UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 8-K
CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(D) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): June 10, 2019

THEMAVEN, INC.

(Exact Name of Registrant as Specified in Charter)

DELAWARE	1-12471	68-0232575
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

1500 Fourth Avenue, Suite 200 Seattle, WA	98101
(Address of Principal Executive Offices)	(Zip Code)

Registrant's telephone number, including area code: 775-600-2765

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

Title of each class	Trading Symbol(s)	Name on exchange on which registered
None	-	-

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 .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))

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

Emerging growth company ☐

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

Item 1.01 — Entry into Material Definitive Agreement.

Merger Agreement

On June 11, 2019, TheMaven, Inc. (the "Company"), TST Acquisition Co., Inc., a Delaware corporation ("TSTAC"), and a wholly-owned subsidiary of the Company, and TheStreet, Inc., a Delaware corporation ("TheStreet"), entered into an Agreement and Plan of Merger (the "Merger Agreement"), pursuant to which TSTAC will merge with and into TheStreet, with TheStreet continuing as the surviving corporation in the merger, and a wholly-owned subsidiary of the Company (the "Merger").

The Merger Agreement provides that all issued and outstanding shares of common stock of TheStreet (other than those shares with respect to which appraisal rights have been properly exercised) will be exchanged for an aggregate of $16.5 million in cash (the "Merger Consideration"). Pursuant to the terms of the Merger Agreement, on June 10, 2019, the Company deposited the Merger Consideration into an escrow account pursuant to an Escrow Agreement, dated June 10, 2019, by and among the Company, TheStreet and Citibank, N.A., as escrow agent. In addition, in connection with the Merger, all outstanding stock options (whether vested or unvested) issued by TheStreet will be cancelled for no additional consideration.

The Merger Agreement further provides that at or shortly prior to the closing of the Merger, each former stockholder of TheStreet shall receive one contractual contingent value right (each a "CVR") for each share of common stock held, which will entitle the former stockholder to receive his or hers pro rata share of certain funds held in escrow pursuant to (i) the Escrow Agreement, dated as of June 20, 2018, by and among TheStreet, Bankers Financial Products Corporation, S&P Global Market Intelligence Inc. and Citibank, N.A., as escrow agent; and (ii) the Escrow Agreement, dated as of February 14, 2019, by and among TheStreet, Euromoney Institutional Investor PLC and Citibank, N.A., as escrow agent, when, and if, such funds are released from their respective escrow accounts; however, there can be no assurance that these funds will be released from escrow in full or at all. The CVRs will not be registered under the Securities Act of 1933, as amended.

The Merger Agreement contains various representations and warranties by TheStreet about its business, operations and financial condition. Consummation of the Merger is subject to certain closing conditions, including approval by The Street's stockholders of the Merger and the payment of a special cash distribution by the TheStreet to its stockholders prior to the consummation of the Merger. Accordingly, there is no assurance that the Merger will be completed as contemplated.

The Merger Agreement has been provided pursuant to applicable rules and regulations of the Securities and Exchange Commission in order to provide investors and stockholders with information regarding its terms; however, it is not intended to provide any other factual information about the Company or TheStreet, their respective subsidiaries and affiliates, or any other party. In particular, the representations, warranties and covenants contained in the Merger Agreement have been made only for the purpose of the Merger Agreement and, as such, are intended solely for the benefit of the parties to the Merger Agreement. In many cases, these representations, warranties and covenants are subject to limitations agreed upon by the parties and are qualified by certain disclosures exchanged by the parties in connection with the execution of the Merger Agreement. Furthermore, many of the representations and warranties in the Merger Agreement are the result of a negotiated allocation of contractual risk among the parties and, taken in isolation, do not necessarily reflect facts about the Company, TheStreet, their respective subsidiaries and affiliates or any other party. Likewise, any references to materiality contained in these representations and warranties may not correspond to concepts of materiality applicable to investors or stockholders. Finally, information concerning the subject matter of the representations and warranties may change after the date of the Merger Agreement and these changes may not be fully reflected in the Company's public disclosures.

In connection with the Merger Agreement, on June 11, 2019, 180 Degree Capital Corp. and TheStreet SPV Series - a Series of 180 Degree Capital Management, LLC, solely in their capacities as stockholders of TheStreet, entered into a Voting Agreement with the Company and TSTAC (the "Voting Agreement") pursuant to which each such stockholder agrees, upon the terms and subject to the conditions of such Voting Agreement, to vote at TheStreet's Stockholders' Meeting (as that term is defined in the Merger Agreement) the shares of TheStreet's common stock beneficially owned by it in favor of the adoption of the Merger Agreement and the approval of the Merger at the Stockholders' Meeting.

The foregoing is only a brief description of the respective material terms of the Merger Agreement and the Voting Agreement, does not purport to be a complete description of the respective rights and obligations of the parties thereunder and is qualified in its entirety by reference to the Merger Agreement and the Voting Agreement, that are filed as Exhibits 10.1 and 10.2, respectively, to this Current Report on Form 8-K and incorporated by reference herein.

Note Purchase Agreement

On June 10, 2019, the Company entered into a Note Purchase Agreement (the "Note Purchase Agreement") with one accredited investor, BRF Finance Co., LLC (the "Investor"), an affiliated entity of B. Riley FBR, Inc. ("B. Riley"), pursuant to which the Company issued to the Investor a 12.0% senior secured note (the "Note"), due July 31, 2019, in the aggregate principal amount of $20,000,000, which after taking into account B. Riley's placement fee of $1,000,000 and legal fees and expenses of the Investor, resulted in the Company receiving net proceeds of $18,865,000, of which $16,500,000 was deposited into escrow the fund the Merger Consideration and the balance of $2,365,000 will be used by the Company for working capital and general corporate purposes.

In addition, the Company and each of its subsidiaries (Maven Coalition, Inc., HubPages, Inc., Say Media, Inc. and TST Acquisition Co., Inc.) entered into a Pledge and Security Agreement (the "Security Agreement") with the Investor, pursuant to which the Company and each subsidiary granted a security interest in all of the their respective assets to the Investor to secure the Company's obligations under the Note. Furthermore, pursuant to the terms of the Note Purchase Agreement, each subsidiary, jointly and severally, guaranteed the Company's obligations under the Note.

The foregoing is only a brief description of the respective material terms of the Note Purchase Agreement, the Note and the Security Agreement, and is qualified in its entirety by reference to the Note Purchase Agreement, the form of Note and the Security Agreement that are filed as Exhibits 10.3, 10.4 and 10.5, respectively, to this Current Report on Form 8-K and incorporated by reference herein.

Item 8.01 — Other Events.

On June 12 2019, the Company issued a press release announcing the execution of the Merger Agreement. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Item 9.01 — Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
10.1	Agreement and Plan of Merger, dated as of June 11, 2019, by and among TheMaven, Inc., TST Acquisition Co., Inc. and TheStreet, Inc.
10.2	Voting Agreement, dated as of June 11, 2019, by and among 180 Degree Capital Corp., TheStreet SPV Series - a Series of 180 Degree Capital Management, LLC, TheMaven, Inc. and TST Acquisition Co., Inc.
10.3	Note Purchase Agreement, dated June 10, 2019, by and among TheMaven, Inc., Maven Coalition, Inc., HubPages, Inc., Say Media, Inc., TST Acquisition Co., Inc. and the Investor
10.4	Form of Note
10.5	Pledge and Security Agreement, dated June 10, 2019, by and among TheMaven, Inc., Maven Coalition, Inc., HubPages, Inc., Say Media, Inc., TST Acquisition Co., Inc. and the Investor
99.1	Press Release issued by the Registrant on June 12, 2019

SIGNATURES

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

THEMAVEN, INC.

Dated: June 12, 2019

By: /s/ Josh Jacobs
Name: Josh Jacobs
Title: President

Exhibit 10.1

Execution Copy

AGREEMENT AND PLAN OF MERGER

By and Among

THEMAVEN, INC.,

TST ACQUISITION CO., INC.

and

THESTREET, INC.

Dated as of June 11, 2019

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THIS AGREEMENT AND PLAN OF MERGER, dated as of June 11, 2019 (this "**Agreement**"), is made by and among TheMaven, Inc., a Delaware corporation ("**Parent**"), TST Acquisition Co., Inc., a Delaware corporation and wholly owned Subsidiary of Parent ("**Merger Sub**"), and TheStreet, Inc., a Delaware corporation (the "**Company**").

WITNESSETH:

WHEREAS, the respective boards of directors of Parent, Merger Sub and the Company have each approved and declared advisable, this Agreement and the merger of Merger Sub with and into the Company (the "**Merger**") upon the terms and subject to the conditions and limitations set forth in this Agreement and in accordance with the DGCL, whereby each issued and outstanding share of common stock, par value $0.01 per share, of the Company (the "**Company Common Stock**") shall be converted into the right to receive the Merger Consideration;

WHEREAS, each of Parent, Merger Sub and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Merger and also to prescribe various conditions to the Merger;

WHEREAS, each of Eric Lundberg, Chief Executive Officer and Chief Financial Officer of the Company, and Margaret De Luna, President and Chief Operating Officer of the Company, have entered into letter agreements with the Company in which they have agreed to continue their service with the Surviving Corporation for a minimum of three months following Closing;

WHEREAS, concurrently with the execution and delivery of this Agreement, as a condition and inducement to the willingness of Parent and Merger Sub to enter into this Agreement, 180 Degree Capital Corp. and TheStreet SPV Series - a Series of 180 Degree Capital Management, LLC, solely in their capacities as stockholders of the Company, are entering into a Voting Agreement with Parent and Merger Sub (the "**Voting Agreement**") pursuant to which each such stockholder is agreeing, upon the terms and subject to the conditions of such Voting Agreement, to vote at the Stockholders' Meeting the shares of Company Common Stock beneficially owned by it in favor of the adoption of this Agreement and the approval of the Merger at the Stockholders' Meeting; and

WHEREAS, prior to the Effective Time, the Company intends to either (a) distribute the Excess Cash Amount in exchange for a portion of the Company Common Stock by conducting a recapitalization of the Company Common Stock (the "**Recapitalization**"), in accordance with the DGCL and subject to the limitations under this Agreement, or (b) pay a cash distribution on the Company Common Stock equal to the Excess Cash Amount (the "**Pre-Merger Special Distribution**") to holders of record of issued and outstanding shares of Company Common Stock immediately prior to the Effective Time.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties and covenants and subject to the conditions herein contained, and intending to be legally bound hereby, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. Defined terms used in this Agreement have the respective meanings ascribed to them by definition in this Agreement or in Appendix A.

ARTICLE II

THE MERGER

Section 2.1 The Merger. Upon the terms and subject to the conditions of this Agreement, and in accordance with the DGCL, at the Effective Time, Merger Sub shall be merged with and into the Company, whereupon the separate existence of Merger Sub shall cease, and the Company shall continue under the name "TheStreet, Inc." as the surviving corporation (the "**Surviving Corporation**") and shall continue to be governed by the laws of the State of Delaware.

Section 2.2 Closing. Subject to the satisfaction or, if permissible, waiver of the conditions set forth in Article VII, the closing of the Merger (the "**Closing**") will take place by teleconference and the exchange of deliverables (in counterparts or otherwise) by electronic transmission in PDF format or by facsimile, at 10:00 a.m. (Eastern time) on a date to be specified by the parties hereto, but no later than the second Business Day after the satisfaction or waiver of the conditions set forth in Article VII (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), unless another time, date or place is agreed to in writing by the parties hereto (such date being the "**Closing Date**").

Section 2.3 Effective Time.

(a) Concurrently with the Closing, the Company, Parent and Merger Sub shall cause a certificate of merger, or a certificate of ownership and merger, as applicable (the "**Certificate of Merger**"), with respect to the Merger to be executed and filed with the Secretary of State as provided under the DGCL. The Merger shall become effective upon the later of (a) the date and time at which the Certificate of Merger has been duly filed with the Secretary of State, or (b) if applicable, such other date and time as is agreed between the parties and specified in the Certificate of Merger (such date and time being hereinafter referred to as the "**Effective Time**").

