as published by the Federal Reserve Bank of New York. If such Market Exchange Rate is not available for any reason with respect to such currency, the Company shall use, in its sole discretion and without liability on its part, such quotation of the Federal Reserve Bank of New York as of the most recent available date, or quotations from one or more major banks in The City of New York or in the country of issue of the currency in question or such other quotations as the Company, shall deem appropriate. The provisions of this paragraph shall apply in determining the equivalent principal amount in respect of Securities of a Series denominated in currency other than Dollars in connection with any action taken by Holders of Securities pursuant to the terms of this Indenture. All decisions and determinations of the Company regarding the Market Exchange Rate or any alternative determination provided for in the preceding paragraph shall be in its sole discretion and shall, in the absence of manifest error, to the extent permitted by law, be conclusive for all purposes and irrevocably binding upon the Company, the Trustee and all Holders. The Trustee shall have no duty to calculate or verify the calculations made pursuant to this Section 10.15.

Section 10.16 U.S.A. Patriot Act. The Company acknowledges that in accordance with Section 326 of the U.S.A. Patriot Act, the Trustee, like all financial institutions, and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The Company agrees that it will provide the Trustee with such information as it may reasonably request as required in order for the Trustee to satisfy the requirements of the U.S.A. Patriot Act.

Section 10.17 Waiver of Jury Trial. EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING AS BETWEEN THE COMPANY AND THE TRUSTEE ONLY ARISING OUT OF OR RELATING TO THIS INDENTURE OR THE SECURITIES.

ARTICLE XI SINKING FUNDS

Section 11.01 Applicability of Article. The provisions of this Article shall be applicable to any sinking fund for the retirement of the Securities of a Series, except as otherwise permitted or required by any form of Security of such Series issued pursuant to this Indenture. The minimum amount of any sinking fund payment provided for by the terms of the Securities of any Series is herein referred to as a "*mandatory sinking fund payment*" and any other amount provided for by the terms of Securities of such Series is herein referred to as an "*optional sinking fund payment*." If

provided for by the terms of Securities of any Series, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 11.02. Each sinking fund payment shall be applied to the redemption of Securities of any Series as provided for by the terms of the Securities of such Series.

Section 11.02 Satisfaction of Sinking Fund Payments with Securities. The Company may, in satisfaction of all or any part of any sinking fund payment with respect to the Securities of any Series to be made pursuant to the terms of such Securities (1) deliver outstanding Securities of such Series to which such sinking fund payment is applicable (other than any of such Securities previously called for mandatory sinking fund redemption) and (2) apply as credit Securities of such Series to which such sinking fund payment is applicable and which have been repurchased by the Company or redeemed either at the election of the Company pursuant to the terms of such Series of Securities (except pursuant to any mandatory sinking fund) or through the application of permitted optional sinking fund payments or other optional redemptions pursuant to the terms of such Securities, provided that such Securities have not been previously so credited. Such Securities shall be received by the Trustee, together with an Officers' Certificate with respect thereto, not later than 15 days prior to the date on which the Trustee begins the process of selecting Securities for redemption, and shall be credited for such purpose by the Trustee at the price specified in such Securities for redemption through operation of the sinking fund and the amount of such sinking fund payment shall be reduced accordingly. If as a result of the delivery or credit of Securities in lieu of cash payments pursuant to this Section 11.02, the principal amount of Securities of such Series to be redeemed in order to exhaust the aforesaid cash payment shall be less than \$100,000, the Trustee need not call Securities of such Series for redemption, except upon receipt of a Company Order that such action be taken, and such cash payment shall be held by the Trustee or a Paying Agent and applied to the next succeeding sinking fund payment, provided, however, that the Trustee or such Paying Agent shall from time to time upon receipt of a Company Order pay over and deliver to the Company any cash payment so being held by the Trustee or such Paying Agent upon delivery by the Company to the Trustee of Securities of that Series purchased by the Company having an unpaid principal amount equal to the cash payment required to be released to the Company.

Section 11.03 Redemption of Securities for Sinking Fund. Not less than 45 days (unless otherwise indicated in the Board Resolution, supplemental indenture or Officers' Certificate in respect of a particular Series of Securities) prior to each sinking fund payment date for any Series of Securities, the Company will deliver to the Trustee an Officers' Certificate specifying the amount of the next ensuing mandatory sinking fund payment for that Series pursuant to the terms of that Series, the portion thereof, if any, which is to be satisfied by payment of cash and the portion thereof, if any, which is to be satisfied by delivering and crediting of Securities of that Series pursuant to Section 11.02, and the optional amount, if any, to be added in cash to the next ensuing mandatory sinking fund payment, and the Company shall thereupon be obligated to pay the amount therein specified. Not less than 30 days (unless otherwise indicated in the Board Resolution, Officers' Certificate or supplemental indenture in respect of a particular Series of Securities) before each such sinking fund payment date the Trustee shall select the Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 3.02 and cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 3.03. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 3.04, 3.05 and 3.06.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed and attested, all as of the day and year first above written.

FLUIDIGM CORPORATION

By: /s/ Vikram Jog

Name: Vikram Jog

Title: Chief Financial Officer

[SIGNATURE PAGE TO INDENTURE]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed and attested, all as of the day and year first above written.

U.S. BANK NATIONAL ASSOCIATION
as Trustee

By: /s/ Paula Oswald
Name: Paula Oswald
Title: Vice President

FLUIDIGM CORPORATION, as
ISSUER
and
U.S. BANK NATIONAL ASSOCIATION,
as Trustee

FIRST SUPPLEMENTAL INDENTURE
DATED AS OF FEBRUARY 4, 2014

TO INDENTURE
DATED AS OF FEBRUARY 4, 2014

Relating To
2.75% Convertible Senior Notes Due 2034

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FIRST SUPPLEMENTAL INDENTURE

THIS FIRST SUPPLEMENTAL INDENTURE, dated as of February 4, 2014 (the "First Supplemental Indenture"), to the Indenture (defined below) among Fluidigm Corporation, a Delaware corporation (the "Company") and U.S. Bank National Association, as trustee (the "Trustee").

RECITALS

WHEREAS, the Company has heretofore executed and delivered to the Trustee an Indenture, dated as of February 4, 2014 (the "Base Indenture"), providing for the issuance from time to time of debentures, notes or other debt instruments of the Company, to be issued in one or more series as therein provided ("Securities");

WHEREAS, pursuant to the terms of the Base Indenture, the Company desires to provide for the establishment of a new series of its Securities to be known as its 2.75% Convertible Senior Notes due 2034 (the "Notes"), the form and substance of such Notes and the terms, provisions and conditions thereof to be set forth as provided in the Base Indenture, as amended and supplemented by this First Supplemental Indenture (the "Indenture"); and

WHEREAS, the Company has requested that the Trustee execute and deliver this First Supplemental Indenture and all requirements necessary to make this First Supplemental Indenture a valid instrument in accordance with its terms, and to make the Notes, when executed by the Company and authenticated and delivered by the Trustee, the valid obligations of the Company, and all acts and things necessary have been done and performed to make this First Supplemental Indenture enforceable in accordance with its terms, and the execution and delivery of this First Supplemental Indenture has been duly authorized in all respects.

WITNESSETH:

NOW, THEREFORE, for and in consideration of the premises contained herein, each party agrees for the benefit of each other party and for the equal and ratable benefit of the Holders, as follows:

ARTICLE I.
DEFINITIONS

Section 1.01 Capitalized Terms.

Capitalized terms used but not defined in this First Supplemental Indenture shall have the meanings ascribed to them in the Base Indenture.

Section 1.02 References.

References in this First Supplemental Indenture to article and section numbers shall be deemed to be references to article and section numbers of this First Supplemental Indenture unless otherwise specified.

Section 1.03 Definitions.

For purposes of this First Supplemental Indenture, the following terms have the meanings ascribed to them as follows:

“Additional Interest” shall have the meaning provided in Section 6.03.

“Additional Shares” has the meaning provided in Section 5.07(a).

“Base Indenture” has the meaning provided in the recitals.

“Beneficial Owner” has the meaning provided in Section 2.03.

“Business Day” means any day other than (x) a Saturday, (y) Sunday or (z) a day on which state or federally chartered banking institutions in New York, New York are not required to be open.

“Close of Business” means 5:00 p.m., New York City time.

“Closing Sale Price” of the Common Stock on any date means the closing per share sale price (or, if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) at 4:00 p.m., New York City time, on such date as reported in composite transactions for the Nasdaq Global Select Market or, if the Common Stock is not listed on the Nasdaq Global Select Market, the principal U.S. national or regional securities exchange on which the Common Stock is listed for trading or, if the Common Stock is not listed on a U.S. national or regional securities exchange, as reported by OTC Markets Group Inc. at 4:00 p.m., New York City time, on such date (or in either case the then-standard closing time for regular trading on the relevant exchange or trading system). If the closing sale price of the Common Stock is not so reported, the “Closing Sale Price” will be the average of the mid-point of the last bid and ask prices for the Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

“Common Stock” means the Company’s common stock, \$0.001 par value per share.

“Conversion Agent” has the meaning provided in Section 2.05.

“Conversion Date” means the date a Holder complies with the relevant procedures for conversion.

“Conversion Notice” means a “Conversion Notice” in the form set forth in the global note attached as Exhibit A hereto.

“Conversion Price” of a Note at any time is equal to \$1,000 divided by the Conversion Rate in effect at such time.

“Conversion Rate” shall initially be 17.8750 shares of Common Stock per \$1,000 principal amount of Notes, subject to adjustment as provided in Article V.

“Depository” has the meaning provided in Section 2.03.

“Designated Institution” has the meaning provided in Section 5.02.

“Effective Date” has the meaning provided in Section 5.07(a).

“Event of Default” has the meaning provided in Section 6.01.

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

“Ex-Dividend Date” means the first date on which shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Company or, if applicable, from the seller of the Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

“Expiration Date” has the meaning provided in Section 5.05(e).

“Expiration Time” has the meaning provided in Section 5.05(e).

“First Supplemental Indenture” has the meaning provided in the preamble.

A “Fundamental Change” will be deemed to have occurred if any of the following events occurs after the time the Notes are originally issued:

(1) any “person” within the meaning of Section 13(d)(3) under the Exchange Act, other than us or our wholly-owned Subsidiaries, files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person has become the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of shares of the Company’s Voting Stock representing 50% or more of the total voting power of all outstanding classes of the Company’s Voting Stock entitled to vote generally in elections of directors, or has the power, directly or indirectly, to elect a majority of the members of the Board of Directors;

(2) the consummation of (A) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination or change in par value) as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, or other property or assets; (B) any consolidation, merger, combination or binding share exchange of the Company pursuant to which the Common Stock will be converted into, or exchanged for, cash, stock, other securities, or other property or assets; or (C) any sale, assignment, conveyance, transfer, lease or other disposition, in one transaction or a series of transactions, of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any Person (provided that, for the avoidance of doubt, a pledge of assets pursuant to any agreement governing secured indebtedness shall be deemed not to be a sale, lease, transfer, conveyance or other disposition hereunder); *provided* that a transaction described in clause (A) or (B) above pursuant to which the Persons that “beneficially owned,” directly or indirectly, the shares of the Company’s Voting Stock immediately prior to such transaction “beneficially own,” directly or indirectly, shares of Voting Stock representing at least a majority of the total voting power of all outstanding classes of Voting Stock of the surviving or

continuing corporation or transferee person or the parent thereof and such holders' proportional voting power immediately after such transaction vis-à-vis each other with respect to the securities they receive in such transaction will be in substantially the same proportions as their respective voting power vis-à-vis each other immediately prior to such transaction will not constitute a "Fundamental Change";

(3) the adoption of a plan relating to the liquidation or dissolution of the Company (whether or not otherwise in compliance with the Indenture);

or

(4) a Termination of Trading.

For purposes of this definition of "Fundamental Change", any transaction that constitutes a Fundamental Change pursuant to both clause (1) and clause (2) of this definition shall be deemed a fundamental change solely under clause (2) of this definition.

However, notwithstanding the foregoing, a "Fundamental Change" will not be deemed to have occurred if at least 90% of the consideration paid for the Common Stock in a transaction or transactions described under clause (1) and/or (2) of this definition of Fundamental Change, excluding cash payments for any fractional share and cash payments made pursuant to dissenters' appraisal rights, consists of shares of common stock traded on The New York Stock Exchange, The NASDAQ Global Market or The NASDAQ Global Select Market (or any of their respective successors), or will be so traded immediately following such transaction, and, as a result therefrom, such consideration becomes the Reference Property for the Notes.

"Fundamental Change Notice" has the meaning provided in Section 3.02(c).

"Fundamental Change Repurchase Date" has the meaning provided in Section 3.02(a).

"Fundamental Change Repurchase Notice" has the meaning provided in Section 3.02(b).

"Fundamental Change Repurchase Price" means, with respect to any Notes to be repurchased by the Company under Section 3.02:

(1) 100% of the principal amount of the Notes to be repurchased; plus

(2) accrued and unpaid interest to, but excluding, the Fundamental Change Repurchase Date; *provided* that if such Fundamental Change Repurchase Date shall be after a Regular Record Date and on or prior to the immediately succeeding Interest Payment Date, the Company shall instead pay the full amount of accrued and unpaid interest to, but excluding, such Interest Payment Date to the Holder of record as of the Close of Business on such Regular Record Date, and the repurchase price will be equal to 100% of the principal amount of the Notes subject to repurchase.

"Fundamental Change Repurchase Right" has the meaning provided in Section 3.02(a).

"Holder" means a Person in whose name a Note is registered on the Registrar's books.

"Holder Option to Repurchase Notice" has the meaning provided in Section 3.03(c).

“Indebtedness” means, without duplication, any obligations (other than non-recourse obligations) of the Company or any of its Significant Subsidiaries for borrowed money or evidenced by bonds, notes or similar instruments.

“Indenture” has the meaning provided in the recitals.