(b) From and after the Effective Time, the Surviving Corporation shall possess all properties, rights, privileges, powers and franchises of the Company and Merger Sub, and all of the claims, obligations, liabilities, debts and duties of the Company and Merger Sub shall become the claims, obligations, liabilities, debts and duties of the Surviving Corporation.

Section 2.4 Certificate of Incorporation and Bylaws. Subject to Section 6.7, at the Effective Time, the certificate of incorporation and bylaws of the Surviving Corporation shall be amended to be identical to the certificate of incorporation and bylaws, respectively, of Merger Sub, as in effect immediately prior to the Effective Time, until thereafter amended in accordance with applicable Law and the applicable provisions of the certificate of incorporation and bylaws; provided that at the Effective Time, Article I of the certificate of incorporation of the Surviving Corporation shall be amended and restated in its entirety to read as follows: "The name of the corporation is TheStreet, Inc.; and provided further that at the Effective Time, the title of the Bylaws of the Surviving Corporation shall be amended and restated in its entirety to read as follows: "Bylaws of TheStreet, Inc.".

Section 2.5 Board of Directors. Subject to applicable Law, each of the parties hereto shall take all necessary action to ensure that the board of directors of the Surviving Corporation effective as of, and immediately following, the Effective Time shall consist of the members of the board of directors of Merger Sub immediately prior to the Effective Time, each to hold office in accordance with the certificate of incorporation and bylaws of the Surviving Corporation until their respective successors shall have been duly elected, designated or qualified, or until their earlier death, resignation or removal in accordance with the certificate of incorporation and bylaws of the Surviving Corporation.

Section 2.6 Officers. From and after the Effective Time, the officers of the Surviving Corporation shall be the officers designated by the board of directors of Merger Sub prior to the Effective Time, each to hold office in accordance with the certificate of incorporation and bylaws of the Surviving Corporation until their respective successors are duly elected or appointed and qualified in accordance with applicable Law.

ARTICLE III

EFFECT OF THE MERGER ON CAPITAL STOCK; EXCHANGE OF CERTIFICATES

Section 3.1 Effect on Securities. At the Effective Time, by virtue of the Merger and without any action on the part of the Company, Merger Sub or the holders of any securities of the Company or Merger Sub:

(a) Cancellation of Company Securities. Each share of Company Common Stock held by the Company as treasury stock, held by a wholly owned Subsidiary of the Company or held by Parent or Merger Sub immediately prior to the Effective Time shall automatically be canceled and retired and shall cease to exist, and no consideration or payment shall be delivered in exchange therefor or in respect thereof.

(b) Conversion of Company Securities. Except as otherwise provided in this Agreement, each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (after giving effect to the Recapitalization or Pre-Merger Special Distribution, as the case may be, other than shares canceled pursuant to Section 3.1(a) and Dissenting Shares) shall be converted into the right to receive (i) an amount in cash equal to the Per Share Amount and (ii) one contractual contingent value right per share of Company Common Stock (each, a "**CVR**"), subject to and in accordance with the CVR Agreement (collectively, the "**Merger Consideration**"), in each case, without any interest thereon and subject to any withholding of Taxes in accordance with Section 3.2(i). Each share of Company Common Stock to be converted into the right to receive the Merger Consideration as provided in this Section 3.1(b) shall be automatically canceled and shall cease to exist, and the holders of certificates (the "**Certificates**") or book-entry shares ("**Book-Entry Shares**") which immediately prior to the Effective Time represented such Company Common Stock shall cease to have any rights with respect to such Company Common Stock other than the right to receive, upon surrender of such Certificates or Book-Entry Shares in accordance with Section 3.2, the Merger Consideration, without interest thereon.

(c) Conversion of Merger Sub Capital Stock. At the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof, each share of common stock, par value of $0.01 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and become one (1) fully paid share of common stock, par value $0.01 per share, of the Surviving Corporation and constitute the only outstanding shares of capital stock of the Surviving Corporation.

(d) Adjustments. Without limiting the other provisions of this Agreement and subject to Section 6.1(c), if at any time during the period between the date of this Agreement and the Effective Time, any change in the number of outstanding shares of Company Common Stock shall occur as a result of a reclassification, recapitalization, stock split (including the 1-for-10 reverse stock split of the Company Common Stock approved by the Company's board of directors in connection the Distribution and any other reverse stock split), or combination, exchange or readjustment of shares, or any stock dividend or stock distribution with a record date during such period, the Merger Consideration shall be equitably adjusted to reflect such change; provided that the parties acknowledge that the Distribution and the Pre-Merger Special Distribution shall not require an adjustment to the Merger Consideration.

Section 3.2 Exchange of Certificates.

(a) Escrow of Aggregate Cash Merger Consideration. As of the date of this Agreement, Parent has caused to be deposited an amount in cash equal to the Aggregate Cash Merger Consideration (the "**Escrow Deposit**") with Citibank, N.A., as escrow agent ("**Escrow Agent**"), as collateral and security for the payment of the Aggregate Cash Merger Consideration, which amount shall be held in a segregated account (the "**Escrow Account**") by Escrow Agent in accordance with the terms and conditions of the escrow and paying agent agreement entered by the parties hereto and the Escrow Agent into prior to the execution of this Agreement.

(b) Designation of Paying Agent; Deposit of Exchange Fund. The Escrow Agent hereby is designated as the paying agent (the "**Paying Agent**") for the payment of the Merger Consideration as provided in Section 3.1(b). Immediately after the Effective Time, the Escrow Deposit shall be deposited with the Paying Agent (such deposit, the "**Exchange Fund**"). In the event the Aggregate Cash Merger Consideration portion of the Exchange Fund shall be insufficient to make the payments contemplated by Section 3.1(b)(i) Parent shall promptly deposit, or cause to be deposited, additional funds with the Paying Agent in an amount that is equal to the deficiency in the amount required to make such payment. Following the Effective Time, if not already paid, Parent shall promptly cause the Paying Agent to make, and the Paying Agent shall make, payments of the Aggregate Cash Merger Consideration to the holders of Company Common Stock pursuant to Section 3.1(b). The Exchange Fund shall not be used for any purpose other than to fund payments pursuant to Section 3.1, except as expressly provided for in this Agreement.

(c) As promptly as practicable following the Effective Time and in any event not later than the second Business Day thereafter, the Surviving Corporation shall cause the Paying Agent to mail (and to make available for collection by hand) to each holder of record of a Certificate or Book-Entry Share that immediately prior to the Effective Time represented outstanding shares of Company Common Stock (x) a letter of transmittal, which shall specify that delivery shall be effected, and risk of loss and title to the Certificates or Book-Entry Shares, as applicable, shall pass, only upon proper delivery of the Certificates (or affidavits of loss in lieu thereof) or Book-Entry Shares to the Paying Agent and which shall be in the form and have such other provisions as Parent may reasonably specify and (y) instructions for use in effecting the surrender of the Certificates or Book-Entry Shares in exchange for the Merger Consideration into which the number of shares of Company Common Stock previously represented by such Certificate or Book-Entry Shares shall have been converted pursuant to this Agreement (which instructions shall provide that, at the election of the surrendering holder, (1) Certificates or Book-Entry Shares may be surrendered by hand delivery or otherwise or (2) the Merger Consideration in exchange therefor may be collected by hand by the surrendering holder or by wire transfer to the surrendering holder). The CVRs shall not be evidenced by a certificate or other instrument.

(d) Upon surrender of a Certificate (or affidavit of loss in lieu thereof) or Book-Entry Share for cancellation to the Paying Agent, together with a letter of transmittal duly completed and validly executed in accordance with the instructions thereto, and such other documents as may be required pursuant to such instructions (including, without limitation, any necessary Tax forms), the holder of such Certificate or Book-Entry Share shall be entitled to receive in exchange therefor the Merger Consideration for each share of Company Common Stock formerly represented by such Certificate or Book-Entry Share, to be mailed, made available for collection by hand or delivered by wire transfer, as elected by the surrendering holder, within two (2) Business Days following the later to occur of (i) the Effective Time or (ii) the Paying Agent's receipt of such Certificate (or affidavit of loss in lieu thereof) or Book-Entry Share, and the Certificate (or affidavit of loss in lieu thereof) or Book-Entry Share so surrendered shall be forthwith canceled. The Paying Agent shall accept such Certificates (or affidavits of loss in lieu thereof) or Book-Entry Shares upon compliance with such reasonable terms and conditions as the Paying Agent may impose to effect an orderly exchange thereof in accordance with normal exchange practices. Until surrendered as contemplated by this Section 3.2(d), each Certificate (or affidavit of loss in lieu thereof) or Book-Entry Share shall be deemed, at any time after the Effective Time, to represent only the right to receive, upon proper surrender, the Merger Consideration as contemplated by this Article III. No interest shall be paid or accrued for the benefit of holders of the Certificates or Book-Entry Shares on the Merger Consideration payable upon the surrender of the Certificates or Book-Entry Shares.

(e) In the event of a transfer of ownership of shares of Company Common Stock that is not registered in the transfer records of the Company, it shall be a condition of payment that any Certificate surrendered in accordance with the procedures set forth in this Section 3.2 shall be properly endorsed or shall be otherwise in proper form for transfer, or any Book-Entry Share shall be properly transferred, and that the person requesting such payment shall have paid any transfer taxes and other Taxes required by reason of the payment of the Merger Consideration (including, for the avoidance of doubt, payment in the form of or with respect to the CVRs) to a person other than the registered holder of the Certificate or Book-Entry Share surrendered or shall have established to the satisfaction of Parent that such Tax either has been paid or is not applicable.

(f) Termination of Exchange Fund. Any portion of the Exchange Fund which remains undistributed to the holders of the Certificates or Book-Entry Shares for one (1) year after the Effective Time shall be delivered to Parent (including, without limitation, all interest and other income received by the Paying Agent in respect of all funds made available to it), upon demand, and any such holders prior to the Merger who have not theretofore complied with this Article III shall thereafter look only to Surviving Corporation and Parent (subject to abandoned property, escheatment or other similar Laws) as general creditor thereof for payment of their claims for cash, without interest, to which such holders may be entitled under or pursuant to this Agreement.

(g) No Liability. None of Parent, Merger Sub, the Company, the Surviving Corporation or the Paying Agent shall be liable to any person in respect of any cash held in the Exchange Fund delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law. If any Certificates or Book-Entry Shares shall not have been surrendered immediately prior to the date on which any cash in respect of such Certificate or Book-Entry Share would otherwise escheat to or become the property of any Governmental Authority, any such cash in respect of such Certificate or Book-Entry Share shall, to the extent permitted by applicable Law, become the property of Parent, free and clear of all claims or interest of any person previously entitled thereto.

(h) Investment of Exchange Fund. The Paying Agent shall invest any cash included in the Exchange Fund as directed by Parent or, after the Effective Time, the Surviving Corporation; provided that (i) no such investment shall relieve Parent or the Paying Agent from making the Aggregate Cash Merger Consideration payments required by this Article III, and, to the extent that there are losses with respect to such investments, or the Exchange Fund diminishes for other reasons below the level required to make prompt payments of the Aggregate Cash Merger Consideration as contemplated hereby, Parent shall promptly replace or restore the portion of the Exchange Fund lost through investments or other events so as to ensure that the Exchange Fund is reasonably maintained at a level sufficient to make the Aggregate Cash Merger Consideration payments, (ii) no such investment shall have maturities that could prevent or delay payments to be made pursuant to this Agreement, and (iii) such investments shall be in short-term obligations of the United States of America with maturities of no more than thirty (30) days or guaranteed by the United States of America and backed by the full faith and credit of the United States of America. Any interest or income produced by such investments will be payable to Parent.

(i) Withholdings. Parent, the Surviving Corporation and the Paying Agent shall be, subject to Section 2.4(b) of the CVR Agreement, entitled to deduct and withhold from the Merger Consideration and any amounts otherwise payable pursuant to this Agreement or the CVR Agreement to any holder of shares of Company Common Stock such amounts as Parent, the Surviving Corporation or the Paying Agent are required to deduct and withhold with respect to the making of such payment under the Code or any provision of applicable Tax Law. To the extent that amounts are so withheld and paid over to the appropriate taxing authority by Parent, the Surviving Corporation or the Paying Agent, such withheld amounts shall be treated for all purposes of this Agreement and the CVR Agreement as having been paid to the person in respect of which such deduction and withholding was made by Parent, the Surviving Corporation or the Paying Agent.

Section 3.3 Stock Options. By virtue of the Merger, each Company Option (whether vested or unvested) that is outstanding and unexercised immediately prior to Effective Time shall be canceled as of the Effective Time for no consideration. The Company shall take such actions at it reasonably determines are necessary such that no Company Option shall be outstanding effective as of the Effective Time.

Section 3.4 Lost Certificates. If any Certificate shall have been lost, stolen or destroyed, then upon the making of an affidavit of that fact by the person claiming such Certificate to be lost, stolen or destroyed and, if required by the Surviving Corporation, the posting by such person of a bond, in such reasonable amount as the Surviving Corporation may direct, as indemnity against any claim that may be made against it with respect to such Certificate, the Paying Agent will issue in exchange for such lost, stolen or destroyed Certificate the Merger Consideration to which the holder thereof is entitled pursuant to this Article III.

Section 3.5 Dissenting Shares. Notwithstanding anything in this Agreement to the contrary, to the extent that holders thereof are entitled to appraisal rights under Section 262 of the DGCL, shares of Company Common Stock issued and outstanding immediately prior to the Effective Time and held by a holder who has properly exercised and perfected his or her demand for appraisal rights under Section 262 of the DGCL (the "**Dissenting Shares**"), shall not be converted into the right to receive the Merger Consideration, but the holders of such Dissenting Shares shall be entitled to receive such consideration as shall be determined pursuant to Section 262 of the DGCL (and at the Effective Time, such Dissenting Shares shall no longer be outstanding and shall automatically be cancelled and shall cease to exist, and such holder shall cease to have any rights with respect thereto, except the rights set forth in Section 262 of the DGCL); provided, however, that if any such holder shall have failed to perfect or shall have effectively withdrawn or lost his or her right to appraisal and payment under the DGCL, such holder's shares of Company Common Stock shall thereupon be deemed to have been converted as of the Effective Time into the right to receive the Merger Consideration, without any interest thereon, and such shares shall not be deemed to be Dissenting Shares. The Company shall give Parent notice of any written demands for appraisal or payment of the fair value of any shares of Company Common Stock or withdrawals of such demands.

Section 3.6 Transfers; No Further Ownership Rights. Subject to Section 3.2, from and after the Effective Time, the holders of shares of Company Common Stock, outstanding immediately prior to the Effective Time shall cease to have any rights with respect to such Company Common Stock, except as otherwise provided herein and by applicable Law. The Aggregate Cash Merger Consideration paid in respect of shares of Company Common Stock, upon the surrender for exchange of Certificates or Book-Entry Shares in accordance with the terms of this Article III shall be deemed to have been paid in full satisfaction of all rights pertaining to the shares of Company Common Stock previously represented by such Certificates or Book-Entry Shares. From and after the Effective Time, the stock transfer books of the Company shall be closed with respect to Company Common Stock that were outstanding immediately prior to the Effective Time, and there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation with respect to the Company Common Stock outstanding immediately prior to the Effective Time. After the Effective Time, Company Common Stock presented to the Surviving Corporation or the Paying Agent for any reason, shall be canceled and exchanged as provided in this Article III.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except (a) as disclosed in the separate disclosure letter which has been delivered by the Company to Parent and Merger Sub prior to the execution of this Agreement (the "**Company Disclosure Schedule**"), which contains specific references to the particular Article or Section of this Agreement to which the information set forth in such schedule relates (which disclosures shall also apply to any other Article or Section to the extent the relevance of the disclosure is readily apparent) or (b) as and to the extent set forth in the Company SEC Documents filed with, or furnished by the Company to, the SEC on or after January 1, 2018 and prior to the date hereof, to the extent the relevance of the disclosure is reasonably apparent (excluding any forward-looking disclosures, whether or not contained under the heading "forward-looking statements," other than any specific factual information contained therein), the Company hereby represents and warrants to Parent and Merger Sub as follows:

Section 4.1 Organization and Qualification; Subsidiaries.

(a) Each of the Company and its Subsidiaries is a corporation or legal entity duly organized or formed, validly existing and in good standing, under the laws of its jurisdiction of organization or formation. Each of the Company and its Subsidiaries has the requisite corporate, partnership or limited liability company power and authority and all necessary governmental approvals to own, lease and operate its properties and to carry on its business as it is now being conducted, except where the failure to have such power, authority and governmental approvals would not have, individually or in the aggregate, a Company Material Adverse Effect. Each of the Company and its Subsidiaries is duly qualified or licensed as a foreign corporation to do business, and is in good standing, in each jurisdiction in which the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except where the failure to be so qualified or licensed or to be in good standing would not have, individually or in the aggregate, a Company Material Adverse Effect.

(b) The Company has no "significant subsidiaries" (as such term is defined in Rule 1-02 of Regulation S-X promulgated under the Securities Act). Except for the capital stock and other equity interests of its Subsidiaries, the Company does not own, directly or indirectly, any capital stock or other equity interest in any other person (including through participation in any joint venture or similar arrangement).

Section 4.2 Certificate of Incorporation and Bylaws. The Company has made available to Parent true, correct and complete copies of the current Restated Certificate of Incorporation and the Bylaws or other equivalent organizational or governing documents of the Company and each of its Subsidiaries, each as amended to date. The Restated Certificate of Incorporation and the Bylaws of the Company and the equivalent organizational or governing documents of each of the Company's Subsidiaries are in full force and effect. None of the Company or any of its Subsidiaries or, to the knowledge of the Company, any of the other parties thereto, is in violation of any material provision of such organizational or governing documents, except as would not have, individually or in the aggregate, a Company Material Adverse Effect.

Section 4.3 Capitalization.

(a) The authorized capital stock of the Company consists of (i) 10,000,000 shares of Company Common Stock and (iii) 10,000,000 shares of preferred stock, par value $0.01 per share (the "**Company Preferred Stock**"). As of June 9, 2019 (such date, the "**Capitalization Date**"), (A) 6,407,273 shares of Company Common Stock were issued and 5,336,639 shares of Company Common Stock were outstanding; (B) no shares of Company Preferred Stock were issued and outstanding; and (C) 1,070,634 shares of Company Common Stock were held by the Company as treasury shares. All outstanding shares of Company Common Stock are validly issued, fully paid, nonassessable and free of any preemptive rights. From the Capitalization Date to the date hereof, the Company has not issued or granted any Company Securities other than pursuant to the exercise of Company Options granted prior to the date hereof.

(b) Except as set forth in this Section 4.3(b) of the Company Disclosure Schedule, as of the Capitalization Date there were (i) other than the Company Common Stock, no outstanding shares of capital stock of, or other equity or voting interest in, the Company; (ii) no outstanding securities of the Company convertible into or exchangeable or exercisable for shares of capital stock of, or other equity or voting interest (including voting debt) in, the Company; (iii) no outstanding options, warrants or other rights or binding arrangements to acquire from the Company, or that obligate the Company to issue, any capital stock of, or other equity or voting interest in, or any securities convertible into or exchangeable for shares of capital stock of, or other equity or voting interest (including voting debt) in, the Company; (iv) no obligations of the Company to grant, extend or enter into any subscription, warrant, right, convertible, exchangeable or exercisable security, or other similar Contract relating to any capital stock of, or other equity or voting interest (including any voting debt) in, the Company; (v) no outstanding shares of restricted stock, restricted stock units, stock appreciation rights, performance shares, contingent value rights, "phantom" stock or similar securities or rights that are derivative of, or provide economic benefits based, directly or indirectly, on the value or price of, any capital stock of, or other securities or ownership interests in, the Company (the items in clauses (i), (ii), (iii), (iv) and (v), collectively with the Company Common Stock, the "**Company Securities**"); (vi) no voting trusts, proxies or similar arrangements or understandings to which the Company is a party or by which the Company is bound with respect to the voting of any shares of capital stock of, or other equity or voting interest in, the Company; (vii) no obligations or binding commitments of any character restricting the transfer of any shares of capital stock of, or other equity or voting interest in, the Company to which the Company is a party or by which it is bound; and (viii) no other obligations by the Company to make any payments based on the price or value of any Company Securities.

Section 4.4 Authority Relative to Agreement. The Company has all necessary corporate power and authority to execute and deliver this Agreement and the other agreements referred to in this Agreement to which it is or will be a party, to perform its obligations hereunder and, subject to receipt of the Requisite Stockholder Approval, to consummate the transactions contemplated hereby and thereby, including the Merger. The execution and delivery of this Agreement and the CVR Agreement by the Company and the consummation by the Company of the transactions contemplated hereby and thereby, including the Merger, have been duly and validly authorized by all necessary corporate action, and no other corporate proceedings on the part of the Company are necessary to authorize the execution of this Agreement or the CVR Agreement or to consummate the transactions contemplated hereby or thereby, including the Merger (other than, with respect to the Merger, the receipt of the Requisite Stockholder Approval, as well as the filing of the Certificate of Merger with the Secretary of State, and other than the declaration of the Pre-Merger Special Distribution or the approval of the Recapitalization (and the filing of a related certificate of amendment of the Company's Restated Certificate of Incorporation with the Secretary of State)). The Company's board of directors has unanimously approved this Agreement the CVR Agreement, declared this Agreement to be advisable, approved the transactions contemplated hereby, determining them to be fair and in the best interest of the Company and its stockholders, and resolved to recommend to the stockholders of the Company the Company Recommendation that they vote in favor of the adoption of this Agreement in accordance with the DGCL. This Agreement has been duly and validly executed and delivered by the Company and, assuming the due authorization, execution and delivery by Parent and Merger Sub, this Agreement constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms (except as such enforceability may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws of general applicability relating to or affecting creditor's rights, and to general equitable principles).

Section 4.5 No Conflict; Required Filings and Consents.

(a) None of the execution and delivery of this Agreement or the CVR Agreement by the Company, the consummation by the Company of the Merger or any other transaction contemplated by this Agreement or the CVR Agreement, or the Company's compliance with any of the provisions of this Agreement or the CVR Agreement, will (i) subject to obtaining the Requisite Stockholder Approval, conflict with, violate or breach (x) any provision of the Restated Certificate of Incorporation, as amended, or the Bylaws, as amended, of the Company or (y) any provision of the organizational or governing documents of any of the Company's Subsidiaries, (ii) assuming the consents, approvals and authorizations specified in Section 4.5(b) have been received, and any condition precedent to such consent, approval, authorization, or waiver has been satisfied, conflict with or violate any Law, judgment, writ or injunction of any Governmental Authority applicable to the Company or by which any property or asset of the Company is bound or affected, or (iii) result in any breach of, or constitute a default (with or without notice or lapse of time, or both) under, or give rise in others any right of termination, amendment, acceleration or cancellation of, any Company Material Contract or accelerate the Company's obligations under any such Company Material Contract, or result in the creation of a Lien, other than any Permitted Lien, upon any of the properties or assets of the Company, other than, in the case of clauses (ii) and (iii), any such violation, breach, default, right, termination, amendment, acceleration, cancellation or Lien that would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(b) Except for (i) the filing of the Proxy Statement with the SEC and other filings required under, and in compliance with the other applicable requirements of, the Exchange Act, the Securities Act, or Blue Sky Laws, (ii) filings required by the rules of The Nasdaq Capital Market and (iii) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware pursuant to the DGCL, no consent or approval of, or filing, license, waiver, permit or authorization, declaration, registration or filing with or notification to, any Governmental Authority or any stock market or stock exchange on which shares of Company Common Stock are listed for trading are necessary for the execution and delivery of this Agreement or the CVR Agreement by the Company, the performance by the Company of its obligations hereunder or thereunder and the consummation by the Company of the transactions contemplated hereby and thereby, other than such consents, approvals, filings, licenses, permits or authorizations, declarations, registrations or filings or notifications that, if not obtained, made or given, would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 4.6 Permits and Licenses. The Company is in possession of all franchises, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals and orders necessary for the Company to own, lease and operate the properties of the Company and to lawfully conduct its business as they are now being conducted (the "**Company Permits**"), and no suspension or cancellation of any of the Company Permits is pending, except where the failure to have, or the suspension or cancellation of, any of the Company Permits would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 4.7 Compliance with Laws. Except as disclosed in Section 4.7 of the Company Disclosure Schedule, the Company is in compliance with, since January 1, 2018 has not breached or violated, and has not received written notice of any default or violation of, any Laws applicable to the Company or by which any property or asset of the Company is bound or affected, in each case except for instances of non-compliance, breach, default or violation that would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 4.8 Company SEC Documents; Financial Statements.