“Interest Payment Date” has the meaning provided in Section 2.04.

“Issue Date” means February 4, 2014.

“Make-Whole Fundamental Change” means a Fundamental Change (determined after giving effect to any exemptions or exclusions from such term, but without giving effect to the proviso in clause (2) of the definition thereof) that becomes effective prior to the February 6, 2021.

“Market Disruption Event” means (1) a failure by the primary U.S. national or regional securities exchange or market on which the Company’s Common Stock is listed or admitted for trading during its regular trading session or (2) the occurrence or existence prior to 1:00 p.m., New York City time, on any Scheduled Trading Day for the Company’s Common Stock for more than one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movement in price exceeding limits permitted by the relevant stock exchange or otherwise) in the Company’s Common Stock or in any options contracts or future contracts relating to the Company’s Common Stock.

“Maturity Date” means February 1, 2034.

“Notes” has the meaning provided in the recitals.

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

“Optional Redemption” has the meaning provided in Section 3.01(b).

“Optional Redemption Date” has the meaning provided in Section 3.01(b).

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, limited liability company, government or any agency or political subdivision hereof or any other entity.

“Provisional Redemption” has the meaning provided in Section 3.01(a).

“Provisional Redemption Date” has the meaning provided in Section 3.01(a).

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

“Redemption Date” has the meaning provided in Section 3.01(b).

“Redemption Notice” has the meaning provided in Section 3.01(c).

“Redemption Price” means, with respect to any Notes to be redeemed by the Company under Section 3.01:

(1) 100% of the principal amount of the Notes being redeemed; plus

(2) accrued and unpaid interest, if any, to, but excluding, such Redemption Date; *provided* that if such Redemption Date shall be after a Regular Record Date and on or prior to the immediately succeeding Interest Payment Date, the Company shall instead pay the full amount of accrued and unpaid interest to the Holder of record as of the Close of Business on such Regular Record Date and the redemption price shall be 100% of the principal amount of the Notes to be redeemed.

“Reference Property” has the meaning provided in Section 5.06(c).

“Regular Record Date” has the meaning provided in Section 2.04.

“Relevant Distribution” has the meaning provided in Section 5.05(c).

“Repurchase Date” has the meaning provided in Section 3.03(a).

“Repurchase Notice” means a “Repurchase Notice” in the form set forth in the global note attached as Exhibit A hereto.

“Repurchase Price” means, with respect to any Notes to be repurchased by the Company under Section 3.03:

(1) 100% of the principal amount of the Notes being repurchased; plus

(2) accrued and unpaid interest, if any, to, but excluding, such Repurchase Date; *provided* that if such Repurchase Date shall be after a Regular Record Date but on or prior to the immediately succeeding Interest Payment Date, the Company shall instead pay the full amount of accrued and unpaid interest to the Holder of record as of the Close of Business on such Regular Record Date and the repurchase price shall be 100% of the principal amount of the Notes to be repurchased.

“Repurchase Right” has the meaning provided in Section 3.03(a).

“Scheduled Trading Day” means any day that is scheduled to be a trading day on the primary U.S. exchange or quotation system on which the Company’s Common Stock is listed or admitted for trading, or if the Company’s Common Stock is not so listed or admitted for trading, “Scheduled Trading Day” means a Business Day.

“Securities” has the meaning provided in the recitals.

“Settlement Amount” means the shares of Common Stock the Company is required to deliver upon conversion of the Notes, including any cash payment made in lieu of fractional shares.

“Significant Subsidiary” has the meaning provided to such term in Rule 1-02(w) of Regulation S-X under the Securities Act of 1933, as amended.

“Spin-Off” has the meaning provided in Section 5.05(c)(B).

“Stock Price” has the meaning provided in Section 5.07(b).

“Subsidiary” means any corporation of which at the time of determination by the Company, directly and/or indirectly through one or more Subsidiaries, owns more than 50% of the shares of Voting Stock.

“Termination of Trading” means the Common Stock (or Reference Property into which the Notes are convertible) ceases to be listed or quoted on any of The New York Stock Exchange, the Nasdaq Global Market or the Nasdaq Global Select Market (or any successors thereof).

“Trading Day” means a day on which (i) the Nasdaq Global Select Market or, if our Common Stock is not listed on the Nasdaq Global Select Market, the principal other U.S. national or regional securities exchange on which our Common Stock is then listed is open for trading, in each case, with a scheduled closing time of 4:00 p.m. (New York City time) or the then-standard closing time for regular trading on the relevant exchange or market, or, if our Common Stock is not so listed, any Business Day, (ii) a closing sale price for our Common Stock is available on such securities exchange or market and (iii) there is no Market Disruption Event. If our Common Stock is not so listed or traded, “trading day” shall mean a Business Day.

“Trustee” has the meaning provided in the preamble.

“Valuation Period” has the meaning provided in Section 5.05(c).

“Voting Stock” means any class or classes of capital stock pursuant to which the holders thereof have the general voting power under ordinary circumstances to elect at least a majority of the board of directors, managers or trustees of any person (irrespective of whether or not, at the time, stock of any other class or classes shall have, or might have, voting power by reason of the happening of any contingency).

Section 1.04 References to Interest.

Any reference to interest on, or in respect of, any Note in this Indenture shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to Section 6.03. Any express mention of the payment of Additional Interest in any provision hereof shall not be construed as excluding Additional Interest in those provisions hereof where such express mention is not made.

ARTICLE II.
GENERAL TERMS AND CONDITIONS OF THE NOTES

Section 2.01 Designation and Principal Amount.

The Notes are hereby authorized and are designated the “2.75% Convertible Senior Notes due 2034.” The Notes issued on the Issue Date pursuant to the terms of this Indenture will be in an initial aggregate principal amount of \$201,250,000, which amount shall be set forth in a written order of the Company for the authentication and delivery of the Notes pursuant to Section 2.03 of the Base Indenture. In addition, the Company may from time to time, without the consent of the Holders, reopen the Indenture and issue additional Notes under the Indenture with the same terms (other than the date of issuance and, in some cases, the date from which interest will initially accrue) as the Notes issued on the Issue Date in an unlimited aggregate principal amount; *provided* that if any such additional Notes are not fungible with the Notes issued on the Issue Date for U.S. federal income tax purposes, such additional Notes will have a separate CUSIP number. The Notes issued on the Issue Date and any such additional Notes would be treated as a single class for all purposes under the Indenture and would vote together as one class on all matters with respect to the Notes.

Section 2.02 Maturity.

The principal amount of the Notes will be payable on the Maturity Date.

Section 2.03 Form and Payment.

The Notes will be issued as global notes, in fully registered book-entry form without coupons in minimum denominations of \$1,000 and integral multiples of \$1,000.

Principal and/or interest, if any, on the global notes representing the Notes will be made to The Depository Trust Company (the “Depository”).

The global notes representing the Notes will be deposited with, or on behalf of, the Depository and will be registered in the name of the Depository or a nominee of the Depository. No global note may be transferred except as a whole by a nominee of the Depository to the Depository or to another nominee of the Depository, or by the Depository or such nominee to a successor of the Depository or a nominee of such successor.

So long as the Depository or its nominee is the registered owner of a global note, the Depository or its nominee, as the case may be, will be the sole Holder of the Notes represented thereby for all purposes under the Indenture. Except as otherwise provided herein, each actual purchaser of each Note represented by a global note (“Beneficial Owner”) will not be entitled to receive physical delivery of certificated Notes and will not be considered the Holders thereof for any purpose under the Indenture, and no global note representing the Notes shall be exchangeable or transferable. Accordingly, each Beneficial Owner must rely on the procedures of the Depository and, if such Beneficial Owner is not a participant, on the procedures of the participant through which such Beneficial Owner owns its interest in order to exercise any rights of a Holder under such global note or the Indenture.

The global notes representing the Notes will be exchangeable for certificated Notes of like tenor and terms and of differing authorized denominations aggregating a like principal amount, only if (i) the Depository notifies the Company that it is unwilling or unable to continue as Depository for the global debt securities and a successor to the Depository is not appointed within 90 days, (ii) the Depository ceases to be a clearing agency registered under the Exchange Act and a successor to the Depository is not appointed by the Company within 90 days, (iii) the Company in its sole discretion determines that the global notes shall be exchangeable for certificated Notes and notifies the Trustee in writing of such determination or (iv) there shall have occurred and be continuing an Event of Default under the Indenture with respect to the Notes and any Beneficial Owner requests that its Notes be issued in physical, certificated form. Upon any such exchange, the certificated Notes shall be registered in the names of the Beneficial Owners of the global notes representing the Notes, which names shall be provided by the Depository's relevant participants (as identified by the Depository) to the Trustee. In such event the Company will execute, and subject to Section 2.03 of the Base Indenture, the Trustee, upon receipt of an Officers' Certificate evidencing such determination by the Company, will authenticate and deliver the Notes in definitive registered form without coupons, in authorized denominations, and in an aggregate principal amount equal to the principal amount of the global notes in exchange for such global notes. Upon the exchange of the global notes for such Notes in definitive registered form without coupons, in authorized denominations, the global notes shall be cancelled by the Trustee. Such Notes in definitive registered form issued in exchange for the global notes shall be registered in such names and in such authorized denominations as the Depository, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee in writing. The Trustee shall deliver such Notes to the Depository for delivery to the Persons in whose names such Notes are so registered.

Section 2.04 Interest.

The Notes shall bear interest at a rate equal to 2.75% per year. Interest on the Notes shall be computed on the basis of a 360-day year comprised of twelve 30-day months, and shall accrue from February 4, 2014, or from the most recent Interest Payment Date to which interest has been paid or duly provided upon for the Notes, as the case may be. Interest on the Notes shall be payable semi-annually in arrears on February 1 and August 1, commencing August 1, 2014 (each an "Interest Payment Date"), to the persons in whose names the Notes are registered at the Close of Business on January 15 and July 15 (whether or not a Business Day), as the case may be, preceding such Interest Payment Date (a "Regular Record Date").

Payments of the Fundamental Change Repurchase Price, Repurchase Price, Redemption Price, principal and interest that are not made when due will accrue interest per annum at the then-applicable interest rate plus one percent from the required payment date.

Section 2.05 Transfer, Exchange and Conversion.

In addition to its obligations under Section 2.04 of the Base Indenture, the Company shall also cause to be kept at one of the offices or agencies maintained pursuant to Section 2.04 of the Base Indenture an office in the United States where Notes may be presented for conversion (the "Conversion Agent"), transfer or exchange.

The Company initially appoints the Trustee as Paying Agent, Registrar and Conversion Agent for the Notes.

The Company reserves the right to:

- (i) vary or terminate the appointment of the Registrar, Paying Agent or Conversion Agent;
- (ii) appoint additional Paying Agents or Conversion Agents; or
- (iii) approve any change in the office through which any Registrar or any Paying Agent or Conversion Agent acts.

The Company shall not be required to transfer or exchange any Note surrendered for repurchase or conversion except for any portion of that Note not being repurchased or converted, as the case may be.

Section 2.06 Repurchase and Cancellation.

Each of the Registrar, Paying Agent and Conversion Agent (if other than the Trustee) will forward to the Trustee any Notes surrendered to it by Holders for transfer, exchange, payment or conversion. All Notes delivered to the Trustee shall be cancelled promptly by the Trustee in the manner provided in the Base Indenture and may not be reissued or resold. No Notes shall be authenticated in exchange for any Notes cancelled, except as provided in the Base Indenture.

The Company may, to the extent permitted by law, and directly or indirectly (regardless of whether such Notes are surrendered to the Company), repurchase Notes in the open market or otherwise, whether by the Company or its subsidiaries or through private or public tender or exchange offer or through counterparties to private agreements, including cash-settled swaps or other derivatives. The Company shall cause any Notes so repurchased (other than Notes repurchased pursuant to cash-settled swaps or other derivatives) to be surrendered to the Trustee for cancellation, and such Notes will no longer be considered "outstanding" under the Indenture upon their repurchase.

ARTICLE III.
REDEMPTION AND REPURCHASE

Section 3.01 Redemption.

(a) Prior to February 6, 2018, the Company may not redeem the Notes. On or after February 6, 2018 and prior to February 6, 2021, the Company may redeem any or all of the Notes (other than Notes for which the Company repurchase right provided under Section 3.02 have been exercised on or before the Close of Business on the Business Day immediately prior to the applicable Redemption Date) (such redemption, a "Provisional Redemption") on any Business Day (a "Provisional Redemption Date") in cash at the Redemption Price; *provided* that the Closing Sale Price of the Common Stock for at least 20 Trading Days (whether or not consecutive) during a period of 30 consecutive Trading Days ending within 5 Trading Days immediately prior to the date of the Redemption Notice, exceeds 130% of the Conversion Price on each applicable Trading Day.

(b) On or after February 6, 2021, the Company may redeem any or all of the Notes (other than Notes for which the Company repurchase right provided under Section 3.02 have been exercised on or before the Close of Business on the Business Day immediately prior to the applicable Redemption Date) without being subject to the conditions set forth in Section 3.01(a) (such redemption, an “Optional Redemption”) on any Business Day (an “Optional Redemption Date”, and together with a Provisional Redemption Date, each a “Redemption Date”) in cash at the Redemption Price.

(c) Section 3.03 of the Base Indenture shall not apply to, and have no force and effect with respect to, the Notes and any reference to Section 3.03 of the Base Indenture with respect to the Notes shall be superseded by and references thereto shall be deemed to refer to this Section 3.01(c). The Company shall give notice of redemption not less than 30 nor more than 60 calendar days immediately preceding the Redemption Date to all Holders of Notes on the date of the redemption notice at their addresses shown in the Registrar’s books (such notice, a “Redemption Notice”), with a copy to the Trustee and the Paying Agent.