(a) Since January 1, 2018, the Company has filed with the SEC, on a timely basis, all required registration statements, forms, documents, proxy statements and reports required to be filed or furnished prior to the date hereof by it with the SEC (collectively, and in each case including all exhibits and schedules thereto and documents incorporated by reference therein, including any amendments thereto, the "**Company SEC Documents**"). As of their respective dates, or, if amended, as of the date of the last such amendment, the Company SEC Documents complied in all material respects with the requirements of the Securities Act, the Exchange Act and the Sarbanes-Oxley Act of 2002 (as amended and including the rules and regulations promulgated thereunder (the "**Sarbanes-Oxley Act**"), as the case may be, and the applicable rules and regulations promulgated thereunder, and none of the Company SEC Documents at the time it was filed contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, or are to be made, not misleading. As of the date of this Agreement, there are no outstanding or unresolved comments in comment letters received from the SEC or its staff.

(b) The consolidated financial statements (including all related notes and schedules) of the Company included or incorporated by reference in the Company SEC Documents complied as to form, as of their respective dates of filing with the SEC, in all material respects with all applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with GAAP applied on a consistent basis during the periods involved (except (i) with respect to financial statements included in Company SEC Documents filed as of the date of this Agreement, as may be indicated in the notes thereto or (ii) as permitted by Regulation S-X under the Securities Act) and fairly present in all material respects the consolidated financial position of the Company and its consolidated Subsidiaries as at the respective dates thereof and their consolidated results of operations and consolidated cash flows for the respective periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments, to the absence of notes and to any other adjustments described therein, including in any notes thereto) in conformity with GAAP (except as may be indicated therein or in the notes thereto).

Section 4.9 Information Supplied. None of the information supplied or to be supplied by or on behalf of the Company or any of its Subsidiaries expressly for inclusion or incorporation by reference in the proxy statement relating to the adoption by the stockholders of the Company of this Agreement (together with any amendments or supplements thereto, the "**Proxy Statement**") will, at the date it is first mailed to the stockholders of the Company and at the time of the Stockholders' Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they are made, not misleading. For the avoidance of doubt, the Company makes no representation or warranty with respect to any information supplied by Parent or Merger Sub or any of their respective Representatives or any other third party for inclusion or incorporation by reference in the Proxy Statement.

Section 4.10 Disclosure Controls and Procedures. The Company has established and maintains a system of internal controls over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) designed to provide reasonable assurances regarding the reliability of financial reporting. The Company (i) has designed and maintains disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) to ensure that material information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and is accumulated and communicated to the Company's management as appropriate to allow timely decisions regarding required disclosure and (ii) since January 1, 2018 has disclosed to the Company's auditors and the audit committee of the Company's board of directors (and made any such written summaries of such disclosures that were so provided available to Parent) (A) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting that are reasonably likely to adversely affect in any material respect the Company's ability to record, process, summarize and report financial information and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls over financial reporting.

Section 4.11 Absence of Certain Changes or Events. From January 1, 2019 through the date of this Agreement, except for the sale of the Company's institutional business, the declaration by the Company's board of directors of the Distribution and actions taken to effect the same or as otherwise contemplated or permitted by this Agreement, (a) the businesses of the Company and its Subsidiaries have been conducted in the ordinary course of business consistent with past practice, and (b) there has not been any event, development or state of circumstance that, individually or in the aggregate has had or, would reasonably be expected to have a Material Adverse Effect.

Section 4.12 No Undisclosed Liabilities. Except (a) as disclosed in the balance sheet of the Company as of December 31, 2018 (the "**Balance Sheet Date**") (including the notes thereto) included in the Company SEC Documents, (b) for liabilities or obligations incurred in the ordinary course of business consistent with past practice since the Balance Sheet Date, (c) for liabilities or obligations incurred or arising under the terms of any Contract or Permit binding upon the Company or any of its Subsidiaries (including any contingent indemnification obligations), (d) for liabilities permitted or contemplated by this Agreement, (e) for liabilities or obligations which have been discharged or paid in full in the ordinary course of business consistent with past practice, as of the date of this Agreement and (f) for liabilities related to the Distribution, neither the Company nor any of its Subsidiaries has any liabilities or obligations of any nature, whether or not accrued, contingent or otherwise, and whether due or to become due, that would be required by GAAP to be reflected or reserved against on a consolidated balance sheet (or the notes thereto) of the Company and its Subsidiaries, other than those which would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. There are no unconsolidated Subsidiaries of the Company or any off-balance sheet arrangements of any type (including any off-balance sheet arrangement required to be disclosed pursuant to Item 303(a)(4) of Regulation S-K promulgated under the Securities Act) that have not been so described in the Company SEC Documents nor any obligations to enter into any such arrangements.

Section 4.13 Absence of Litigation. Except as disclosed in Section 4.13 of the Company Disclosure Schedule, as of the date hereof there is no claim, action, suit, arbitration, proceeding or investigation pending or, to the knowledge of the Company, threatened in writing against the Company or any of its Subsidiaries, or any of their respective properties or assets at law or in equity, and there are no Orders, by or before any arbitrator or Governmental Authority, in each case as would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 4.14 Employee Benefit Plans.

(a) Company has furnished to Parent true and complete copies of each of the Company Benefit Plans and material documentation related thereto. With respect to each Company Benefit Plan that is subject to ERISA reporting requirements, Company has provided copies of the Form 5500 reports filed for the last three plan years. Company has furnished Parent with the most recent Internal Revenue Service determination or opinion letter issued with respect to each such Company Benefit Plan, and to the Company's knowledge nothing has occurred since the issuance of each such letter that could reasonably be expected to cause the loss of the tax qualified status of any Company Benefit Plan subject to Code Section 401(a).

(b) Each Company Benefit Plan has been operated and administered in accordance with its terms and applicable Law, including, but not limited to, ERISA and the Code, except for instances of noncompliance that would not have, individually or in the aggregate, a Company Material Adverse Effect. There are no pending investigations by any Governmental Authority, termination proceedings or other claims (except routine claims for benefits payable under the Company Benefit Plans) against or involving any Company Benefit Plan or asserting any rights to or claims for benefits under any Company Benefit Plan, other than any such investigations, proceedings, or claims that would not have, individually or in the aggregate, a Company Material Adverse Effect.

(c) Neither Company nor any ERISA Affiliate has ever maintained, established, sponsored, participated in, contributed to, or is obligated to contribute to, or otherwise incurred any obligation or liability (including without limitation any contingent liability) under any "multiemployer plan" (as defined in Section 3(37) of ERISA) or to any "pension plan" (as defined in Section 3(2) of ERISA) subject to Title IV of ERISA or Section 412 of the Code. None of Company or any ERISA Affiliate has any actual or potential withdrawal liability (including without limitation any contingent liability) for any complete or partial withdrawal (as defined in Sections 4203 and 4205 of ERISA) from any multiemployer plan.

(d) Each Company Benefit Plan intended to be qualified under Section 401(a) of the Code, and the trust (if any) forming a part thereof, has received a favorable determination or opinion letter from the Internal Revenue Service as to its qualification under the Code and to the effect that each such trust is exempt from taxation under Section 501(a) of the Code, and, to the knowledge of the Company, nothing has occurred since the date of such determination or opinion letter that could reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect on such qualification or tax-exempt status.

(e) No Company Benefit Plan provides benefits, including without limitation death or medical benefits (whether or not insured), with respect to current or former employees or directors of the Company or its Subsidiaries beyond their retirement or other termination of service, other than (i) coverage mandated solely by applicable Law, (ii) death benefits or retirement benefits under any "employee pension benefit plan" (within the meaning of Section 3(2) of ERISA), (iii) deferred compensation benefits accrued as liabilities on the books of the Company or any of its Subsidiaries, (iv) benefits the full costs of which are borne by the current or former employee or director or his or her beneficiary or (v) certain rights to exercise stock options for a period of time beyond such recipient's last day of service with the Company.

(f) Each "nonqualified deferred compensation plan" (within the meaning of Section 409A of the Code) is in material compliance with the requirements of 409A of the Code and guidance promulgated thereunder by its terms and has been operated in material compliance with such requirements. All Company Options were granted with an exercise price at least equal to the fair market value of the Company's common stock (as determined pursuant to the applicable provisions of Section 409A and 422 of the Code and the Regulations promulgated thereunder) on the date such options were granted by the Company's board of directors (or a committee thereof), and the Company has not incurred any liability or obligation to withhold taxes under Section 409A of the Code upon the vesting of any Company Options, nor would the vesting or settlement of such awards reasonably be expected to result in a violation of Section 409A of the Code.

(g) There is no agreement, plan, arrangement or other contract covering any current or former employee or other service provider of the Company or any Subsidiary that, considered individually or considered collectively with any other such agreements, plans, arrangements or other contracts, will, or could reasonably be expected to, as a result of the transactions and agreements contemplated hereby (whether alone or upon the occurrence of any additional or subsequent events), give rise directly or indirectly to the payment of any amount that could reasonably be characterized as a "parachute payment" within the meaning of Section 280G of the Code.

Section 4.15 Labor Matters.

(a) Neither the Company nor any of its Subsidiaries is a party to or bound by any collective bargaining agreement, work rules or other agreement with any labor union, labor organization, employee association, or works council (each, a "**Union**") applicable to employees of the Company or any of its Subsidiaries ("**Company Employees**"). None of the Company Employees is represented by any Union with respect to his or her employment with the Company or any of its Subsidiaries.

(b) The Company and its Subsidiaries are, and since January 1, 2018 have been, in compliance with all applicable state, federal, and local Laws respecting labor and employment, including all Laws relating to discrimination, disability, labor relations, unfair labor practices, hours of work, payment of wages, employee benefits, retirement benefits, compensation, immigration, workers' compensation, working conditions, occupational safety and health, family and medical leave, reductions in force, plant closings, notification of employees, and employee terminations, except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, and to the knowledge of the Company, the Company does not have any liabilities under the WARN Act or any state or local Laws requiring notice with respect to such layoffs or terminations.

(c) The representations and warranties set forth in Section 4.14 and Section 4.15 are the Company's sole and exclusive representations and warranties regarding employee, employee benefit plan and labor matters.

Section 4.16 Intellectual Property.

(a) Except as would not have, individually or in the aggregate, a Company Material Adverse Effect, (i) the Company and its Subsidiaries own or have the right to use in the manner currently used all patents, trademarks, trade names, copyrights, Internet domain names, service marks and trade secrets (the "**Intellectual Property Rights**") that are material to the business of the Company and its Subsidiaries as currently conducted (the "**Company Intellectual Property Rights**"), and other than trade secrets, all as listed in Section 4.16(a) of the Company Disclosure Schedule, and (ii) neither the Company nor any of its Subsidiaries has received since January 1, 2018 any written charge, complaint, claim, demand or notice challenging the validity of any of the Company Intellectual Property Rights. All rights whatsoever in or to, or control over, any of the Company's subscriber or similar data, including customer lists, are owned, and will be owned immediately after the Effective Time, solely by the Company and are not owned by, and immediately after the Effective Time will not be owned by, any employee or former employee of the Company.

(b) To the Company's knowledge, the conduct of the business of the Company and its Subsidiaries as currently conducted does not infringe upon any Intellectual Property Rights of any other Person, except for any such infringement that is not reasonably likely to have, individually or in the aggregate, a Company Material Adverse Effect. To the Company's knowledge, no Person is infringing any Company Intellectual Property Rights.

(c) [intentionally omitted].

(d) Except as is not reasonably likely to have, individually or in the aggregate, a Company Material Adverse Effect, to the Company's knowledge, the Company's data, privacy and security practices conform in all material respects to all of the Privacy Commitments (as defined below) and each Law applicable to the protection or processing or both of the name, street address, telephone number, e-mail address, photograph, social security number, driver's license number, passport number or customer or account number, or any other piece of information that allows the identification of a natural Person ("**Personal Data**"), including Laws applicable direct marketing, e-mails, text messages or telemarketing. Except as is not reasonably likely to have, individually or in the aggregate, a Company Material Adverse Effect, to the Company's knowledge, the Company as of the date of this Agreement: (A) provides notice and obtains any necessary consents from data subjects required for the processing of Personal Data as conducted by or for the Company; and (B) abides by any privacy choices (including opt-out preferences) of data subjects relating to Personal Data (such obligations along with the obligations contained in the Company's data privacy and security policies, or published on the Company's websites or otherwise made available by the Company to any Person ("**Privacy Commitments**").

(e) The representations and warranties set forth in Section 4.16 are the Company's sole and exclusive representations and warranties intellectual property matters.

Section 4.17 Taxes.

(a) Since January 1, 2018, the Company has timely filed (taking into account any extension of time within which to file), all material income Tax Returns and other material Tax Returns required to be filed by it, and all such filed Tax Returns are true, correct, complete in all material respects. To the knowledge of the Company, all Taxes due and owing by the Company (whether or not shown on such Tax Returns) have been fully and timely paid, except where the failure to pay or timely pay any such Tax is not reasonably likely to have, individually or in the aggregate, a Company Material Adverse Effect.

(b) The unpaid Taxes of the Company did not materially, as of the date of the financial statements for the year-ended December 31, 2018 contained in the Company SEC Documents, exceed by a material amount the amount of Tax liability (exclusive of any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the balance sheet therein (rather than in any notes thereto).

(c) No deficiency with respect to Taxes has been proposed, asserted or assessed against the Company in writing by a taxing authority that has not been satisfied by payment, settled or withdrawn, or reserved on the Company's financial statements.

(d) The Company has not constituted either a "distributing corporation" or a "controlled corporation" (within the meaning of Section 355(a)(1)(A) of the Code) in a distribution of stock occurring during the last two (2) years intended to qualify for tax-free treatment under Section 355 or Section 361 of the Code.

(e) The Company and its subsidiaries have complied in all material respects with all applicable Laws relating to the payment of withholding Taxes and have duly and timely withheld and paid over to the appropriate Tax authority (in all material respects) all amounts required to be so withheld and paid under all applicable Tax Laws, including any Taxes in connection with any amounts paid or owing to any present or former employee, officer, director, independent contractor, creditor, stockholder or any other third party.

(f) To the knowledge of the Company, there are no Liens for Taxes on any of the assets of the Company, other than Permitted Liens.

(g) Since January 1, 2018, neither the Company nor any of its Subsidiaries has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency, in either case that is still outstanding.

Section 4.18 Material Contracts.

(a) Except as set forth in Section 4.18 of the Company Disclosure Schedule, as of the date hereof, neither the Company nor any of its Subsidiaries is a party to or bound by any "Company Material Contract." For purposes of this Agreement, "**Company Material Contract**" means all Contracts to which the Company or any of its Subsidiaries is a party or by which the Company, any of its Subsidiaries or any of their respective properties or assets is bound (other than Company Plans or Company Benefit Plans) that are or would be required to be filed by the Company as a "material contract" pursuant to Item 601(b)(10) of Regulation S-K, except for (A) forms related to Company Benefit Plans, (B) the Company's form of change in control agreement (and any amendments thereto), and (C) the Company's form of indemnification agreement, under the Securities Act or disclosed by the Company on a Current Report on Form 8-K.

For the avoidance of doubt, all expired or terminated Contracts for which the Company no longer has any obligations under are excluded from the definition of Company Material Contract.

(b) Neither the Company nor any Subsidiary of the Company is in breach of or default under the terms of any Company Material Contract where such breach or default would have, individually or in the aggregate, a Company Material Adverse Effect. To the knowledge of the Company, no other party to any Company Material Contract is in breach of or default under the terms of any Company Material Contract where such breach or default would have, individually or in the aggregate, a Company Material Adverse Effect. Neither the Company nor any Subsidiary has received notice of any breach or default under any Company Material Contract, except for breaches or defaults that would not, individually or in the aggregate, reasonably be expected to result in a Company Material Adverse Effect. Each Company Material Contract is a valid and binding obligation of the Company and, to the knowledge of the Company, is in full force and effect, except as would not have, individually or in the aggregate, a Company Material Adverse Effect; provided, however, that (i) such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws, now or hereafter in effect, relating to creditors' rights generally and (ii) equitable remedies of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought.

Section 4.19 Property. As of the date hereof (a) the Company has a good and valid leasehold interest in each material Company Lease, free and clear of all Liens (other than Permitted Liens), and (b) owns or leases all of the material tangible personal property shown to be owned or leased by the Company or any of its Subsidiaries reflected in the latest audited financial statements included in the Company SEC Documents or acquired after the date thereof, free and clear of all Liens (other than Permitted Liens), except to the extent disposed of in the ordinary course of business since the date of the latest audited financial statements included in the Company SEC Documents or otherwise no longer held due to casualty or destruction.

Section 4.20 Takeover Statutes. Assuming the accuracy of the representation contained in Section 5.11, the board of directors of the Company has taken all actions and votes as are necessary to render the provisions of any "fair price," "moratorium," "control share acquisition" or any other restriction on business combinations contained in any applicable state takeover or anti-takeover statute or similar federal or state Law (collectively, "**Takeover Statutes**") inapplicable to this Agreement, the CVR Agreement, the Merger or any other transaction contemplated by this Agreement or the CVR Agreement.

Section 4.21 Vote Required. The affirmative vote of the holders of outstanding Company Common Stock representing at least a majority of all the votes entitled to be cast thereupon by holders of Company Common Stock (the "**Requisite Stockholder Approval**") is the only vote of holders of securities of the Company that is necessary to adopt this Agreement and approve the transactions contemplated hereby, including the Merger and but excluding the Recapitalization. For the avoidance of doubt, the Requisite Stockholder Approval is the only vote of holders of securities of the Company that is necessary to effect the Recapitalization if the same if submitted to the holders of Company Common Stock for approval.

Section 4.22 Brokers. No broker, finder or investment banker other than Moelis & Company LLC or Lake Street Capital Markets, LLC is entitled to any brokerage, finder's or other fee or commission in connection with the Merger and any of the other transactions contemplated by this Agreement or the CVR Agreement.

Section 4.23 No Other Representations or Warranties. Except for the representations and warranties contained in this Article IV, Parent and Merger Sub acknowledge that neither the Company nor any other person on behalf of the Company makes any express or implied representation or warranty with respect to the Company or with respect to any other information provided to Parent or Merger Sub in connection with the transactions contemplated hereby, including the accuracy, completeness or currency thereof. Neither the Company nor any other person will have or be subject to any liability or indemnification obligation to Parent, Merger Sub or any other person resulting from the distribution or failure to distribute to Parent or Merger Sub, or Parent's or Merger Sub's use of, any such information, including any information, documents, projections, forecasts of other material made available to Parent or Merger Sub in the electronic data room for Project Boulevard maintained by the Company for purposes of the Merger and the other transactions contemplated by this Agreement (the "**Electronic Data Room**"), management presentations in expectation of the transactions contemplated by this Agreement or otherwise, unless and to the extent any such information is expressly included in a representation or warranty contained in this Article IV.

Section 4.24 Prior Transactions. Each Prior Transaction was completed in compliance with all applicable Laws, including the applicable requirements of the Exchange Act and Securities Act, and the applicable rules of The Nasdaq Capital Market, except for instances of non-compliance that would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Each Prior Transaction received the requisite approval of the Company's board of directors and stockholders in accordance with the Company's Restated Certificate of Incorporation, as amended, Bylaws, as amended, and the DGCL. Except as set forth on Section 4.24 of the Company Disclosure Schedule, no claims have been made, or to the Company's knowledge, threatened, against the Company by the buyer in either Prior Transaction alleging breach of the Definitive Agreements by the Company or seeking indemnification pursuant to the Definitive Agreements. Except as set forth on Section 4.24 of the Company Disclosure Schedule, to the knowledge of the Company's, all fees and expenses, including legal fees and expenses, incurred by the Company for third party advisors engaged by the Company in connection with the Prior Transactions have been paid in full or accrued.

Section 4.25 Key Personnel. To the knowledge of the Company, neither Eric Lundberg nor Margaret De Luna have entered into any agreement or understanding, verbal or written, with James Cramer or any other executive officer of the Company, directly or indirectly, to work for any Person other than the Company.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Except as disclosed in the separate disclosure letter which has been delivered by Parent to the Company prior to the execution of this Agreement (the "**Parent Disclosure Schedule**"), Parent and Merger Sub hereby jointly and severally represent and warrant to the Company as of the date hereof as follows:

Section 5.1 Organization and Qualification; Subsidiaries. Each of Parent and Merger Sub is a corporation duly organized, validly existing and in good standing, under the laws of the State of Delaware. Each of Parent and Merger Sub has the requisite corporate power and authority and all necessary governmental approvals to own, lease and operate its properties and to carry on its business as it is now being conducted, except where the failure to have such power, authority and governmental approvals would not have, individually or in the aggregate, a Parent Material Adverse Effect. Each of Parent and Merger Sub is duly qualified or licensed as a foreign corporation to do business, and, in the case of Merger Sub only, is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except where the failures to be so qualified or licensed or to be in good standing would not have, individually or in the aggregate, a Parent Material Adverse Effect.

Section 5.2 Certificate of Incorporation, Bylaws, and Other Organizational Documents. Parent has made available to the Company true, correct and complete copies of the certificate of incorporation, bylaws (or equivalent organizational or governing documents), and other organizational or governing documents, agreements or arrangements, each as amended to date, of each of Parent and Merger Sub (collectively, "**Parent Organizational Documents**"). The Parent Organizational Documents are in full force and effect. None of Parent, Merger Sub or, to the knowledge of Parent, any of the other parties thereto are in violation of any provision of the Parent Organizational Documents, as applicable, except as would not have, individually or in the aggregate, a Parent Material Adverse Effect.

Section 5.3 Authority Relative to Agreement. Each of Parent and Merger Sub has all necessary power and authority to execute and deliver this Agreement and the other agreements referred to in this Agreement to which Parent and Merger Sub is or will be a party, to perform its obligations hereunder and to consummate the transactions contemplated hereby, including the Merger. The execution and delivery of this Agreement by Parent and Merger Sub and the CVR Agreement in the case of Parent, and the consummation by Parent and Merger Sub of the transactions contemplated hereby and thereby, including the Merger, have been duly and validly authorized by all necessary corporate action of Parent and Merger Sub, and no other corporate proceedings on the part of Parent or Merger Sub are necessary to authorize the execution of this Agreement or the CVR Agreement or to consummate the transactions contemplated hereby or thereby, including the Merger (other than, with respect to the Merger, the filing of the Certificate of Merger with the Secretary of State). This Agreement has been duly and validly executed and delivered by Parent and Merger Sub and, assuming the due authorization, execution and delivery by the Company, this Agreement constitutes a legal, valid and binding obligation of Parent and Merger Sub, enforceable against Parent and Merger Sub in accordance with its terms (except as such enforceability may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws of general applicability relating to or affecting creditor's rights, and to general equitable principles).