The Redemption Notice shall identify the Notes and the aggregate principal amount thereof to be redeemed pursuant to the redemption and shall state:

- (i) that Holders have a right to convert the Notes called for redemption upon satisfaction of the requirements set forth in this Section 3.01;
- (ii) the Redemption Date;
- (iii) the Redemption Price;

(iv) the time at which the Holders’ right to convert the Notes called for redemption will expire, which will be the close of business on the Business Day immediately preceding the Redemption Date (unless the Company defaults in the payment of the Redemption Price);

(v) the Conversion Rate and, in the case of any conversion of the Note in connection with a Provisional Redemption in accordance with Section 3.01, the number of additional shares of Common Stock specified in Section 5.07 to be issuable upon such conversion of the Note;

(vi) the names and addresses of the Paying Agent and the Conversion Agent;

(vii) the procedures a Holder must follow to convert its Notes;

(viii) that Notes called for redemption must be surrendered to the Paying Agent to collect the Redemption Price therefor;

(ix) the CUSIP number or numbers, as the case may be, of the Notes to be redeemed; and

(x) in case any Note is to be redeemed in part only, the portion of the principal amount thereof to be redeemed and that on and after the Redemption Date, upon surrender of such Note, a new Note in principal amount equal to the unredeemed portion thereof shall be issued.

(d) Section 3.02 of the Base Indenture shall not apply to, and have no force and effect with respect to, the Notes and any reference to Section 3.02 of the Base Indenture with respect to the Notes shall be superseded by and references thereto shall be deemed to refer to this Section 3.01(d). If the Company does not redeem all of the Notes, the Trustee shall select the Notes to be redeemed in principal amounts of \$1,000 or integral multiples of \$1,000, from Notes then outstanding and not already redeemed as a result of having previously been called for redemption, in accordance with the procedures of the Depository. If the Trustee selects a portion of a Holder's Notes for partial redemption and such Holder converts a portion of such Holder's Note, the converted portion shall be deemed to be from the portion selected for redemption to the extent that the converted portion does not exceed the portion selected for redemption. The Trustee shall promptly notify the Company in writing of the Notes selected for redemption and the principal amount thereof to be redeemed. If any Notes are to be redeemed in part only, the Company shall issue new Notes in principal amount equal to the unredeemed principal portion thereof; *provided*, that the Company shall not be required to (i) issue, register the transfer of or exchange any Notes during a period beginning at the open of business 15 days before the mailing of a Redemption Notice and ending at the close of business on the earliest date on which the relevant Redemption Notice is deemed to have been given to all Holders of Notes to be redeemed or (ii) register the transfer of or exchange any Notes so selected for redemption, in whole or in part, except the unredeemed portion of any Notes being redeemed in part.

(e) With respect to any Notes that are converted in connection with a Provisional Redemption in accordance with Section 5.07, the Company shall, if applicable, increase the Conversion Rate for the Notes so surrendered for conversion by a number of Additional Shares in accordance with Section 5.07.

(f) No Notes may be redeemed if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to the Redemption Date.

(g) If, by 11:00 a.m., New York City time on the applicable Redemption Date, the Paying Agent holds money sufficient to make payment of the Redemption Price on all the Notes or portions thereof that are to be redeemed on such Redemption Date, then (i) such Notes will cease to be outstanding, (ii) interest will cease to accrue on such Notes (whether or not book-entry transfer of the Notes has been made or the Notes have been delivered to the Trustee or Paying Agent) and (iii) all other rights of the Holders of such Notes will terminate (other than the right to receive the Redemption Price and previously accrued but unpaid interest); *provided*, that, if the Redemption Date is after a Regular Record Date and on or prior to the immediately following Interest Payment Date, then accrued and unpaid interest on such Notes to, but excluding, such Interest Payment Date shall be paid, on such Interest Payment Date, to the Holder of record of such Notes at the close of business on such Regular Record Date without any requirement to surrender such Notes to the Paying Agent. The Paying Agent shall return to the Company, as soon as practicable and upon receipt of written instructions, any money not required for that purpose.

(h) If the Redemption Price of any Note shall not be fully and duly paid in accordance with this Section 3.01, the portion of the Redemption Price that is not so paid shall bear interest pursuant to Section 2.04, and such Note shall continue to be convertible pursuant to Article V of this First Supplemental Indenture, until such Redemption Price and accrued interest have been paid.

Section 3.02 Repurchase at Option of Holders Upon a Fundamental Change.

(a) Upon the occurrence of a Fundamental Change prior to the Maturity Date, each Holder will have the option to require the Company to repurchase for cash (a "Fundamental Change Repurchase Right") all or any portion of such Holder's Notes that is equal to \$1,000, or an integral multiple of \$1,000, on the day of the Company's choosing that is not less than 20 or more than 35 Business Days after the later of the occurrence of such Fundamental Change and the date the Company gives notice of the Fundamental Change (such day, the "Fundamental Change Repurchase Date") at the Fundamental Change Repurchase Price.

(b) A Holder must deliver written notice (a "Fundamental Change Repurchase Notice") of its exercise of this Fundamental Change Repurchase Right to the Paying Agent during the period between the delivery of the Fundamental Change Notice and the Close of Business on the Business Day immediately preceding the Fundamental Change Repurchase Date in the form set forth in the global note attached as Exhibit A to this Indenture, in each case duly completed and signed, with appropriate signature guarantee, specifying the Notes for which the Fundamental Change Repurchase Right is being exercised. If a Holder wishes to withdraw this election, it must provide a written notice of withdrawal to the Paying Agent at any time until the Close of Business on the Business Day immediately preceding the Fundamental Change Repurchase Date. If the Notes are not in certificated form, the notice given by each Holder (and any withdrawal notice) must comply with applicable Depositary procedures.

(c) The Company shall mail to the Trustee and to each Holder a written notice of a Fundamental Change (the "Fundamental Change Notice") within ten Business Days after the occurrence of such Fundamental Change. This Fundamental Change Notice shall state:

- (i) the events causing the Fundamental Change;
- (ii) the effective date of the Fundamental Change, and whether the Fundamental Change is a Make-Whole Fundamental Change;
- (iii) the last date on which a Holder may exercise the Fundamental Change Repurchase Right;
- (iv) the Fundamental Change Repurchase Price;
- (v) the Fundamental Change Repurchase Date;

(vi) the Conversion Rate and, in the case of any conversion of the Note in connection with a Make-Whole Fundamental Change, the number of additional shares of Common Stock specified in Section 5.07 to be issuable upon such conversion of the Note, and the procedures required for exercise of a Holder's right to convert its Notes, including in the event of a Make-Whole Fundamental Change;

(vii) the procedures required for exercise of the Fundamental Change Repurchase Right, and the procedures required for withdrawal of any such exercise; and

(viii) the name and address of the Paying Agent and Conversion Agent.

No failure of the Company to give a Fundamental Change Notice shall limit any Holder's right pursuant hereto to exercise their Fundamental Change Repurchase Right.

(d) The Company shall be required to repurchase Notes that have been validly surrendered for repurchase and not validly withdrawn on the Fundamental Change Repurchase Date. The Holder will receive payment of the Fundamental Change Repurchase Price on the later of the Fundamental Change Repurchase Date and the time of book-entry transfer or the delivery of such Holder's Notes. If the Paying Agent as of 11:00 a.m., New York City time, on the Fundamental Change Repurchase Date holds money sufficient to pay the Fundamental Change Repurchase Price of the Notes for which a Fundamental Change Repurchase Notice has been submitted and not validly withdrawn, then:

(i) such Notes shall cease to be outstanding and interest will cease to accrue (whether or not book-entry transfer of the Notes is made or whether or not the Note is delivered to the Paying Agent); and

(ii) all other rights of the relevant Holders of such Notes shall terminate (other than the right to receive the Fundamental Change Repurchase Price and, if the Fundamental Change Repurchase Date is after a Regular Record Date and on or prior to the related Interest Payment Date, the right of the Holder on such Regular Record Date to receive the related interest payment).

(e) No Notes may be repurchased by the Company at the option of Holders upon a Fundamental Change if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to the Fundamental Change Repurchase Date (except in the case of an acceleration resulting from a default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes). The Paying Agent shall promptly return to the respective Holders thereof any Notes held by it during the continuance of such an acceleration.

(f) In connection with any Fundamental Change Repurchase Right, the Company shall, to the extent applicable:

(i) comply with the provisions of Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act, to the extent such rules as applicable;

- (ii) file a Schedule TO or any successor or similar schedule, if required, under the Exchange Act; and
- (iii) otherwise comply with all applicable federal and state securities laws.

Section 3.03 Repurchase at Option of Holders Upon Specified Dates.

(a) Each Holder will have the option to require the Company to repurchase all or a portion of their Notes for cash (“Repurchase Right”) on February 6, 2021, February 6, 2024, and February 6, 2029 (each a “Repurchase Date” and together, the “Repurchase Dates”) at the Repurchase Price. The Repurchase Price will be payable in cash and the Company will be required to repurchase any outstanding Notes for which a Holder delivers a written Repurchase Notice to the Paying Agent.

(b) A Holder must deliver a written Repurchase Notice of its exercise of this Repurchase Right to the Paying Agent during the period beginning at the Open of Business on the date that is 20 Business Days prior to the Repurchase Date until the Close of Business on the Business Day immediately preceding the Repurchase Date. If a Holder wishes to withdraw this election, it must provide a written notice of withdrawal to the Paying Agent at any time until the Close of Business on the Business Day immediately preceding the Repurchase Date. If the Notes are not in certificated form, the notice given by each Holder (and any withdrawal notice) must comply with applicable Depositary procedures.

(c) The Company shall mail to the Trustee and to each Holder a written notice (the “Holder Option to Repurchase Notice”) on a date not less than 20 Business Days prior to each Repurchase Date. This Holder Option to Repurchase Notice shall state certain specified information, including:

(i) that Holders have a right to require the Company to repurchase the Notes upon satisfaction of the requirements set forth in this Section 3.03;

(ii) the Repurchase Date;

(iii) the Repurchase Price;

(iv) that Notes with respect to which a Repurchase Notice is given by a Holder may be converted pursuant to Article V of this First Supplemental Indenture only if such Repurchase Notice has been withdrawn in accordance with this Section 3.03 or if there shall be a default in the payment of such Repurchase Price payable as herein provided;

(v) the Conversion Rate;

(vi) the names and addresses of the Paying Agent and the Conversion Agent;

(vii) the procedures a Holder must follow for exercise of the Repurchase Right and the procedures required for withdrawal of any such exercise;

(viii) that Notes called for redemption must be surrendered to the Paying Agent to collect the Repurchase Price therefor; and

(ix) the CUSIP number or numbers, as the case may be, of the Notes to be redeemed.

No failure of the Company to give a Holder Option to Repurchase Notice shall limit any Holder's right pursuant hereto to exercise their Repurchase Right.

(d) The Company shall be required to repurchase Notes that have been validly surrendered for repurchase and not validly withdrawn on the Repurchase Date. The Holder will receive payment of the Repurchase Price on the later of the Repurchase Date and the time of book-entry transfer or the delivery of such Holder's Notes. If the Paying Agent as of 11:00 a.m., New York City time, on the Repurchase Date holds money sufficient to pay the Repurchase Price of the Notes for which a Repurchase Notice pursuant to this Section 3.03 has been submitted and not validly withdrawn, then:

(i) such Notes shall cease to be outstanding and interest will cease to accrue (whether or not book-entry transfer of the Notes is made or whether or not the Note is delivered to the Paying Agent); and

(ii) all other rights of the relevant Holders of such Notes shall terminate (other than the right to receive the Repurchase Price and, if the Repurchase Date is after a Regular Record Date and on or prior to the related Interest Payment Date, the right of the Holder on such Regular Record Date to receive the related interest payment).

(e) No Notes may be repurchased by the Company at the option of Holders upon their exercise of a Repurchase Right if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to the Repurchase Date (except in the case of an acceleration resulting from a default by the Company in the payment of the Repurchase Price with respect to such Notes). The Paying Agent shall promptly return to the respective Holders thereof any Notes held by it during the continuance of such an acceleration.

(f) In connection with any repurchase by the Company upon a Holder's exercise of its Repurchase Right, the Company shall, to the extent applicable:

(i) comply with the provisions of Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act, to the extent such rules as applicable;

(ii) file a Schedule TO or any successor or similar schedule, if required, under the Exchange Act; and

(iii) otherwise comply with all applicable federal and state securities laws.

Section 3.04 No Sinking Fund.

No sinking fund is provided for the Notes, and Article XI of the Base Indenture is inapplicable with respect to the Notes.

ARTICLE IV.
CONSOLIDATION, MERGER AND SALE OF ASSETS

Article V of the Base Indenture shall not apply to, and have no force and effect with respect to, the Notes and any reference to Article VIII of the Base Indenture with respect to the Notes shall be superseded by and references thereto shall be deemed to refer to this Article IV.

The Company shall not consolidate with, or merge with or into, enter into any combination or binding share exchange with, another Person or sell, assign, convey, transfer, lease or otherwise dispose in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any successor Person unless:

(i) the successor Person, if any, is a corporation organized and existing under the laws of the United States of America or any state thereof or the District of Columbia and expressly assumes by supplemental indenture all the obligations of the Company under the Notes and the Indenture;

(ii) immediately after giving effect to the transaction, no default or Event of Default with respect to the Notes shall have occurred and be continuing; and

(iii) the Company shall deliver to the Trustee prior to the consummation of the proposed transaction an Officers' Certificate to the foregoing effect and an Opinion of Counsel (which may rely upon such Officers' Certificate as to the absence of defaults and Events of Default) stating that the proposed transaction and such supplemental indenture will, upon consummation of the proposed transaction, comply with this Indenture.

Upon any such consolidation, merger, combination, binding share exchange, or sale, assignment, conveyance, transfer, lease or other disposition, the resulting, surviving or transferee corporation (if not the Company) shall succeed to the Company, and may exercise every right and power of the Company, under this Indenture, and the Company shall be discharged from its obligations under the Notes and this Indenture except in the case of any such lease. For purposes of the foregoing, any sale, assignment, conveyance, transfer, lease or other disposition of the assets of one or more of the Company's Subsidiaries that would, if the Company had held such assets directly, have constituted the sale, assignment, conveyance, transfer, lease or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, will be treated as such under this Indenture.