Section 5.4 No Conflict; Required Filings and Consents.

(a) None of the execution and delivery of this Agreement by Parent and Merger Sub, the execution and delivery of CVR Agreement by Parent, the consummation by Parent or Merger Sub of the transactions contemplated by this Agreement, including the Merger, or compliance by Parent or Merger Sub with any of the provisions of this Agreement or the CVR Agreement will (i) conflict with, violate or breach any provision of the certificate of incorporation or bylaws (or equivalent organizational or governing documents) of (x) Parent or (y) Merger Sub, (ii) assuming the consents, approvals and authorizations specified in Section 5.4(b) have been received and the waiting periods referred to therein have expired, and any condition precedent to such consent, approval, authorization, or waiver has been satisfied, conflict with or violate any Law, judgment, writ or injunction or any Governmental Authority applicable to Parent or Merger Sub or by which any property or asset of Parent or Merger Sub is bound or affected or (iii) result in any breach of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any right of termination, amendment, acceleration or cancellation of, or result in the creation of a Lien on any property or asset of Parent or Merger Sub pursuant to, any Contract to which Parent or Merger Sub is a party or by which Parent or Merger Sub or any property or asset of Parent or Merger Sub is bound, other than, in the case of clauses (ii) and (iii), for any such violations, breaches, defaults, rights, terminations, amendments, accelerations, or cancellations which would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(b) Except for (i) compliance with the applicable requirements of the Exchange Act, the Securities Act or Blue Sky Laws or (ii) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware pursuant to the DGCL, no consent or approval of, or filing, license, waiver, permit or authorization, declaration, registration or filing with or notification to, any Governmental Authority or any stock market or stock exchange are necessary for the execution and delivery of this Agreement by Parent and Merger Sub, the execution and delivery of the CVR Agreement by Parent, the performance by the Parent and Merger Sub of their obligations hereunder and the consummation by the Parent and Merger Sub of the transaction contemplated hereby or thereby, other than such consent, approval, filings, license permits, authorizations, declarations, registrations or filings with or notification that, if not obtained, made or given, would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

Section 5.5 Absence of Litigation. As of the date hereof, there is no claim, action, suit, arbitration, proceeding, or investigation pending or, to the knowledge of Parent, threatened in writing against Parent, Merger Sub or any of their respective affiliates or any of their respective properties or assets at law or in equity, and there are no Orders by or before any arbitrator or Governmental Authority, in each case as would have, individually or in the aggregate, a Parent Material Adverse Effect.

Section 5.6 Absence of Certain Agreements. Except as set forth in Section 5.6 of the Parent Disclosure Schedule, neither Parent nor any of its affiliates has entered into any Contract, arrangement or understanding (in each case, whether oral or written), or authorized, committed or agreed to enter into any Contract, arrangement or understanding (in each case, whether oral or written), pursuant to which: any stockholder of the Company would be entitled to receive consideration of a different amount or nature than the Merger Consideration or pursuant to which any stockholder of the Company (i) agrees to vote to adopt this Agreement or the Merger or (ii) agrees to vote against any Superior Proposal.

Section 5.7 Parent SEC Documents; Financial Statements; Information Supplied.

(a) Except as set forth in Section 5.7(a) of the Parent Disclosure Schedule, since January 1, 2018, Parent has filed with the SEC, on a timely basis, all required registration statements, forms, documents, proxy statements and reports required to be filed or furnished prior to the date hereof by it with the SEC (collectively, and in each case including all exhibits and schedules thereto and documents incorporated by reference therein, including any amendments thereto, the "**Parent SEC Documents**"). As of their respective dates, or, if amended, as of the date of the last such amendment, the Parent SEC Documents complied in all material respects with the requirements of the Securities Act, the Exchange Act and the Sarbanes-Oxley Act, as the case may be, and the applicable rules and regulations promulgated thereunder, and none of the Parent SEC Documents at the time it was filed contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, or are to be made, not misleading. As of the date of this Agreement, there are no outstanding or unresolved comments in comment letters received from the SEC or its staff.

(b) Except as set forth in Section 5.7(b) of the Parent Disclosure Schedule, the consolidated financial statements (including all related notes and schedules) of Parent included or incorporated by reference in the Parent SEC Documents complied as to form, as of their respective dates of filing with the SEC, in all material respects with all applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with GAAP applied on a consistent basis during the periods involved (except (i) with respect to financial statements included in Company SEC Documents filed as of the date of this Agreement, as may be indicated in the notes thereto or (ii) as permitted by Regulation S-X under the Securities Act) and fairly present in all material respects the consolidated financial position of Parent and its consolidated subsidiaries as at the respective dates thereof and their consolidated results of operations and consolidated cash flows for the respective periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments, to the absence of notes and to any other adjustments described therein, including in any notes thereto) in conformity with GAAP (except as may be indicated therein or in the notes thereto.

(c) None of the information supplied or to be supplied by or on behalf of Parent or Merger Sub expressly for inclusion or incorporation by reference in the Proxy Statement will, at the date it is first mailed to the stockholders of the Company and at the time of the Stockholders' Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they are made, not misleading.

Section 5.8 Capitalization of Merger Sub. As of the date of this Agreement, the authorized share capital of Merger Sub consists of 1,000 shares, par value $0.01 per share, of which 100 are validly issued and outstanding. All of the issued and outstanding share capital of Merger Sub is, and at the Effective Time will be, owned by Parent or a direct or indirect wholly owned Subsidiary of Parent. Merger Sub was formed solely for the purpose of engaging in the transactions contemplated hereby, and it has not conducted any business prior to the date hereof and has no, and prior to the Effective Time will have no, assets, liabilities or obligations of any nature other than those incident to its formation and pursuant to this Agreement and the Merger and the other transactions contemplated by this Agreement.

Section 5.9 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Merger and any of the other transactions contemplated by this Agreement based upon arrangements made by or on behalf of Parent.

Section 5.10 Sufficient Funds; Solvency. The Escrow Deposit is an amount in cash equal to the Aggregate Cash Merger Consideration. Parent has and, at the Effective Time will have, sufficient funds available (through a capital contribution or debt financing from B Riley FBR, Inc.) to (a) pay all costs, fees and expenses related to this Agreement and the transactions contemplated hereby and (b) to satisfy the working capital needs and other general corporate requirements of Parent and the Surviving Corporation following the Merger. Parent has delivered to the Company a letter addressed to Parent and the Company, dated as of June 7, 2019, to the effect that B Riley FBR, Inc. is highly confident of its ability to underwrite, arrange and/or place financing sufficient to provide to Parent, as of the date hereof and at and following the Effective Time, with such funds. Parent and Merger Sub acknowledge and agree that their obligations hereunder are not subject to any conditions regarding Parent's, Merger Sub's or any other person's ability to obtain financing for the consummation of the transactions contemplated by this Agreement. As of the Effective Time, assuming satisfaction of the conditions to the Parent's obligation to consummate the Merger or waiver of such conditions, and after giving effect to the transactions contemplated by this Agreement, including receipt of any funding from B Riley FBR, Inc., payment of the Aggregate Cash Merger Consideration, payment by Parent of all amounts required to be paid in connection with the consummation of the transactions contemplated hereby, payment by Parent of all related fees and expenses and satisfaction by Parent of the working capital needs of Parent and the Surviving Corporation following the Merger, Parent will be Solvent as of the Effective Time and immediately following the transactions contemplated hereby. For purposes of this Section 5.10, "**Solvent**" with respect to Parent means that, as of any date of determination, (i) the amount of the "fair saleable value" of the assets of Parent and its Subsidiaries (including the Surviving Corporation), taken as a whole, exceeds, as of such date, the sum of (A) the value of all "liabilities of Parent and such Subsidiaries, taken as a whole, including contingent and other liabilities," as of such date, as such quoted terms are generally determined in accordance with the applicable federal Laws governing determinations of the insolvency of debtors and (B) the amount that will be required to pay the probable liabilities of Parent and such Subsidiaries taken as a whole on its existing debts (including contingent and other liabilities) as such debts become absolute and mature; (ii) Parent and such Subsidiaries will collectively not have, as of such date, an unreasonably small amount of capital for the operation of the business in which it is engaged or proposed to be engaged following the Closing Date; and (iii) Parent and such Subsidiaries will collectively be able to pay their liabilities, including contingent and other liabilities, as they mature.

Section 5.11 DGCL Section 203. Neither Parent nor Merger Sub is, nor at any time has either Parent or Merger Sub been, an "interested stockholder" of the Company as defined in Section 203 of the DGCL or as defined in the Company's Restated Certificate of Incorporation, as amended.

Section 5.12 Parent Ownership of Company Securities. Parent and its Subsidiaries do not beneficially own (as such term is used in Rule 13d-3 promulgated under the Exchange Act) any shares of Company Common Stock or other securities of the Company or any options, warrants or other rights to acquire Company Common Stock or other securities of, or any other economic interest (through derivative securities or otherwise) in, the Company.

Section 5.13 WARN Act. Parent and Merger Sub are neither planning nor contemplating, and Parent and Merger Sub have neither made nor taken, any decisions or actions concerning the Company Employees after the Closing that would require the service of notice under the WARN Act or similar local laws.

Section 5.14 Management Agreements. Other than this Agreement and the Voting Agreement, there are no Contracts, undertakings, commitments, agreements or obligations or understandings between Parent or Merger Sub or any of their respective affiliates, on the one hand, and any member of the Company's management or the board of directors or any of the Company's affiliates, on the other hand, relating in any way to the transactions contemplated by this Agreement or the operations of the Company after the Effective Time.

Section 5.15 No Parent Vote Required. No approval of the holders of the Parent's shares is required by applicable Law, the Parent Organizational Documents, or otherwise for Parent and Merger Sub to approve and adopt this Agreement and to consummate the transactions contemplated hereby, including the Merger.

Section 5.16 Acknowledgement of Disclaimer of Other Representations and Warranties. Parent and Merger Sub acknowledge that, as of the date hereof, they and their Representatives (a) have received access to (i) the Electronic Data Room, and (ii) such books and records, Contracts and other assets of the Company which they and their Representatives, as of the date hereof, have requested to review, and (b) have had the opportunity to meet with the management of the Company and to discuss the business and assets of the Company. Parent and Merger Sub each acknowledges and agrees that, except for the representations and warranties expressly set forth in this Agreement (a) neither the Company nor any of its Subsidiaries makes, or has made, any representation or warranty relating to itself or its business or otherwise in connection with the Merger and Parent and Merger Sub are not relying on any representation or warranty except for those expressly set forth in this Agreement, (b) no person has been authorized by the Company or any of its Subsidiaries to make any representation or warranty relating to itself or its business or otherwise in connection with the Merger, and if made, such representation or warranty must not be relied upon by Parent or Merger Sub as having been authorized by such entity, and (c) any estimate, projection, prediction, data, financial information, memorandum, presentation or any other materials or information provided by the Company or addressed to Parent, Merger Sub or any of their Representatives, are not and shall not be deemed to be or include representations or warranties unless and to the extent any such materials or information is the subject of any express representation or warranty set forth in Article IV. Each of Parent and Merger Sub acknowledges that it has conducted, to its satisfaction, its own independent investigation of the condition, operations and business of the Company and its Subsidiaries and, in making its determination to proceed with the transactions contemplated by this Agreement, including the Merger.