ARTICLE V.
CONVERSION OF NOTES

Section 5.01 Right to Convert.

(a) At any time prior to the Close of Business on the Business Day immediately preceding the Maturity Date, a Holder may convert all or any portion of its Notes at the Conversion Rate in effect on the Conversion Date. A Holder may convert fewer than all of such Holder's Notes so long as the Notes converted are in an integral multiple of \$1,000 principal amount.

(b) Upon conversion of a Note, a Holder will not receive any additional cash payment for accrued and unpaid interest, if any, unless such Holder is the Holder on a Regular Record Date and such conversion occurs between such Regular Record Date and the Interest Payment Date to which it relates as described in Section 5.01(c), and the Company will not adjust the Conversion Rate to account for accrued and unpaid interest. Except as described in Section 5.01(c), the Company's settlement of conversions pursuant to Section 5.03 shall be deemed to satisfy the Company's obligation to pay the principal amount of the Note and accrued and unpaid interest, if any, to, but not including, the Conversion Date.

(c) Holders at the Close of Business on a Regular Record Date will receive payment of interest payable on the corresponding Interest Payment Date notwithstanding the conversion of such Notes at any time after the Close of Business on the applicable Regular Record Date. Notes surrendered for conversion by a Holder after the Close of Business on any Regular Record Date but prior to the next Interest Payment Date must be accompanied by payment of an amount equal to the interest that will be payable on the Notes; *provided, however*, that no such payment shall be required (1) if the Company has specified a Fundamental Change Repurchase Date following a Fundamental Change that is after a Regular Record Date and on or prior to the corresponding Interest Payment Date, (2) if the Company has specified a Redemption Date in accordance with Section 3.01 that is after a Regular Record Date and on or prior to the corresponding Interest Payment Date, (3) with respect to any Notes surrendered for conversion following the Regular Record Date immediately preceding the Maturity Date or (4) only to the extent of overdue interest, if any overdue interest exists at the time of conversion with respect to such Notes. For the avoidance of doubt, all Holders on the Regular Record Date immediately preceding the Maturity Date will receive and retain the full interest payment due on the Maturity Date regardless of whether their Notes are converted following such Regular Record Date.

(d) If the Company calls any or all of the Notes for redemption under Section 3.01, Holders shall have the right to convert all or a portion of their Notes called for redemption at any time prior to the Close of Business on the Business Day immediately preceding the Redemption Date, after which time Holders shall no longer have the right to convert their Notes on account of the Company's delivery of such Redemption Notice, unless the Company defaults in the payment of the Redemption Price. If a Holder elects to convert its Notes in connection with a Provisional Redemption, the Company shall, if applicable, increase the Conversion Rate for the Notes so surrendered for conversion by a number of Additional Shares in accordance with Section 5.07.

(e) The Company shall pay any documentary, stamp or similar issue or transfer tax due on the issuance of the shares of the Common Stock upon conversion of the Notes, unless the tax is due because the Holder requests such shares of Common Stock to be issued in a name other than the Holder's name, in which case the Holder shall pay the tax.

Section 5.02 Exchange in Lieu of Conversion.

(a) If at any time when a Holder surrenders Notes for conversion prior to the Maturity Date of the Notes, the Company:

(i) has designated a financial institution, which shall be a direct or indirect Depository participant (a "Designated Institution"), to accept such Notes in exchange for shares of Common Stock (including cash for any fractional shares) due upon conversion as provided in Section 5.03; and

(ii) notifies the Holder surrendering such Notes for conversion by the second Trading Day after the applicable Conversion Date, that it has directed the Designated Institution to make an exchange in lieu of conversion, then, notwithstanding anything in this Indenture to the contrary, the Company may direct the Conversion Agent to surrender such Notes to the Designated Institution for exchange in lieu of conversion.

(b) If the Designated Institution accepts Notes surrendered for exchange, it shall deliver shares of Common Stock (including cash for any fractional shares) to the Conversion Agent and the Conversion Agent will deliver shares of Common Stock (including cash for any fractional shares) to such Holder on the third Business Day immediately following the Conversion Date. Any Notes so exchanged by such Designated Institution shall remain outstanding for all purposes under this Indenture.

(c) If the Designated Institution agrees to accept any Notes for exchange but does not timely deliver the related consideration to the Conversion Agent, or if the Designated Institution does not accept such Notes for exchange, the Company shall, within the time period specified in Section 5.03(c), convert such Notes into shares of Common Stock (including cash for any fractional shares) in accordance with the provisions of Section 5.03.

For the avoidance of doubt, in no event will the Company's designation of a financial institution pursuant to this Section 5.02 require such financial institution to accept any Notes for exchange.

Section 5.03 Settlement upon Conversion.

(a) Upon conversion, the Company shall deliver to Holders in respect of each \$1,000 principal amount of Notes being converted a number of shares of Common Stock equal to the Conversion Rate in effect immediately prior to the Close of Business on the relevant Conversion Date. No fractional shares will be issued upon conversion. Instead, the Company will pay cash in lieu of any fractional share based on the Closing Sale Price of the Common Stock on the relevant Conversion Date.

(b) Each conversion will be deemed to have been effected as to any Notes surrendered for conversion on the Conversion Date, and with respect to the shares of Common Stock that are issuable upon such conversion, the Person in whose name the certificate or certificates for such shares will be registered shall be treated as the holder of record of such shares as of the Close of Business on the Conversion Date.

(c) The Company shall deliver the consideration due in respect of any conversion on the third Business Day immediately following the relevant Conversion Date.

Section 5.04 Conversion Procedures.

(a) (1) If a Note is represented by a certificated security, to exercise its right of conversion, a Holder must:

- (i) complete and manually sign the Conversion Notice, with the appropriate signature guarantee, or facsimile of the Conversion Notice and deliver the completed Conversion Notice (which shall be irrevocable) to the Conversion Agent;
- (ii) surrender the certificated Note to the Conversion Agent;
- (iii) furnish appropriate endorsements and transfer documents if required by the Registrar or Conversion Agent;
- (iv) pay all transfer or similar taxes if required pursuant to Section 5.01(e); and
- (v) pay funds equal to interest payable on the next Interest Payment Date required by Section 5.01(c), if any, or

(2) If a Note is represented by a global security, to exercise its right of conversion, a Holder must comply with Section 5.04(a)(1)(iv) and Section 5.04(a)(1)(v) above and the Depository's procedures for converting a beneficial interest in a global security.

(b) If a Holder has submitted its Notes for repurchase upon a Fundamental Change or on a Repurchase Date, such Holder may only convert its Notes if it withdraws its Fundamental Change Repurchase Notice or Repurchase Notice, as the case may be, prior to the Fundamental Change Repurchase Date or the applicable Repurchase Date, pursuant to Section 3.02(b) or 3.03(b), as the case may be. If such Holder's Notes are submitted for repurchase upon a Fundamental Change or on a Repurchase Date, such Holder's right to withdraw its Fundamental Change Repurchase Notice or Repurchase Notice, as the case may be, and convert its Notes that are subject to repurchase will terminate at the Close of Business on the Business Day immediately preceding the Fundamental Change Repurchase Date or applicable Repurchase Date, as the case may be.

Section 5.05 Conversion Rate Adjustments.

The Conversion Rate shall be subject to adjustment from time to time, without duplication, upon the occurrence of any of the following events, *provided*, that the Company will not make any adjustments to the Conversion Rate if Holders of the Notes participate (other than

in the case of (x) a share split or share combination or (y) a tender or exchange offer), at the same time and upon the same terms as Holders of our Common Stock and solely as a result of holding the Notes, in any of the transactions described below without having to convert their Notes as if they held a number of shares of Common Stock equal to the Conversion Rate, *multiplied by* the principal amount of Notes held by such Holder, *divided by* \$1,000:

(a) If the Company issues solely shares of Common Stock as a dividend or distribution on all or substantially all of its shares of Common Stock, or if the Company subdivides or combines Common Stock, the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where,

- CR₀ = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such dividend or distribution, or immediately prior to the Open of Business on the effective date of such subdivision or combination of Common Stock, as the case may be;
- CR₁ = the Conversion Rate in effect immediately after the Open of Business on the Ex-Dividend Date for such dividend or distribution, or effective date of such subdivision or combination of Common Stock, as the case may be;
- OS₀ = the number of shares of Common Stock outstanding immediately prior to the Open of Business on the Ex-Dividend Date for such dividend or distribution or the effective date of such subdivision or combination of Common Stock, as the case may be; and
- OS₁ = the number of shares of Common Stock that would be outstanding immediately after giving effect to such dividend or distribution, or immediately after the effective date of such subdivision or combination of Common Stock, as the case may be.

Any adjustment made under this Section 5.05(a) shall become effective immediately after the Open of Business on the Ex-Dividend Date for such dividend or distribution or effective date of such subdivision or combination of Common Stock, as the case may be. If such dividend, distribution, subdivision or combination described in this Section 5.05(a) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution or to effect such subdivision or combination, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared or subdivision or combination had not been announced.

(b) If an Ex-Dividend Date occurs for a distribution to all or substantially all holders of Common Stock of any rights, options or warrants entitling such holders for a period of not more than 60 calendar days from the announcement date for such distribution to subscribe for or purchase shares of Common Stock, at a price per share less than the average of the Closing Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the announcement date for such distribution, the Conversion Rate shall be increased based on the following formula:

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

where,

- CR₀ = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such distribution;
- CR₁ = the Conversion Rate in effect immediately after the Open of Business on the Ex-Dividend Date for such distribution;
- OS₀ = the number of shares of Common Stock outstanding immediately prior to the Open of Business on the Ex-Dividend Date for such distribution;
- X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and
- Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants *divided by* the average of the Closing Sale Prices of Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the announcement date for such distribution.

Any adjustment made under this Section 5.05(b) will become effective immediately after the Open of Business on the Ex-Dividend Date for such distribution. Any increase made under this Section 5.05(b) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the Open of Business on the Ex-Dividend Date for such distribution. To the extent that shares of Common Stock are not delivered after the exercise of such rights, options or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so distributed, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect if the Record Date for such distribution had not occurred.

For purposes of this Section 5.05(b), in determining whether any rights, options or warrants entitle the Holders to subscribe for or purchase shares of Common Stock at a price that is less than the average of the Closing Sale Prices of the Common Stock over the applicable 10 consecutive Trading Day period and in determining the aggregate price payable for such shares of the Common Stock, there shall be taken into account any consideration the Company receives for such rights, options or warrants and any amount payable on exercise or conversion thereof, with the value of such consideration if other than cash to be determined in good faith by the Board of Directors.

(c) (A) If an Ex-Dividend Date occurs for a distribution (a “Relevant Distribution”) of shares of the Company’s capital stock, evidences of the Company’s indebtedness or other assets or property of the Company or rights, options or warrants to acquire the Company’s capital stock or other securities, to all or substantially all holders of the Common Stock (excluding (i) dividends or distributions and rights, options or warrants as to which an adjustment was effected under Section 5.05(a) or Section 5.05(b) above; (ii) dividends or distributions paid exclusively in cash covered under Section 5.05(d); and (iii) Spin-Offs), then the Conversion Rate shall be increased based on the following formula:

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

where,

- CR₀ = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such distribution;
- CR₁ = the Conversion Rate in effect immediately after the Open of Business on the Ex-Dividend Date for such distribution;
- SP₀ = the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and
- FMV = the fair market value (as determined in good faith by the Board of Directors) of the shares of capital stock, evidences of indebtedness, assets or property or rights, options or warrants distributed with respect to each outstanding share of Common Stock as of the Open of Business on the Ex-Dividend Date for such distribution.

Any increase made under the above portion of this Section 5.05(c) shall become effective immediately after the Open of Business on the Ex-Dividend Date for such distribution. No adjustment pursuant to the above formula will result in a decrease of the Conversion Rate. However, if such distribution is not so paid or made, the Conversion Rate shall be readjusted to be the Conversion Rate that would then be in effect if such distribution had not been declared.

Notwithstanding the foregoing, if “FMV” (as defined above) is equal to or greater than “SP₀” (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive (without having to convert its notes), in respect of each \$1,000 principal amount thereof, at the same time and upon the same terms as holders of the Common Stock, the amount and type of the Relevant Distribution that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate on the Record Date for the distribution.

(B) With respect to an adjustment pursuant to this Section 5.05(c) where there has been an Ex-Dividend Date for a dividend or other distribution on the Common Stock of shares of capital stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit, that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange (a “Spin-Off”), the Conversion Rate shall be increased based on the following formula:

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

where,

- CR₀ = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for the Spin-Off;
- CR₁ = the Conversion Rate in effect immediately after the Open of Business on the Ex-Dividend Date for the Spin-Off;
- FMV = the average of the Closing Sale Prices of the capital stock or similar equity interest distributed to holders of Common Stock applicable to one share of Common Stock (determined by reference to the definition of “Closing Sale Price” as if references therein to Common Stock were to such capital stock or similar equity interest) over the first 10 consecutive Trading Day period commencing on, and including, the effective date for the Spin-Off (such period, the “Valuation Period”); and
- MP₀ = the average of the Closing Sale Prices of the Common Stock over the Valuation Period.

The adjustment to the Conversion Rate under the preceding paragraph of this Section 5.05(c) shall be determined on the last day of the Valuation Period but will be given effect immediately after the Open of Business on the Ex-Dividend Date for the Spin-Off. In respect of any conversion during the Valuation Period for any Spin-Off, references within this Section 5.05(c)(B) related to 10 Trading Days shall be deemed to be replaced with such lesser number of Trading Days as have elapsed from, and including, the effective date for such Spin-Off to, but excluding, the relevant Conversion Date.

(d) If an Ex-Dividend Date occurs for a cash dividend or distribution to all or substantially all holders of the outstanding Common Stock (other than any dividend or distribution in connection with the Company’s liquidation, dissolution or winding up), the Conversion Rate shall be increased based on the following formula:

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

where,

- CR₀ = the Conversion Rate in effect immediately prior to the Open of Business on the Ex-Dividend Date for such distribution;
- CR₁ = the Conversion Rate in effect immediately after the Open of Business on the Ex-Dividend Date for such distribution;

- SP₀ = the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and
- C = the amount in cash per share of Common Stock the Company pays, or distributes, to all or substantially all holders of the Common Stock.

Any increase made under this Section 5.05(d) shall become effective immediately after the Open of Business on the Ex-Dividend Date for such dividend or distribution. No adjustment pursuant to the above formula will result in a decrease of the Conversion Rate. However, if any dividend or distribution described in this Section 5.05(d) is declared but not so paid or made, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

Notwithstanding the foregoing, if “C” (as defined above) is equal to or greater than “SP₀” (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive (without having to convert its Notes) for each \$1,000 principal amount of Notes, at the same time and upon the same terms as holders of shares of Common Stock, the amount of cash that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate on the Record Date for such cash dividend or distribution.

(e) If the Company or any of its Subsidiaries makes a payment in respect of a tender or exchange offer for the Common Stock and, if the cash and value of any other consideration included in the payment per share of Common Stock exceeds the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (the “Expiration Date”), the Conversion Rate shall be increased based on the following formula:

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

where,

- CR₀ = the Conversion Rate in effect immediately prior to the Open of Business on the Trading Day next succeeding the Expiration Date;
- CR₁ = the Conversion Rate in effect immediately after the Open of Business on the Trading Day next succeeding the Expiration Date;
- AC = the aggregate value of all cash and any other consideration (as determined in good faith by the Board of Directors) paid or payable for shares of Common Stock purchased in such tender or exchange offer;
- OS₀ = the number of shares of Common Stock outstanding immediately prior to the time (the “Expiration Time”) such tender or exchange offer expires (prior to giving effect to the purchase of all shares accepted for purchase or exchange in such tender or exchange offer);

- OS₁ = the number of shares of Common Stock outstanding immediately after the Expiration Time (after giving effect to the purchase of all shares accepted for purchase or exchange in such tender or exchange offer); and
- SP₁ = the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the Expiration Date.

The adjustment to the Conversion Rate under this Section 5.05(e) shall be determined at the Close of Business on the tenth Trading Day immediately following, but excluding, the Expiration Date but shall be given effect at the Open of Business on the Trading Day next succeeding the Expiration Date. In respect of any conversion during the 10 Trading Days commencing on the Trading Day next succeeding the Expiration Date, references within this Section 5.05(e) to 10 Trading Days shall be deemed to be replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the Expiration Date to, but excluding, the relevant Conversion Date. No adjustment pursuant to the above formula will result in a decrease of the Conversion Rate.

(f) To the extent that the Company has a rights plan in effect upon conversion of the Notes, the Holders shall receive, in addition to the Common Stock received in connection with such conversion, the rights under the rights plan, unless prior to any conversion, the rights have separated from the Common Stock, in which case the Conversion Rate will be adjusted at the time of separation as if the Company distributed to all holders of Common Stock, shares of the Company's capital stock, evidences of indebtedness or other assets or property as described in Section 5.05(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

(g) To the extent permitted by applicable law and applicable listing rules of the Nasdaq Global Select Market and any other securities exchange on which the Company's securities are then listed, (i) the Company is permitted to increase the Conversion Rate of the Notes by any amount for a period of at least 20 Business Days so long as the increase is irrevocable during the period and the Board of Directors determines that such increase would be in the Company's best interest and (ii) the Company may (but is not required to) increase the Conversion Rate to avoid or diminish income tax to holders of the Common Stock or rights to purchase shares of the Common Stock in connection with a dividend or distribution of shares (or rights to acquire shares) or similar events. The Company must give at least 15 days' prior notice of any such increase in the Conversion Rate.

(h) Adjustments to the Conversion Rate will be calculated to the nearest 1/10,000th of a share of Common Stock. Notwithstanding anything in this Section 5.05 to the contrary, the Company shall not be required to adjust the Conversion Rate unless the adjustment would result in a change of at least 1% of the Conversion Rate. However, the Company shall carry forward any adjustments that are less than 1% of the Conversion Rate and make such carried forward adjustments (1) when the cumulative net effect of all adjustments not yet made will result in a change of at least 1% of the Conversion Rate or (2) regardless of whether the aggregate adjustment is less than 1%, (i) upon any required repurchases of the Notes in connection with a Fundamental Change and (ii) upon any conversion of Notes.

(i) Whenever any provision of this Indenture requires the Company to calculate the Closing Sale Prices or the Stock Price over a span of multiple days, the Board of Directors shall make appropriate adjustments to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Record Date, the Ex-Dividend Date, the Expiration Date or the Effective Date of the event occurs, at any time during the period from which such Closing Sale Prices or Stock Prices are to be calculated.

(j) If the Company issues rights, options or warrants that are only exercisable upon the occurrence of certain triggering events, then (i) the Company will not adjust the Conversion Rate pursuant to the above provisions until the earliest of these triggering events occurs; and (ii) the Company will readjust the Conversion Rate to the extent any of these rights, options or warrants are not exercised before they expire.

(k) If the Company adjusts the Conversion Rate pursuant to the above provisions, the Company shall deliver to the Conversion Agent a certificate setting forth the Conversion Rate, detailing the calculation of the Conversion Rate and describing the facts upon which the adjustment is based.

Section 5.06 Recapitalizations, Reclassifications and Changes to the Common Stock.

In the event of:

(a) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination or changes in par value);

(b) a consolidation, merger, combination or binding share exchange involving the Company; or

(c) a sale, assignment, conveyance, transfer, lease or other disposition, in one transaction or a series of transactions, of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any Person (provided that, for the avoidance of doubt, a pledge of the Company's assets pursuant to any agreement governing secured indebtedness shall not be deemed to be a sale, lease, transfer, conveyance or other disposition hereunder);

in each case, in which holders of outstanding Common Stock are entitled to receive cash, securities or other property for their shares of Common Stock, the Company or the successor or purchasing company, as the case may be, shall execute with the Trustee a supplemental indenture, providing that, at and after the effective time of such transaction, Holders of each \$1,000 principal amount of Notes will be entitled to convert their Notes into the type and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of Common Stock equal to the Conversion Rate immediately prior to such transaction would have owned or been entitled to receive upon such transaction ("Reference Property"). The supplemental indenture shall also provide for anti-dilution and other adjustments that are as nearly equivalent as possible to the adjustments described under Section 5.05. If the Reference Property in respect of any such transaction includes shares of stock, securities or other property or assets of a company other than the

successor or purchasing corporation, as the case may be, in such transaction, such other company shall also execute such supplemental indenture, and such supplemental indenture shall contain such additional provisions to protect the interests of the Holders, including the right of Holders to require the Company to repurchase their Notes upon a Fundamental Change as described in Section 3.02, as the Board of Directors reasonably considers necessary by reason of the foregoing. If the Notes become convertible into Reference Property, the Company shall notify the Trustee.

For purposes of the foregoing, the type and amount of consideration that holders of the Common Stock are entitled to in the case of recapitalizations, reclassifications, changes of the Common Stock, consolidations, mergers, combinations, binding share exchanges, sales, assignments, conveyances, transfers, leases or other dispositions that cause the Common Stock to be converted into or exchanged for the right to receive more than a single type of consideration because the holders of Common Stock have the right to elect the type of consideration they receive will be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such an election. The Company shall notify Holders of the weighted average as soon as practicable after such determination is made. The Company shall not become a party to any such transaction unless its terms are consistent with the foregoing.

Section 5.07 Adjustment to Conversion Rate upon Conversion upon a Make-Whole Fundamental Change or a Provisional Redemption

(a) If a Holder elects to convert its Notes in connection with (i) a Make-Whole Fundamental Change or (ii) a Provisional Redemption as provided in Section 3.01, then the Conversion Rate of such Notes shall be increased by an additional number of shares of Common Stock (the "Additional Shares") as described below. A conversion shall be deemed to be in connection with a Make-Whole Fundamental Change if the Conversion Notice is received by the Conversion Agent during the period that begins on (and includes) the date on which the Make-Whole Fundamental Change occurs or becomes effective (the "Effective Date") and ends at the Close of Business on the Business Day immediately preceding the related Fundamental Change Repurchase Date (or, in the case of a Make-Whole Fundamental Change that would have been a Fundamental Change but for the exception provided in clause (2) of the definition thereof, the 35th Trading Day immediately following the Effective Date). A conversion of Notes will be deemed for these purposes to be "in connection with" such Provisional Redemption if a Holder converts its Notes at any time following the date of the Notice of Provisional Redemption up to, and including, the Business Day prior to the Redemption Date for the Provisional Redemption.

(b) The number of Additional Shares, if any, by which the Conversion Rate will be increased for conversions in connection with a (i) Make-Whole Fundamental Change or (ii) Provisional Redemption, will be determined by reference to the table below, based on the Effective Date or the date of the Redemption Notice and (1) the price paid per share of the Common Stock in the case of a Make-Whole Fundamental Change described in clause (2) of the definition of "Fundamental Change," in the event that the Common Stock is acquired for cash, or, (2) the average of the Closing Sale Prices of the Common Stock over the five Trading Day period ending on the Trading Day immediately preceding the Effective Date of such other Make-Whole Fundamental Change or the date of the Redemption Notice in the case of a Provisional Redemption. The amount determined under the first or second clause of the preceding sentence, as applicable, is referred to as the "Stock Price."

The Stock Prices set forth in the first row of the table below (i.e., column headers) and the number of Additional Shares in the table below will be adjusted as of any date on which the Conversion Rate of the Notes is adjusted pursuant to Section 5.05. The adjusted Stock Prices will equal the Stock Prices immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the Conversion Rate immediately prior to the adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares will be adjusted in the same manner and at the same time as the Conversion Rate pursuant to Section 5.05.

The following table sets forth the number of Additional Shares by which the Conversion Rate for each \$1,000 principal amount of Notes shall be increased based on the Stock Price and the Effective Date:

Effective Date	Stock Price											
	\$ 39.96	\$ 45.00	\$ 50.00	\$ 60.00	\$ 75.00	\$ 90.00	\$ 105.00	\$ 120.00	\$ 135.00	\$ 150.00	\$ 165.00	\$ 180.00
February 4, 2014	7.1499	5.9858	5.1118	3.8985	2.8225	2.1927	1.7886	1.5108	1.3093	1.1568	1.0375	0.9414
February 6, 2015	7.1499	5.6438	4.7580	3.5500	2.5103	1.9212	1.5531	1.3052	1.1279	0.9951	0.8919	0.8093
February 6, 2016	7.1499	5.2947	4.3894	3.1817	2.1804	1.6370	1.3090	1.0938	0.9426	0.8307	0.7445	0.6758
February 6, 2017	7.1499	4.9818	4.0358	2.8082	1.8408	1.3464	1.0622	0.8821	0.7584	0.6683	0.5992	0.5444
February 6, 2018	7.1499	4.7156	3.6942	2.4163	1.4801	1.0432	0.8095	0.6684	0.5743	0.5066	0.4550	0.4141
February 6, 2019	7.1499	4.4793	3.3258	1.9567	1.0676	0.7130	0.5442	0.4488	0.3869	0.3426	0.3088	0.2817
February 6, 2020	7.1499	4.2587	2.8458	1.3148	0.5627	0.3508	0.2680	0.2241	0.1955	0.1745	0.1581	0.1447
February 6, 2021	7.1499	4.2587	2.1250	0.1553	0.0001	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

(c) The exact Stock Price and Effective Date may not be set forth in the table in Section 5.07(b), in which case if the Stock Price is:

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

(ii) in excess of \$180.00 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above), the Conversion Rate will not be increased; and

(iii) less than \$39.96 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above), the Conversion Rate will not be increased.

(d) Notwithstanding anything herein to the contrary, the Company may not increase the Conversion Rate to more than 25.0250 shares per \$1,000 principal amount of Notes, provided that the Company will adjust such number of shares for the same events for which the Company will adjust the Conversion Rate pursuant to Section 5.05.

Section 5.08 Reserved Shares.

The Company shall at all times reserve out of its authorized but unissued Common Stock a sufficient number of shares of Common Stock to permit the conversion, in accordance herewith, of all of the Notes (assuming, for such purposes, that at the time of computation of such number of shares, all such Notes would be converted by a single Holder). The shares of Common Stock due upon conversion of a global note shall be delivered by the Company in accordance with the Depository's customary practices.

All shares of Common Stock issued upon conversion of the Notes shall be validly issued, fully paid and non-assessable and shall be free of preemptive or similar rights and free of any lien or adverse claim that arises from the action or inaction of the Company.

The Company shall comply with all securities laws regulating the offer and delivery of shares of Common Stock upon conversion of the Notes and shall list such shares on each national securities exchange or automated quotation system on which the shares of Common Stock are listed on the applicable Conversion Date.

Section 5.09 Trustee Adjustment Disclaimer.

The Trustee has no duty to determine when an adjustment under this Article V should be made, how it should be made or what it should be. The Trustee has no duty to determine whether a supplemental indenture need be entered into or whether any provisions of any supplemental indenture are correct. The Trustee shall not be accountable for and makes no representation as to the validity or value of any securities or assets issued upon conversion of the Notes. The Trustee shall not be responsible for making any calculations hereunder nor the Company's failure to comply with this Article V. Each Conversion Agent (other than the Company or an Affiliate of the Company) shall have the same protection under this Section 5.09 as the Trustee.

ARTICLE VI.
EVENTS OF DEFAULT

Section 6.01 Events of Default.