ARTICLE VI

COVENANTS AND AGREEMENTS

Section 6.1 Conduct of Business by the Company Pending the Merger. The Company covenants and agrees that, between the date of this Agreement and the earlier of the Effective Time and the date, if any, on which this Agreement is terminated pursuant to Section 8.1, except (a) as may be required by Law, (b) as may be agreed in writing by Parent (which consent shall not be unreasonably withheld, delayed or conditioned), (c) as may be expressly permitted pursuant to this Agreement, including effecting the Recapitalization or Pre-Merger Special Distribution, as the case may be, or (d) as set forth in Section 6.1 of the Company Disclosure Schedule, (x) the business of the Company and its Subsidiaries shall be conducted only in, and such entities shall not take any action except in the ordinary course of business and in a manner consistent with past practice in all material respects and the Company and its Subsidiaries shall use their respective commercially reasonable efforts to preserve their business organizations substantially intact and maintain existing relations with Governmental Authorities, top customers, suppliers, distributors, licensees, licensors, creditors, landlords, employees and other person with whom the Company maintains a material business relationship; provided, however, that no action by the Company or its Subsidiaries with respect to matters specifically addressed by any provision of this Section 6.1 shall be deemed a breach of this sentence unless such action would constitute a breach of such specific provision; and (y) the Company shall not (except for any actions taken in connection with the Distribution or the Recapitalization or Pre-Merger Special Distribution, as the case may be):

(a) except as set forth in Section 6.16 to effect the Recapitalization or Pre-Merger Special Distribution, as the case may be, amend or otherwise change the Restated Certificate of Incorporation, as amended, or the Bylaws, as amended, of the Company (or such equivalent organizational or governing documents of any of its Subsidiaries);

(b) except for transactions among the Company and its wholly owned Subsidiaries or among the Company's wholly owned Subsidiaries, including any actions taken in connection with the Recapitalization or Pre-Merger Special Distribution, as the case may be, issue, sell, pledge, dispose, encumber, grant, confer or award any shares of its or its Subsidiaries' capital stock, or any options, warrants, restricted stock units, convertible securities or other rights of any kind to acquire any shares of its or its Subsidiaries' capital stock or take any action not otherwise contemplated by this Agreement to cause to be exercisable any otherwise unexercisable option under any existing stock plan (except as otherwise provided by the terms of any unexercisable options or other equity awards outstanding on the date hereof or otherwise permitted to be granted under clause (iii), (iv) or (v) below); provided, however that (i) the Company may issue shares upon the exercise of any Company Option outstanding as of the date hereof;

(c) except as necessary to effect the Recapitalization or Pre-Merger Special Distribution, as the case may be, (i) declare, authorize, make or pay any dividend or other distribution, payable in cash, stock, property or otherwise, with respect to the Company's or any of its Subsidiaries' capital stock, other than dividends paid by any Subsidiary of the Company to the Company or any wholly owned Subsidiary of the Company, or (ii) split, combine, or reclassify any of its capital stock or other equity of the Company, or issue or authorize the issuance of any other securities in respect of, in lieu of, or in substitution of shares of capital stock of the Company;

(d) except as required pursuant to existing written agreements or Company Benefit Plans in effect as of the date hereof, or written agreements for newly hired employees entered into in the ordinary course of business, or as otherwise required by Law, (i) materially increase the compensation or other benefits payable or to become payable to employees, directors or executive officers of the Company or any of its Subsidiaries except in the ordinary course of business consistent with past practice (including, for this purpose, the normal salary, bonus and equity compensation review process conducted each year), (ii) grant any severance or termination pay to, or enter into any severance agreement with, any employee, director or executive officer of the Company or any of its Subsidiaries, other than in the ordinary course of business consistent with past practice, (iii) enter into any employment agreement with any employee or executive officer of the Company (except (x) to the extent necessary to replace a departing employee, (y) for employment agreements terminable on less than thirty (30) days' notice without penalty, and (z) for extension of employment agreements in the ordinary course of business consistent with past practice), or (iv) establish, adopt, enter into or amend any collective bargaining agreement except as may be required by Law;

(e) acquire, whether by purchase, merger, consolidation, or acquisition of stock, assets, properties, interests or businesses or make any investment in (whether by purchase of stock or securities, contributions to capital, loans to or property transfers), any corporation, partnership, limited liability company, other business organization or any division or any material amount of assets thereof, or a material license therefor, except in the ordinary course of business, consistent with past practice or pursuant to existing Contracts to which the Company is a party;

(f) except in the ordinary course of business consistent with past practice, enter into, amend or terminate any lease or sublease of real property, including any Company Lease (whether as a lessor, sublessor, lessee or sublessee) or fail to exercise any right to renew any lease or sublease of real property;

(g) sell or grant a license in or otherwise subject to any encumbrance or otherwise dispose of any material properties or assets, including Company Intellectual Property Rights, other than the granting of nonexclusive licenses in the ordinary course of business consistent with past practice;

(h) grant any sublicense rights to any customer of the Company with respect to any Company product or services;

(i) make any loans or advances, otherwise incur any long-term indebtedness for borrowed money or guarantee any such indebtedness for any person (other than a Company subsidiary) except for indebtedness (i) for borrowed money incurred pursuant to agreements in effect prior to the execution of this Agreement or (ii) as otherwise required in the ordinary course of business consistent with past practice (including advances / reimbursements to employees for routine business and travel expenses);

(j) (i) enter into a Contract which would be considered a Company Material Contract, (ii) modify, amend or terminate any Company Material Contract where such modification, amendment or termination would have a value in excess of $10,000, or (iii) waive, release or assign any rights or claims having a value in excess of $10,000 under a Company Material Contract, in each case, other than in the ordinary course of business;

(k) (i) pay, discharge, settle or satisfy any claims or legal proceedings with a settlement value in excess of $150,000, (ii) waive, release, grant or transfer any right of material value other than in the ordinary course of business consistent with past practice, or (iii) commence any legal action or proceeding where the amount claimed is in excess of $50,000, except in each case for any settlement solely for cash and for which the Company has no liability or material ongoing obligation (other than execution of a customary release; or

(l) enter into any Contract to do any of the foregoing.

Section 6.2 Proxy Statement.

(a) Preparation and Filing of Proxy Statement. The Company shall, with the assistance of Parent, as soon as reasonably practicable following the date hereof, prepare and file with the SEC the Proxy Statement. The Company shall promptly notify Parent upon the receipt of any comments from the SEC (or the staff of the SEC) or any request from the SEC (or the staff of the SEC) for amendments or supplements to the Proxy Statement, and shall provide Parent with copies of all correspondence between the Company and its Representatives, on the one hand, and the SEC (or the staff of the SEC), on the other hand with respect to this Agreement. The Company shall use its reasonable best efforts to respond as promptly as reasonably practicable to any comments of the SEC (or the staff of the SEC) with respect to the Proxy Statement.

(b) Mailing of Proxy Statement; Amendments. The Company shall cause the Proxy Statement to be mailed or delivered to the holders of Company Common Stock as of the record date established for the Stockholders' Meeting as promptly as reasonably practicable after the date on which the SEC (or the staff of the SEC) confirms that it has no further comments on the Proxy Statement. If at any time prior to the Effective Time any event or circumstance relating to the Company or Parent or any of the Company's or Parent's Subsidiaries, or their respective officers or directors, should be discovered by the Company or Parent, respectively, which, pursuant to the Exchange Act, should be set forth in an amendment or a supplement to the Proxy Statement, such party shall promptly inform the others. Except for annual, quarterly and current reports filed or furnished with the SEC under the Exchange Act, which may be incorporated by reference therein, no filing of, or amendment or supplement to the Proxy Statement relating to the Merger will be made by the Company without providing Parent the opportunity to review and comment thereon. Each of Parent, Merger Sub and the Company agree to correct any information provided by it for use in the Proxy Statement which shall have become false or misleading.

(c) Cooperation. Parent shall furnish to the Company all information concerning Parent and Merger Sub required by the Exchange Act and the rules and regulations promulgated thereunder to be set forth in the Proxy Statement and shall otherwise assist and cooperate with the Company in the preparation of the Proxy Statement and the resolution of comments from the SEC (or the staff of the SEC). Prior to filing or mailing the Proxy Statement (or any amendment or supplement thereto) or responding to any comments of the SEC (or the staff of the SEC) with respect thereto, the Company shall provide Parent a reasonable opportunity to review and to propose comments on such document or response to the extent related to this Agreement.

Section 6.3 Stockholders' Meeting. The Company shall, as promptly as reasonably practicable following the date on which the SEC (or the staff of the SEC) confirms that it has no further comments on the Proxy Statement, take all action necessary in accordance with applicable Law, the rules of The Nasdaq Capital Market and the Restated Certificate of Incorporation, as amended, and the Bylaws, as amended, of the Company to duly call, give notice of, convene and hold a meeting of its stockholders (the "**Stockholders' Meeting**") for the purpose of obtaining the Requisite Stockholder Approval. Subject to the ability of the board of directors of the Company to make an Adverse Recommendation Change in accordance with Section 6.6(c), the board of directors of the Company shall make the Company Recommendation with respect to the adoption of this Agreement and the approval of the transactions contemplated hereby, including the Merger, and shall include such recommendation in the Proxy Statement. Parent shall vote (or cause to be voted) all shares of Company Common Stock beneficially owned by Parent or Merger Sub, if any, in favor of the adoption of this Agreement and the approval of the Merger at the Stockholders' Meeting and the approval of the Recapitalization if the same is submitted to the holders of Company Common Stock for approval at the Stockholders' Meeting. Notwithstanding anything to the contrary contained in this Agreement, the Company, after consultation with Parent, may adjourn or postpone the Stockholders' Meeting (i) as necessary to ensure that any required supplement or amendment to the Proxy Statement is provided to the Company's stockholders within a reasonable amount of time in advance of the Stockholders' Meeting, (ii) if as of the time for which the Stockholders' Meeting is originally scheduled (as set forth in the Proxy Statement) there are insufficient shares of Company Common Stock represented (either in person or by proxy) to constitute a quorum necessary to conduct business at the Stockholders' Meeting, (iii) if required by applicable Law or (iv) if in the good faith judgment of the board of directors of the Company (after consultation with legal counsel), an adjournment or postponement of the Stockholders' Meeting would be consistent with the fiduciary duties of the members of the board of directors of the Company under applicable Law. Subject to the provisions of this Agreement, the Company will use reasonable best efforts to solicit from holders of Company Common Stock proxies in favor of the adoption of this Agreement and the approval of the transactions contemplated hereby, including the Merger, and to take all other action necessary or advisable to secure the vote or consent of holders of Company Common stock required by the rules of The Nasdaq Capital Market or applicable Laws to obtain such approvals.

Section 6.4 Appropriate Action; Consents; Filings.

(a) Subject to Section 6.6, the parties hereto will use their respective reasonable best efforts to consummate and make effective the transactions contemplated hereby and to cause the conditions to the Merger set forth in Article VII to be satisfied, including (i) the obtaining of all necessary actions or nonactions, consents and approvals from Governmental Authorities or other persons necessary in connection with the consummation of the transactions contemplated by this Agreement, including the Merger, and the making of all necessary registrations and filings (including filings with Governmental Authorities, if any) and the taking of all reasonable steps as may be necessary to obtain an approval from, or to avoid an action or proceeding by, any Governmental Authority or other persons necessary in connection with the consummation of the transactions contemplated by this Agreement, including the Merger, (ii) the defending of any lawsuits or other legal proceedings, whether judicial or administrative, challenging this Agreement or the consummation of the transactions, including the Merger, performed or consummated by such party in accordance with the terms of this Agreement, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Authority vacated or reversed, and (iii) the execution and delivery of any additional instruments necessary to consummate the Merger and any other transactions to be performed or consummated by such party in accordance with the terms of this Agreement and to carry out fully the purposes of this Agreement.

(b) Each of Parent and the Company shall give (or shall cause its respective Subsidiaries to give) any notices to third parties, and Parent shall use, and cause each of its affiliates to use, its reasonable best efforts, and the Company shall use its reasonable best efforts to cooperate with Parent in its efforts, to obtain any third party consents not covered by subsection (a) above that are necessary, proper or advisable to consummate the Merger. Each of the parties hereto will furnish to the other such necessary information and reasonable assistance as the other may request in connection with the preparation of any required governmental filings or submissions and will cooperate in responding to any inquiry from a Governmental Authority, including immediately informing the other party of such inquiry, consulting in advance before making any presentations or submissions to a Governmental Authority, and supplying each other with copies of all material correspondence, filings or communications between either party and any Governmental Authority with respect to this Agreement. Notwithstanding the foregoing, obtaining any third party consents pursuant to this Section 6.4(b) shall not be considered a condition to the obligations of the Parent and Merger Sub to consummate the Merger.