Section 6.01 of the Base Indenture shall not apply to, and have no force and effect with respect to, the Notes and any reference to Section 6.01 of the Base Indenture with respect to the Notes shall be superseded by and references thereto shall be deemed to refer to this Section 6.01.

Each of the following shall constitute an "Event of Default" under this Indenture:

- (i) the Company fails to pay the principal of any Note when due;
- (ii) the Company fails to deliver the Settlement Amount owing upon conversion of any Note when due, and such failure continues for five Business Days;
- (iii) the Company fails to pay any interest on any Note when due, and such failure continues for 30 calendar days;

(iv) the Company fails to pay the Redemption Price of any Note when due;

(v) the Company fails to pay the Repurchase Price or Fundamental Change Repurchase Price of any Note when due;

(vi) the Company fails to provide timely notice of a Fundamental Change or a Make-Whole Fundamental Change in accordance with the terms of this Indenture;

(vii) the Company fails to perform any other covenant required of it in this Indenture (other than a covenant or agreement a default in whose performance or whose breach is specifically dealt with in clauses (i) through (vi) above) and such failure continues for 60 calendar days after notice is given in accordance with this Indenture by the Trustee or Holders of not less than 25% in aggregate principal amount of the outstanding Notes;

(viii) (A) the Company's failure, or the failure of any of the Company's Significant Subsidiaries to make any payment at maturity (after giving effect to any applicable grace period) of Indebtedness, in a principal amount in excess of \$15.0 million and continuance of such failure, or (B) the acceleration of Indebtedness of the Company or any of the Company's Significant Subsidiaries in an amount in excess of \$15.0 million because of a default with respect to such Indebtedness, unless such Indebtedness is discharged or such acceleration has been cured, waived, rescinded or annulled, in either case within a period of 30 days after written notice to us given in accordance with this Indenture by the Trustee or Holders of not less than 25% in aggregate principal amount of the outstanding Notes, *provided, however*, that if any such failure or acceleration referred to in (A) or (B) above shall cease or be cured, waived, rescinded or annulled, then the Event of Default by reason thereof shall be deemed not to have occurred;

(ix) the entry of a decree or order for relief in respect of the Company or any of its Significant Subsidiaries by a court having jurisdiction in the premises in an involuntary case under Bankruptcy Law, as now or hereafter constituted, or a decree or order adjudging the Company or any of its Significant Subsidiaries a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company or any of its Significant Subsidiaries under any applicable Federal or State law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Company or any of its Significant Subsidiaries or of any substantial part of their respective properties, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days; and

(x) the commencement by the Company or any of its Significant Subsidiaries of a voluntary case under the Bankruptcy Law, as now or hereafter constituted, or the consent by it to the entry of an order for relief in an involuntary case under any such law or to the appointment of a receiver, liquidator, assignee, custodian,

trustee, sequestrator (or other similar official) of the Company or any of its Significant Subsidiaries or of any substantial part of their respective properties, or the making by it of an assignment for the benefit of its creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company or any of its Significant Subsidiaries in furtherance of any such action.

Section 6.02 Acceleration of Maturity; Rescission and Annulment.

Section 6.02 of the Base Indenture shall not apply to, and have no force and effect with respect to, the Notes and any reference to Section 6.02 of the Base Indenture with respect to the Notes shall be superseded by and references thereto shall be deemed to refer to this Section 6.02.

If an Event of Default with respect to the Notes, other than an Event of Default pursuant to Section 6.01(ix) or (x) with respect to the Company, occurs and is continuing, then in every case the Trustee or the Holders of not less than 25% in aggregate principal amount of the outstanding Notes may declare the principal amount of the Notes to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration such principal amount (or specified portion) shall become immediately due and payable. If an Event of Default with respect to the Notes pursuant to Sections 6.01(x) or (xi) occurs with respect to the Company, the principal amount of the Notes and accrued and unpaid interest, if any, shall automatically become immediately due and payable.

At any time after such a declaration of acceleration with respect to the Notes has been made and before a judgment or decree for payment of the money due based on such acceleration has been obtained by the Trustee as provided for in Section 6.03 of the Base Indenture, the Holders of a majority in principal amount of the outstanding Notes, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if all Events of Default with respect to the Notes, other than the non-payment of the principal and interest, if any, of the Notes which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 6.05 of this First Supplemental Indenture. No such rescission shall affect any subsequent default or impair any right consequent thereon.

Section 6.03 Additional Interest.

Notwithstanding anything else in this Indenture to the contrary, if the Company so elects, the sole remedy under the Indenture for an Event of Default relating to (i) the Company's failure to file with the Trustee pursuant to Section 314(a)(1) of the TIA any documents or reports that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act or (ii) the Company's failure to comply with its reporting obligations to the Trustee and the Commission, pursuant to Section 9.01, will, for the first 270 days after the occurrence of such an Event of Default, consist exclusively of the right to receive additional interest on the Notes at an annual rate equal to 0.25% of the aggregate principal amount of the Notes for the first 90 days after the occurrence of such an Event of Default and at an annual rate equal to 0.50% of the aggregate principal amount of the Notes from the 91st day to, but not including, the 271st day thereafter (or, if applicable, the earlier date on which the Event of Default relating to the reporting obligations is cured or waived) ("Additional Interest"). Any

such Additional Interest will be payable in the same manner and on the same dates as the stated interest payable on the Notes. If the Event of Default is continuing on the 271st day after an Event of Default relating to a failure to comply with the reporting obligations described above first occurs, the Notes will be subject to acceleration as provided in Section 6.02 of this First Supplemental Indenture. The provisions of this Indenture described in this paragraph will not affect the rights of Holders of Notes in the event of the occurrence of any other Events of Default.

In order to elect to pay Additional Interest as the sole remedy during the first 270 days after the occurrence of an Event of Default relating to the Company's failure to comply with the reporting obligations set forth in clauses (i) or (ii) of the immediately preceding paragraph, the Company must notify in writing all Holders and the Trustee and Paying Agent of such election on or before the Close of Business on the fifth Business Day prior to the date on which such Event of Default would otherwise occur. Upon the Company's failure to timely give such notice or pay Additional Interest, the Notes will be immediately subject to acceleration as provided in Section 6.02 of this First Supplemental Indenture.

Section 6.04 Suits.

Section 6.07 of the Base Indenture shall not apply to, and have no force and effect with respect to, the Notes and any reference to Section 6.07 of the Base Indenture with respect to the Notes shall be superseded by and references thereto shall be deemed to refer to this Section 6.04.

No Holder of the Notes shall have any right to institute any proceeding, judicial or otherwise, with respect to the Base Indenture or First Supplemental Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

- (a) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Notes;
- (b) the Holders of at least 25% in aggregate principal amount of the outstanding Notes shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;
- (c) such Holder or Holders shall have offered indemnity to the Trustee satisfactory to it against the costs, expenses and liabilities to be incurred in compliance with such request;
- (d) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and
- (e) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in aggregate principal amount of the outstanding Notes;

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of the Base Indenture or the First Supplemental Indenture to affect, disturb or prejudice the rights of any other Holders, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under the Base Indenture or First Supplemental Indenture, except in the manner herein provided and for the equal and ratable benefit of all Holders.

However, the limitations of this Section 6.04 do not apply to a suit instituted by a Holder for the enforcement of payment of the principal of or interest on any Note on or after the applicable due date, the right to convert the Note or to receive the consideration due upon conversion or the right of a Beneficial Owner to exchange its beneficial interest in a global security representing Notes for a physical note if an Event of Default has occurred and is continuing, in each case, in accordance with this Indenture.

Section 6.05 Waivers.

Section 6.13 of the Base Indenture shall not apply to, and have no force and effect with respect to, the Notes and any reference to Section 6.13 of the Base Indenture with respect to the Notes shall be superseded by and references thereto shall be deemed to refer to this Section 6.05.

The Holders of not less than a majority of the aggregate principal amount of outstanding Notes may waive any default or Event of Default unless:

- (i) the Company fails to pay the principal of or any interest on any Note when due;
- (ii) the Company fails to deliver the consideration due upon conversion of any Note within the time period required by this Indenture; or
- (iii) the Company fails to comply with any of the provisions of this Indenture the modification of which would require the consent of the Holder of each outstanding Note affected.

Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Section 6.06 Notice of Default.

Section 7.05 of the Base Indenture shall not apply to, and have no force and effect with respect to, the Notes and any reference to Section 7.05 of the Base Indenture with respect to the Notes shall be superseded by and references thereto shall be deemed to refer to this Section 6.06.

Within 90 days after the occurrence and continuation of any default under this Indenture with respect to the Notes that is known to a Responsible Officer of the Trustee, the Trustee shall transmit to all Holders notice of such default hereunder known to the Trustee, unless such default shall have been cured or waived; *provided, however*, that except in the case of a default in the payment of the principal of or interest, if any, on any Note, or a default in the delivery of the consideration due upon conversion, the Trustee shall be protected in withholding such notice if and so long as a trust committee of directors or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interest of the Holders. For the purpose of this Section 6.06, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to the Notes.

ARTICLE VII.
DISCHARGE

Section 7.01 Discharge.

Section 8.01 of the Base Indenture shall not apply to, and have no force and effect with respect to, the Notes and any reference to Section 8.01 of the Base Indenture with respect to the Notes shall be superseded by and references thereto shall be deemed to refer to this Section 7.01.

This First Supplemental Indenture shall upon Company Request cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of the Notes expressly provided for, rights under Section 2.08 of the Base Indenture, and the right to receive payment pursuant to Section 8.02 of the Base Indenture, and the obligations of the Company to the Trustee under Section 7.07 of the Base Indenture), and the Trustee on Company Request, and at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this First Supplemental Indenture, when

(1) either

(A) all Notes theretofore authenticated and delivered (other than (i) Notes which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.08 of the Base Indenture and (ii) Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 2.05 of the Base Indenture) have been delivered to the Trustee for cancellation; or

(B) all such Notes not theretofore delivered to the Trustee for cancellation have become due and payable, and

the Company has deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose an amount in cash and/or (in the case of conversion) shares of Common Stock sufficient to pay and discharge the entire indebtedness on such Notes not theretofore delivered to the Trustee for cancellation, for principal and interest, if any, to the date of such deposit (in the case of Notes which have become due and payable) or to the Maturity Date, at any Fundamental Change Repurchase Date, at any Redemption Date, or has satisfied the Company's conversion obligations upon conversion, as the case may be; provided, however, in the event a petition for relief under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal or state bankruptcy, insolvency or other similar law, is filed with respect to the Company within 91 days after the deposit and the Trustee is required to return the deposited money to the Company, the obligations of the Company under this First Supplemental Indenture with respect to such Notes shall not be deemed terminated or discharged;

(2) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and

(3) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided or relating to the satisfaction and discharge of this First Supplemental Indenture have been complied with.

Notwithstanding anything in this Section 7.01 to the contrary, such satisfaction and discharge shall not be effective earlier than (A) the Close of Business on the Business Day immediately preceding the Maturity Date, in the case of the Maturity Date, (B) the Close of Business on the Business Day immediately preceding the Redemption Date, in the case of the Redemption Date in respect of which all of the outstanding Notes have been redeemed, (C) the Close of Business on the Business Day immediately preceding the Repurchase Date, in the case of a Repurchase Date on which the holders of all of the outstanding Notes have exercised their right to require us to repurchase all of their Notes, and (D) the Close of Business on the Business Day immediately preceding the Fundamental Change Repurchase Date, in the case of the Fundamental Change Repurchase Date in respect of which the Holders of all outstanding Notes have exercised their right to require the Company to repurchase all of their Notes or convert all of their Notes.

Section 7.02 No Defeasance.

Sections 8.03 and 8.04 of the Base Indenture shall not apply to the Notes.

ARTICLE VIII. SUPPLEMENTAL INDENTURES

Section 8.01 Supplemental Indentures Without Consent of Holders.

Section 9.01 of the Base Indenture shall not apply to, and have no force and effect with respect to, the Notes and any reference to Section 9.01 of the Base Indenture with respect to the Notes shall be superseded by and references thereto shall be deemed to refer to this Section 8.01.

Without notice to, or the consent of, any Holder, the Company, when authorized by a Board Resolution or Officers' Certificate and the Trustee, at any time and from time to time, may amend or supplement this Indenture by entering into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

- (i) cure any ambiguity, omission, defect or inconsistency that does not materially adversely affect Holders of the Notes;
- (ii) provide for the assumption by a successor corporation of the Company's obligations under this Indenture and the Notes in accordance with Article IV of this First Supplemental Indenture;
- (iii) to comply with the requirements of Section 5.06;
- (iv) add guarantees with respect to the Notes;
- (v) secure the Company's obligation under the Notes;

- (vi) add to the Company's covenants for the benefit of the Holders or surrender any right or power conferred upon the Company;
- (vii) make any change that does not adversely affect the rights of any Holder;
- (viii) comply with any requirement of the Commission in connection with the qualification of this Indenture under the TIA;
- (ix) increase the Conversion Rate;
- (x) evidence and provide the acceptance of the appointment of a successor trustee under the Indenture; or

(xi) conform the provisions of this Indenture to the "Description of Notes" section in the preliminary prospectus supplement dated January 29, 2014 relating to the offering of the Notes, as supplemented by the related pricing term sheet dated January 29, 2014.

Section 8.02 Supplemental Indenture with Consent of Holder.

Section 9.02 of the Base Indenture shall not apply to, and have no force and effect with respect to, the Notes and any reference to Section 9.02 of the Base Indenture with respect to the Notes shall be superseded by and references thereto shall be deemed to refer to this Section 8.02.

With the consent of the Holders of a majority in aggregate principal amount of the outstanding Notes affected by such supplemental indenture, by act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution or Officers' Certificate, and the Trustee may amend or supplement this Indenture by entering into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders under this Indenture or waiving compliance in any instance with any provision of this Indenture; *provided, however*, that no such supplemental indenture shall, without the consent of the Holder of each outstanding Note affected thereby:

- (i) change the stated maturity of the principal of or any interest on the Notes;
- (ii) reduce the principal amount of (including the Redemption Price, Fundamental Change Repurchase Price or Repurchase Price) or interest on the Notes;
- (iii) reduce the amount of principal payable upon acceleration of the maturity of the Notes;
- (iv) change the currency of payment of principal of or interest on the Notes or change any Note's place of payment;

(v) impair the right of any Holder to receive payment of principal of and interest on such Holder's Notes, or consideration due upon conversion, on or after the due dates therefor or to institute suit for the enforcement of any payment on, or with respect to, the Notes or the consideration due upon conversion of the Notes;

(vi) modify the provisions with respect to the Fundamental Change Repurchase Right of the Holders pursuant to Section 3.02 of this First Supplemental Indenture or the Repurchase Rights of the Holders pursuant to Section 3.03 of this First Supplemental Indenture in a manner adverse to Holders of Notes;

(vii) modify in any manner adverse to the Holders the time at which or circumstances under which the Notes may or shall be redeemed;

(viii) change the ranking of the Notes;

(ix) adversely affect the right of Holders to convert Notes, or reduce the Conversion Rate; or

(x) modify provisions with respect to modification, amendment or waiver (including waiver of Events of Default), except to increase the percentage required for modification, amendment or waiver or to provide for consent of each affected Holder of Notes.

It shall not be necessary for the consent of the Holders to approve the particular form of any proposed supplemental indenture or waiver, but it shall be sufficient if such consent approves the substance thereof. After a supplemental indenture or waiver under this section becomes effective, the Company shall deliver to the Holders affected thereby a notice briefly describing the supplemental indenture or waiver. Any failure by the Company to deliver such notice, or any defect therein, shall not, however, in any way impair or affect the validity of any such supplemental indenture or waiver.

ARTICLE IX. **ADDITIONAL COVENANTS**

Except as otherwise set forth in this Article IX, Holders shall have the benefit of the following covenants, in addition to the covenants of the Company set forth in Article IV of the Base Indenture:

Section 9.01 Reports.

Section 4.02 of the Base Indenture shall not apply to, and have no force and effect with respect to, the Notes and any reference to Section 4.02 of the Base Indenture with respect to the Notes shall be superseded by and references thereto shall be deemed to refer to this Section 9.01.

So long as any Notes are outstanding, the Company shall furnish to the Trustee and the Holders within 15 days after the date on which the Company would be required to file the same with the Commission pursuant to its rules and regulations (giving effect to any grace period provided by Rule 12b-25 under the Exchange Act), all quarterly and annual financial information

required to be contained in Forms 10-Q and 10-K and, with respect to the annual consolidated financial statements only, a report thereon by the Company's independent auditors. The Company shall not be required to file any report or other information with the Commission if the Commission does not permit such filing, although such reports will be required to be furnished to the Trustee. Documents filed by the Company with the Commission via the EDGAR system will be deemed to have been furnished to the Trustee and the Holders as of the time such documents are filed via EDGAR.

ARTICLE X.
MISCELLANEOUS

Section 10.01 Form of Notes.

The Notes and the Trustee's Certificates of Authentication to be endorsed thereon are to be substantially in the form of Exhibit A, which form is hereby incorporated in and made a part of this First Supplemental Indenture.

The terms and provisions contained in the Notes shall constitute, and are hereby expressly made, a part of this First Supplemental Indenture, and the Company and the Trustee, by their execution and delivery of this First Supplemental Indenture, expressly agree to such terms and provisions and to be bound thereby.

Section 10.02 Additional Rights of Trustee.

This Section 10.02 supplements the Base Indenture to provide that, with respect to the Notes:

(i) the Trustee shall not be obligated to exercise any of its rights or powers at the request of the Holders unless the Holders have offered to the Trustee indemnity or security satisfactory to the Trustee against any loss, liability or expense; and

(ii) the Trustee may refuse to follow any direction of Holders that is permitted by the Indenture if such direction conflicts with law or the Indenture or that the Trustee determines is unduly prejudicial to the rights of any other Holder.

Section 10.03 Ratification of Base Indenture.

The Base Indenture, as supplemented and amended by this First Supplemental Indenture, is in all respects ratified and confirmed, and this First Supplemental Indenture shall be deemed part of the Base Indenture in the manner and to the extent herein and therein provided.

Section 10.04 Trust Indenture Act Controls.

If any provision hereof limits, qualifies or conflicts with the duties imposed by Section 310 through 317 of the TIA, the imposed duties shall control.

Section 10.05 Conflict with Indenture.

To the extent not expressly amended or modified by this First Supplemental Indenture, the Base Indenture shall remain in full force and effect. If any provision of this First Supplemental Indenture relating to the Notes is inconsistent with, or amends or supplements, any provision of the Base Indenture, the provision of this First Supplemental Indenture shall control.

Section 10.06 Governing Law.

THIS INDENTURE AND THE NOTES AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS INDENTURE OR THE NOTES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. The Company submits to the non-exclusive jurisdiction of the courts of the State of New York sitting in the Borough of Manhattan, City of New York, and of the United States District Court for the Southern District of New York, in any action or proceeding to enforce any of their obligations under this Indenture, and agrees not to seek a transfer of any such action or proceeding on the basis of inconvenience of the forum or otherwise (but the Company shall not be prevented from removing any such action or proceeding from a state court to the United States District Court for the Southern District of New York). The Company agrees that process in any such action or proceeding may be served upon it by registered mail or in any other manner permitted by the rules of the court in which the action or proceeding is brought.

Section 10.07 Successors.

All agreements of the Company in the Base Indenture, this First Supplemental Indenture and the Notes shall bind its successors. All agreements of the Trustee in the Base Indenture and this First Supplemental Indenture shall bind its successors.

Section 10.08 Counterparts.

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 10.09 Waiver of Jury Trial.

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

Section 10.10 Force Majeure.

In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and

hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances. In no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

Section 10.11 Calculations in Respect of the Notes.

The Company and its agents shall be responsible for making the calculations called for under this Indenture and the Notes. These calculations include, but are not limited to, determinations of the Closing Sale Price of the Common Stock, any adjustments to the Conversion Rate, the consideration deliverable in respect of any conversion and accrued interest (including any Additional Interest) payable on the Notes. The Company will make all these calculations in good faith and, absent manifest error, the Company's calculations will be final and binding on the Holders. The Company shall provide a schedule of its calculations to each of the Trustee and the Conversion Agent, and each of the Trustee and Conversion Agent is entitled to rely conclusively upon the accuracy of the Company's calculations without independent verification. The Trustee will forward the Company's calculations to any Holder upon the request of that Holder.

Section 10.12 Notices.

Except as otherwise provided in this Indenture, notice to registered Holders shall be given to the addresses as they appear in the register maintained by the Registrar. Notices shall be deemed to have been given on the date of such mailing or electronic delivery. Whenever a notice is required to be given by the Company, such notice may be given by the Trustee on the Company's behalf (and the Company will make any notice it is required to give to Holders available on its website).

Section 10.13 No Personal Liability of Directors, Officers, Employees and Shareholders.

No director, officer, employee, incorporator or shareholder of the Company or any Subsidiary of the Company will have any liability for any obligations of the Company under the Notes, the Indenture or for any claim based on, in respect of, or by reason of, such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the Notes.

IN WITNESS WHEREOF, the parties to this First Supplemental Indenture have caused it to be duly executed as of the day and year first above written.

FLUIDIGM CORPORATION

By: /s/ Vikram Jog
Name: Vikram Jog
Title: Chief Financial Officer

[Signature Page to First Supplemental Indenture]

IN WITNESS WHEREOF, the parties to this First Supplemental Indenture have caused it to be duly executed as of the day and year first above written.

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: /s/ Paula Oswald
Name: Paula Oswald
Title: Vice President

[Signature Page to First Supplemental Indenture]

EXHIBIT A

THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE OF A DEPOSITARY. THIS SECURITY IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITARY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE AND MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY THE DEPOSITARY TO A NOMINEE OF THE DEPOSITARY OR BY A NOMINEE OF THE DEPOSITARY TO ANOTHER NOMINEE OF THE DEPOSITARY OR TO THE DEPOSITARY OR BY ANY SUCH NOMINEE TO A SUCCESSOR DEPOSITARY OR A NOMINEE OF SUCH SUCCESSOR DEPOSITARY.

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

FLUIDIGM CORPORATION

2.75% Convertible Senior Notes due 2034

**CUSIP 34385P AA6
ISIN US34385PAA66**

No. **\$()**

Fluidigm Corporation, a Delaware corporation (herein called the "Company," which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to Cede & Co., or registered assigns, the principal sum of \$ Dollars, or such principal amount as shall be reflected in the books and records of the Trustee and the Depositary, on February 1, 2034, at the office or agency of the Company referred to below, and to pay interest thereon, accruing from February 4, 2014, on August 1, 2014 and semi-annually thereafter on February 1 and August 1 of each year, at the rate of 2.75% per annum until the principal hereof is paid or made available for payment. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture, be paid to the Person in whose name this Note (or one or more predecessor Notes) is registered at the Close of Business on the Regular Record Date for such interest, which shall be January 15 or July 15 (whether or not a Business Day), as the case may be, next preceding such Interest

Payment Date. Any such interest not so punctually paid or duly provided for will forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Note (or one or more predecessor Notes) is registered at the Close of Business on a special record date (as determined in accordance with Section 2.13 of the Base Indenture) for the payment of such defaulted interest to be fixed by the Trustee, notice whereof shall be given to Holders not less than 10 days prior to such special record date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Notes may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture.

Payment of the principal of, and interest on, this Note and any Fundamental Change Repurchase Price, Redemption Price or Repurchase Price will be made at the office appointed by the Company in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; provided, however, that at the option of the Company payment of principal and interest and any Fundamental Change Repurchase Price, Redemption Price or Repurchase Price may be made (i) at the office of the Trustee or, at the Company's option, by check mailed to the address of the Person entitled thereto as such address shall appear in the register maintained by the Registrar or (ii) if requested by a Holder of more than \$2,000,000 principal amount of Notes, by wire transfer to an account maintained by the Person entitled thereto.

Reference is hereby made to the further provisions of this Note set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Trustee referred to on the reverse hereof by manual signature, this Note shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed under its corporate seal.

Dated: _____, 20__

FLUIDIGM CORPORATION

By: _____

Name:

Title:

Attest:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This is one of the Notes of the series designated therein referred to in the within-mentioned Indenture.

U.S. Bank National Association, as Trustee

Dated: _____, 20__

By: _____
Authorized Officer

[Certificate of Authentication of Global Note]

REVERSE OF NOTE

This Security is one of a duly authorized issue of securities of the Company (herein called the “Notes”), issued and to be issued in one or more series under an Indenture, dated as of February 4, 2014 (herein called the “Base Indenture”), between the Company and U.S. Bank National Association, as Trustee, herein called the “Trustee” (which term includes any successor trustee under the Indenture (as defined below)), to which Indenture (as defined below) and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, obligations, duties and immunities thereunder of the Company, the Trustee and the Holders and of the terms upon which the Notes are, and are to be, authenticated and delivered. The terms of the Notes include the covenants and terms established by the First Supplemental Indenture, dated as of February 4, 2014, among the Company and the Trustee (the “First Supplemental Indenture”, and as such First Supplemental Indenture amends and supplements the Base Indenture, the “Indenture”), pursuant to the authority granted under the Indenture (such terms and covenants shall be referred to herein collectively with the terms and covenants set out in the Indenture that are applicable to the Notes as the “Indenture Terms”). Defined terms used herein that are not otherwise defined shall have the meanings given such terms in the Indenture Terms. This Note is one of the series designated on the face hereof, which series has an initial aggregate principal amount of \$201,250,000. The Company may subsequently issue additional notes as part of this series of Notes under the Indenture; *provided* that if such additional notes are not fungible with the Notes initially issued under the Indenture for U.S. federal income tax purposes, such additional Notes will have a separate CUSIP number. In the event of any conflict between the terms of the Notes and the terms of the Indenture, the terms of the Indenture shall control.

1. Paying Agent and Registrar

The Company initially appoints the Trustee as Paying Agent and Registrar. The Company will give prompt written notice to the Trustee of the name and address, and any change in the name or address, of each Registrar or Paying Agent. The Company may also from time to time designate one or more co-registrars or additional paying agents and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligations to maintain a Registrar and a Paying Agent in each place so specified pursuant to Base Indenture Section 2.02.

U.S. Bank National Association, the Trustee under the Indenture, or any banking institution serving as successor Trustee thereunder, in its individual or any other capacity, may make loans to, accept deposits from and perform services for the Company or its Affiliates, and may otherwise deal with the Company or its Affiliates as if it were not Trustee.

2. Indenture

The Company will furnish to any Holder upon written request and without charge a copy of the Indenture. Requests may be made to: Fluidigm Corporation, 7000 Shoreline Court, Suite 100, South San Francisco, CA 94080, Attention: Chief Financial Officer.

3. Redemption

The Notes are redeemable at certain times at the option of the Company in accordance with the Indenture prior to maturity. No sinking fund is provided for the Notes and the Notes will not be subject to defeasance.

Subject to the Indenture Terms, the Notes called for Provisional Redemption or Optional Redemption become due on the relevant Redemption Date. The Company shall give the Redemption Notice not less than 30 nor more than 60 calendar days immediately preceding the Redemption Date to each Holder to be redeemed at its registered address. The Redemption Notice for the Notes shall state the amount to be redeemed. On and after the Redemption Date, interest shall cease to accrue on any Notes that are redeemed. If less than all of the Notes are redeemed at any time, the Trustee shall select Notes to be redeemed in accordance with the procedures of the Depositary and the Indenture.

In the event of redemption of this Note in part only, a new Note or Notes of this series in principal amount equal to the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof, subject to Section 3.01(d) of the First Supplemental Indenture.

4. Repurchase at Option of Holders Upon a Fundamental Change

Subject to the Indenture Terms, in the event of a Fundamental Change, each Holder of the Notes shall have the right, at the Holder's option, to require the Company to repurchase such Holder's Notes including any portion thereof which is \$1,000 in principal amount or any integral multiple thereof on the Fundamental Change Repurchase Date at a price payable in cash equal to the Fundamental Change Repurchase Price.

5. Repurchase at Option of Holders Upon Specified Dates

Subject to the Indenture Terms, on each specified Repurchase Date, each Holder of the Notes shall have the right, at the Holder's option, to require the Company to repurchase such Holder's Notes including any portion thereof which is \$1,000 in principal amount or any integral multiple thereof on the Repurchase Date at a price payable in cash equal to the Repurchase Price.

6. Conversion

The Notes shall be convertible into shares of Common Stock in accordance with Article V of the First Supplemental Indenture. To convert a Note, a Holder must satisfy the requirements of Section 5.04 of the First Supplemental Indenture. A Holder may convert a portion of a Note if the portion is \$1,000 principal amount or an integral multiple of \$1,000 principal amount.

Upon conversion of a Note, the Holder thereof shall be entitled to receive shares of Common Stock payable upon conversion in accordance with Article V of the First Supplemental Indenture, at the Conversion Rate specified in the First Supplemental Indenture, as adjusted from time to time as provided in the First Supplemental Indenture.

7. Events of Default

The following constitute Events of Default: the Company fails to pay the principal of any Note when due; the Company fails to deliver the Settlement Amount owing upon conversion of any Note when due, and such failure continues for five Business Days; the Company fails to pay any interest on any Note when due, and such failure continues for 30 calendar days; the Company fails to pay the Redemption Price of any Note when due; the Company fails to pay the Repurchase Price or Fundamental Change Repurchase Price of any Note when due; the Company fails to provide timely notice of a Fundamental Change or a Make-Whole Fundamental Change in accordance with the Indenture; the Company fails to perform any other covenant required of it in the Indenture (other than a covenant or agreement a default in whose performance or whose breach is specifically dealt with in the preceding clauses of this sentence) and such failure continues for 60 calendar days after notice is given in accordance with the Indenture by the Trustee or Holders of not less than 25% in aggregate principal amounts of the outstanding Notes; (a) the Company's failure, or the failure of any of the Company's Significant Subsidiaries to make any payment at maturity (after giving effect to any applicable grace period) of Indebtedness, in a principal amount in excess of \$15.0 million and continuance of such failure, or (b) the acceleration of Indebtedness of the Company or any of the Company's Significant Subsidiaries in an amount in excess of \$15.0 million because of a default with respect to such Indebtedness, unless such Indebtedness is discharged or such acceleration has been cured, waived, rescinded or annulled, in either case within a period of 30 days after written notice to us given in accordance with the Indenture by the Trustee or Holders of not less than 25% in aggregate principal amount of the outstanding Notes, provided, however, that if any such failure or acceleration referred to in (a) or (b) above shall cease or be cured, waived, rescinded or annulled, then the Event of Default by reason thereof shall be deemed not to have occurred; and certain events of bankruptcy, insolvency or reorganization with respect to the Company or any of the Company's Significant Subsidiaries as provided in the Indenture. If any Event of Default occurs and is continuing (other than an Event of Default that is a result of bankruptcy, insolvency or reorganization of the Company as provided in the Indenture), the Trustee or the Holders of at least 25% in aggregate principal amount of the outstanding Notes may declare the principal of all of the Notes to be due and payable immediately. If an event of default occurs that is a result of bankruptcy, insolvency or reorganization of the Company as provided in the Indenture, the principal amount of the Notes and accrued and unpaid interest, if any, will automatically become due and payable in accordance with the Indenture.

8. Amendments and Waivers

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders at any time by the Company and the Trustee with the consent of the Holders of a majority in principal amount of the Notes at the time outstanding. Without the consent of or notice to any Holder, the Indenture or the Notes may be amended or supplemented under the conditions specified in the Indenture, including to cure any ambiguity, omission, defect or inconsistency that does not materially adversely affect the Holders or to make any change that does not adversely affect the rights of any Holder. The Indenture also contains provisions permitting the Holders of specified percentages in principal amount of the Notes at the time outstanding, on behalf of the Holders of all of the Notes, to waive compliance by the Company

with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holders shall be conclusive and binding upon such Holder and upon all future Holders and of any Note issued upon the registration of transfer hereof or in exchange or in lieu hereof, whether or not notation of such consent or waiver is made upon this Note.

9. Company's Payment Obligation

No reference herein to the Indenture Terms and no provision of this Note or of the Indenture shall alter or impair the obligations of the Company, which are absolute and unconditional, to pay the principal of and any interest on this Note at the times, places and rates, and in the coin or currency herein prescribed, and to perform the conversion obligations of the Company herein prescribed.

10. Denominations, Transfer, Exchange

The Notes are issuable only in registered form without coupons in minimum denominations of \$1,000.00 and integral multiples of \$1,000.00 in excess thereof. As provided in the Indenture and subject to certain limitations set forth therein, Notes are exchangeable for a like aggregate principal amount of Notes and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

Where Notes are presented to the Registrar with a request to register a transfer or to exchange them for an equal principal amount of Notes of this same Series, the Registrar shall register the transfer or make the exchange if its requirements for such transactions are met. To permit registrations of transfers and exchanges, the Trustee shall authenticate Notes at the Registrar's request. No service charge shall be made for any registration of transfer or exchange (except as otherwise expressly permitted herein), but the Company may require payment of a sum sufficient to cover any transfer tax or similar governmental charge payable in connection therewith (other than any such transfer tax or similar governmental charge payable upon exchanges pursuant to the Indenture Terms). Neither the Company nor the Registrar shall be required (a) to issue, register the transfer of, or exchange Notes for the period beginning at the opening of business fifteen days immediately preceding the delivery of a notice of redemption of Notes selected for redemption and ending at the close of business on the day of such delivery, or (b) to register the transfer of or exchange Notes selected, called or being called for redemption as a whole or the portion being redeemed of any such Notes selected, called or being called for redemption in part.

11. No Personal Liability of Directors, Officers, Employees and Shareholders

A director, officer, employee or stockholder, as such, of the Company or any Subsidiary of the Company shall not have any liability for any obligations of the Company under the Notes, the Indenture Terms or for any claim based on, in respect of or by reason of such obligations or their creation. Each Holder by accepting a Note waives and releases all such liability. The waiver and release are part of the consideration for the issuance of the Notes.

12. Persons Deemed Owners

Prior to due presentment of this Note for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Note is registered as the owner hereof for all purposes, whether or not this Note is overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

FORM OF CONVERSION NOTICE

To convert this Note in accordance with the Indenture, check the box:

To convert only part of this Note, state the principal amount to be converted (must be in multiples of \$1,000):

\$ _____

If you want the stock certificate representing the Common Stock issuable upon conversion made out in another person's name, fill in the form below:

(Insert other person's soc. sec. or tax I.D. no.)

(Print or type other person's name, address and zip code)

Date: _____

Signature(s): _____

(Sign exactly as your name(s) appear(s) on the other side of this Note)

Signature(s) guaranteed

by:

(All signatures must be guaranteed by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in such other guarantee program acceptable to the Trustee.)

FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE

Certificate No. of Note:

If you want to elect to have this Note repurchased by the Company pursuant to Section 3.02 of the First Supplemental Indenture, check the box:

If you want to elect to have only part of this Note purchased by the Company pursuant to Section 3.02 of the Indenture, state the principal amount to be so purchased by the Company:

\$ _____

(in an integral multiple of \$1,000)

Date: _____

Signature(s): _____

(Sign exactly as your name(s) appear(s) on this Note)

Signature(s) guaranteed
by:

(All signatures must be guaranteed by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in such other guarantee program acceptable to the Trustee.)

FORM OF REPURCHASE NOTICE

Certificate No. of Note:

If you want to elect to have this Note repurchased by the Company pursuant to Section 3.03 of the First Supplemental Indenture, check the box:

If you want to elect to have only part of this Note purchased by the Company pursuant to Section 3.03 of the Indenture, state the principal amount to be so purchased by the Company:

\$ _____

(in an integral multiple of \$1,000)

Date: _____

Signature(s): _____

(Sign exactly as your name(s) appear(s) on this Note)

Signature(s) guaranteed
by:

(All signatures must be guaranteed by a guarantor institution participating in the Securities Transfer Agents Medallion Program or in such other guarantee program acceptable to the Trustee.)

February 4, 2014

Fluidigm Corporation
7000 Shoreline Court, Suite 100
South San Francisco, California 94080

Re: Registration Statement on Form S-3

Ladies and Gentlemen:

We have acted as counsel to Fluidigm Corporation, a Delaware corporation (the "Company"), in connection with the filing by the Company with the Securities and Exchange Commission (the "Commission") on January 29, 2014 of a registration statement on Form S-3 (the "Registration Statement"), under the Securities Act of 1933, as amended (the "Act"), that became automatically effective under the Act pursuant to Rule 462(e) promulgated thereunder. The Registration Statement relates to the proposed offer, issuance and sale by the Company, from time to time pursuant to Rule 415 under the Act as set forth in the Registration Statement, the prospectus contained therein (the "Prospectus") and the supplements to the prospectus referred to therein (the "Prospectus Supplements") of up to an aggregate offering price of \$350,000,000, or the equivalent thereof, of (a) shares of the Company's common stock, \$0.001 par value per share (the "Common Stock"), (b) shares of the Company's preferred stock, \$0.001 par value per share (the "Preferred Stock"), (c) the Company's senior and subordinated debt securities (the "Debt Securities"), (d) warrants to purchase shares of the Company's Common Stock, Preferred Stock or Debt Securities (the "Warrants"), or (e) units (the "Units") consisting of Common Stock, Preferred Stock, Debt Securities, Warrants or any combination of the foregoing (the Common Stock, Preferred Stock, Debt Securities, Warrants and Units are collectively referred to herein as the "Company Securities."

Pursuant to the Registration Statement, the Company has issued \$201,250,000 of 2.75% Convertible Senior Notes due 2034 (the "Notes"), all of which will be sold to Piper Jaffray & Co. (the "Underwriter"), pursuant to that certain Underwriting Agreement, dated as of January 29, 2014 (the "Underwriting Agreement"), by and between the Company and the Underwriter.

The Notes have been issued in the form set forth in the Indenture, dated as of February 4, 2014 (the "Base Indenture"), by and between the Company and U.S. Bank National Association, as trustee (the "Trustee"), as amended and supplemented by the First Supplemental Indenture, dated as of February 4, 2014 (the "First Supplemental Indenture," as such First Supplemental Indenture amends and supplements the Base Indenture, the "Indenture"), by and between the Company and the Trustee. The Notes are also convertible initially up to 3,597,604 shares of Common Stock (such number of shares of Common Stock issuable upon conversion of the Notes referred to herein as, the "Conversion Shares").

We have examined the Registration Statement, together with the exhibits thereto and the documents incorporated by reference therein; the base prospectus, dated January 29, 2014, together with the documents incorporated by reference therein, filed with the Registration Statement (the "Base Prospectus"); the preliminary prospectus supplement, dated January 29, 2013, in the form filed with the Commission pursuant to Rule 424(b) of the Securities Act; the final prospectus supplement, dated January 29, 2014, in the form filed with the Commission pursuant to Rule 424(b) of the Securities Act (collectively with the Base Prospectus, the "Prospectus Supplement"); the Indenture; and the Notes. In addition, we have examined such other instruments, documents, certificates and records which we have deemed relevant and necessary for the basis of our opinion hereinafter expressed.

In such examination, we have assumed: (i) the authenticity of original documents and the genuineness of all signatures; (ii) the conformity to the originals of all documents submitted to us as copies; (iii) the truth, accuracy and completeness of the information, representations and warranties contained in the instruments, documents, certificates and records we have reviewed; (iv) the Underwriting Agreement has been duly authorized and validly executed and delivered by the parties thereto (other than the Company); and (v) the legal capacity of all natural persons. As to any facts material to the opinions expressed herein that were not independently established or verified, we have relied upon oral or written statements and representations of officers and other representatives of the Company.

We express no opinion as to the laws of any jurisdiction, other than the federal laws of the United States of America, the laws of the State of New York and the laws of the State of Delaware, as such are in effect on the date hereof, and we have made no inquiry into, and we express no opinion as to, the statutes, regulations, treaties, common laws or other laws of any other nation, state or jurisdiction.

We express no opinion as to (i) the effect of any bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium or other similar laws relating to or affecting the rights of creditors generally, (ii) rights to indemnification and contribution which may be limited by applicable law or equitable principles, or (iii) the effect of general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing, the effect of judicial discretion and the possible unavailability of specific performance, injunctive relief or other equitable relief, and the limitations on rights of acceleration, whether considered in a proceeding in equity or at law.

Based on such examination, we are of the opinion that:

1. The Notes have been validly issued and constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.
2. When the applicable conversion right has been duly exercised in accordance with the terms of the Notes and the Indenture, and the Conversion Shares have been issued and delivered upon such exercise in accordance with the terms of the Notes and the Indenture, the Conversion Shares will be validly issued, fully paid and nonassessable.

We hereby consent to the filing of this opinion as an exhibit to the Company's Current Report on Form 8-K, filed on February 4, 2014, for incorporation by reference in the above-referenced Registration Statement and to the use of our name wherever it appears in the Registration Statement, the Base Prospectus, the Prospectus Supplement, and in any amendment or supplement thereto. In giving such consent, we do not believe that we are "experts" within the meaning of such term as used in the Act or the rules and regulations of the Commission issued thereunder with respect to any part of the Registration Statement, including this opinion as an exhibit or otherwise.

Very truly yours,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

/s/ Wilson Sonsini Goodrich & Rosati, P.C.