(c) Following the Effective Time, each of Parent, Merger Sub and the Company agrees to cooperate fully with the other parties to this Agreement, to execute such further instruments, documents and agreements, to give such further written assurances, as may be reasonably requested by any other party to this Agreement and to carry into effect the intents and purposes of this Agreement.

Section 6.5 Access to Information; Confidentiality.

(a) From the date hereof to the Effective Time or the earlier termination date of this Agreement, if any, pursuant to Section 8.1, to the extent permitted by applicable Law and Contracts, the Company will provide to Parent and its Representatives reasonable access during normal business hours to the Company's and its Subsidiaries' properties, books, Contracts and records and other information as Parent may reasonably request regarding the business, assets, liabilities, properties, employees and other aspects of the Company and its Subsidiaries, but only to the extent that such access does not unreasonably interfere with the business or operations of the Company and its Subsidiaries or could otherwise result in significant interference with the discharge by employees of the Company or its Subsidiaries of their material duties; provided, however, that the Company shall not be required to provide access to any information or documents which would, in the reasonable judgment of the Company, (i) breach any agreement with any Third Party, (ii) constitute a waiver of the attorney-client or other privilege held by the Company, or (iii) otherwise violate any applicable Laws, including data privacy laws.

(b) The parties shall comply with, and shall cause their respective Representatives to comply with, all of their respective obligations under the Confidentiality Agreement, which shall remain in full force and effect.

Section 6.6 Non-Solicitation; Acquisition Proposals.

(a) Except as expressly permitted by this Section 6.6, the Company agrees that it shall not, and the Company shall not authorize any of its Representatives to, from the date hereof until the earlier of the Effective Time or the date, if any, on which this Agreement is terminated pursuant to Section 8.1, directly or indirectly, (x) solicit, initiate, seek, knowingly encourage or knowingly facilitate (including by way of furnishing information) any inquiry, discussion, offer or request that constitutes, or could reasonably be expected to lead to, a Competing Proposal, (y) engage in, continue or otherwise participate in any discussions or negotiations with (other than to state they are not permitted to engage discussions), or furnish any non-public information relating to the Company or any of its Subsidiaries to, or afford access to the books or records of the Company or its Subsidiaries to, any Third Party that, to the knowledge of the Company, is seeking to make, or has made, a Competing Proposal, or (z) approve, endorse, recommend or enter into any letter of intent, memorandum of understanding, agreement in principle, acquisition agreement, merger agreement or similar definitive agreement (other than an Acceptable Confidentiality Agreement) with respect to any Competing Proposal (an "**Alternative Acquisition Agreement**").

(b) At any time after the date hereof and prior to obtaining the Requisite Stockholder Approval, the Company, its board of directors or the strategic committee of such board of directors (the "**Committee**"), directly or indirectly through its Representatives, may (i) furnish nonpublic information to any Third Party making an unsolicited, written Competing Proposal (provided, however, that prior to so furnishing such information, the Company receives from the Third Party an executed Acceptable Confidentiality Agreement), and (ii) engage in discussions or negotiations with such Third Party with respect to the Competing Proposal if: (x) such Third Party has submitted an unsolicited, written Competing Proposal which the board of directors of the Company or the Committee determines in good faith, after consultation with its financial and legal advisors, constitutes, or could reasonably be expected to lead to, a Superior Proposal, and (y) the board of directors of the Company or the Committee determines in good faith, after consultation with legal counsel, that failure to take such action would likely be inconsistent with the directors' fiduciary duties under applicable Law; provided, however, (a) such Competing Proposal did not result from a breach of this Section 6.6, and (b) the Company gives Parent the notice required by Section 6.6(e). Prior to taking any of the actions referred to in this Section 6.6(b), and in accordance with Section 6.6(e) below, the Company shall notify Parent and Merger Sub orally and in writing that it proposes to furnish non-public information and/or enter into discussions or negotiations as provided in this Section 6.6(b).

(c) Except as expressly permitted by this Section 6.6(c), neither the board of directors of the Company nor the Committee shall (i) withdraw, change, qualify or modify, or publicly propose to withdraw, change, qualify or modify, in a manner adverse to Parent or Merger Sub, the Company Recommendation; (ii) approve, adopt or recommend, or publicly propose to approve, adopt or recommend, any Competing Proposal or Alternative Acquisition Agreement made or received after the date hereof (any of the actions described in clauses (i) and (ii) of this Section 6.6(c), an "**Adverse Recommendation Change**"); or (iii) cause or permit the Company to enter into any Alternative Acquisition Agreement. Notwithstanding anything to the contrary set forth in this Agreement, at any time prior to obtaining the Requisite Stockholder Approval, the board of directors of the Company, upon recommendation of the Committee, shall be permitted (x) to terminate this Agreement to enter into a definitive agreement with respect to a Superior Proposal, subject to compliance with Section 6.6(d) and Section 8.3, if the board of directors of the Company or the Committee (A) has received a Competing Proposal that, in the good faith determination of the board of directors of the Company, upon recommendation of the Committee, constitutes, or could reasonably be expected to lead to, a Superior Proposal, after having complied with, and giving effect to all of the adjustments which may be offered by Parent and Merger Sub pursuant to, Section 6.6(d), and (B) determines in good faith, upon recommendation of the Committee and after consultation with its legal advisors, that failure to take such action may be inconsistent with the directors' fiduciary duties under applicable Law, or (y) to effect an Adverse Recommendation Change described in clause (i) of such definition, if the board of directors of the Company determines in good faith, upon recommendation of the Committee and after consultation with its legal advisors, that failure to take such action may be inconsistent with the directors' fiduciary duties under applicable Law.

(d) The Company shall not be entitled to effect an Adverse Recommendation Change or to terminate this Agreement as permitted under Section 6.6(c) with respect to a Superior Proposal unless (i) the Company has provided a written notice (a "**Notice of Superior Proposal**") to Parent and Merger Sub that the Company intends to take such action and provides a copy of the Superior Proposal and a copy of any transaction agreements, (ii) during the three (3) Business Day period following Parent's and Merger Sub's receipt of the Notice of Superior Proposal, the Company shall, and shall cause its Representatives to, negotiate with Parent and Merger Sub in good faith (to the extent Parent and Merger Sub desire to negotiate) to make such adjustments in the terms and conditions of this Agreement so that such Superior Proposal ceases to constitute a Superior Proposal; and (iii) following the end of such three (3) Business Day period, the board of directors of the Company shall have determined in good faith, upon recommendation of the Committee and taking into account any changes to this Agreement proposed in writing by Parent and Merger Sub in response to the Notice of Superior Proposal or otherwise, that the Superior Proposal giving rise to the Notice of Superior Proposal continues to constitute a Superior Proposal. Any material amendment to the financial terms or any other material amendment of such Superior Proposal shall require a new Notice of Superior Proposal and the Company shall be required to comply again with the requirements of this Section 6.6(d); provided, however, that references to the three (3) Business Day period above shall be deemed to be references to a two (2) Business Day period; and provided, further that (x) the Company has complied in all material respects with its obligations under this Section 6.6, (y) any purported termination is in accordance with Section 8.1, and (z) the Company pays Parent the applicable Termination Fee in accordance with Section 8.3 prior to or concurrently with such termination.

(e) From and after the date hereof, the Company shall, as promptly as reasonably practicable (and in any event within two (2) days), advise Parent and Merger Sub of receipt by the Company of any Competing Proposal or any request for non-public information in connection with any Competing Proposal, the material terms and conditions of any such Competing Proposal or request, including a copy of the Competing Proposal and any related draft agreements, and shall as promptly as reasonably practicable (and in any event within two (2) days) advise Parent and Merger Sub of any material amendments to any such Competing Proposal or request.

(f) Nothing contained in this Agreement shall prohibit the Company or its board of directors, directly or indirectly, from (a) taking and disclosing to the Company's stockholders a position contemplated by Rule 14e-2(a) promulgated under the Exchange Act (or any similar communication to the Company's stockholders in connection with the making or amendment of a tender offer or exchange offer), or from making a statement contemplated by Item 1012(a) of Regulation M-A or Rule 14d-9 promulgated under the Exchange Act, (b) making any other disclosure to the Company's stockholders with regard to this Agreement and the transactions contemplated hereby, including the Merger, that such board of directors determines (after consultation with its outside legal counsel) is required by applicable Law or stock exchange rule (in which event the Company shall give Parent notice of such requirement as soon as reasonably practicable prior to such disclosure), or (c) issuing a "stop, look and listen" statement pending disclosure of its position with respect to any tender offer or exchange offer; provided, however, that any disclosures permitted under this Section 6.6(f) shall not be a basis, in themselves, for Parent to terminate this Agreement pursuant to Section 8.1(d)(i).

(g) For purposes of this Agreement:

(i) "**Competing Proposal**" shall mean, other than the transactions contemplated by this Agreement, any bona fide proposal or offer (other than a proposal or offer by Parent or any of its Subsidiaries) from a Third Party relating to (i) a merger, reorganization, sale of assets, share exchange, consolidation, business combination, recapitalization, dissolution, liquidation, joint venture or similar transaction involving the Company or any of its Subsidiaries whose assets, individually or in the aggregate, constitute twenty-five percent (25%) or more of the consolidated assets of the Company as determined on a book-value basis; (ii) the acquisition (whether by merger, consolidation, equity investment, joint venture or otherwise) by any person of twenty-five percent (25%) or more of the assets of the Company and its Subsidiaries, taken as a whole as determined on a book-value basis; (iii) the acquisition in any manner, directly or indirectly, by any person of twenty-five percent (25%) or more of the issued and outstanding shares of Company Common Stock, (iv) any purchase, acquisition, tender offer or exchange offer that, if consummated, would result in any person beneficially owning twenty-five percent (25%) or more of the Company Common Stock or any class of equity or voting securities of the Company or any of its Subsidiaries whose assets, individually or in the aggregate, constitute twenty-five percent (25%) or more of the consolidated assets of the Company as determined on a book-value basis.

(ii) "**Superior Proposal**" shall mean a Competing Proposal (with all percentages in the definition of Competing Proposal increased to fifty percent (50%)) made by a Third Party on terms that the board of directors of the Company determines in good faith, after upon the recommendation of the Committee and consultation with the Company's financial and legal advisors, and considering such factors as the board of directors of the Company considers to be appropriate (including the conditionality and the timing and likelihood of consummation of such proposal), are more favorable to the Company and its stockholders than the transactions contemplated by this Agreement (after giving effect to all adjustments to the terms thereof which may be offered by Parent in writing (including pursuant to Section 6.6(d)).

Section 6.7 Directors' and Officers' Indemnification and Insurance.

(a) Parent and Merger Sub agree that all rights to exculpation and indemnification for acts or omissions occurring at or prior to the Effective Time, whether asserted or claimed prior to, at or after the Effective Time (including any matters arising in connection with the transactions contemplated by this Agreement), now existing in favor of the current or former directors, officers or employees, as the case may be, of the Company or its Subsidiaries as provided in the Company's or each of the Company's Subsidiaries' respective articles or certificates of incorporation or bylaws (or comparable organizational or governing documents) or in any agreement shall survive the Merger and shall continue in full force and effect. For a period of six (6) years from the Effective Time, Parent and the Surviving Corporation shall (and Parent shall cause the Surviving Corporation to) (i) fulfill and honor all obligations of the Company to the Indemnitees with respect to all acts or omissions by them in their capacities as such at any time prior to the Effective Time, to the fullest extent permitted by the Laws of the State of Delaware and required by: (x) the Restated Certificate of Incorporation, as amended, or Bylaws, as amended (or equivalent organizational or governing documents), of the Company or any of its Subsidiaries or affiliates as in effect on the date of this Agreement and (y) the indemnification agreement(s) of the Company or its Subsidiaries or other applicable Contract(s) as in effect on the date of this Agreement, and (ii) not amend, repeal or otherwise modify any such provisions referenced in subsections (i)(x) and (y) above in any manner that would adversely affect the rights thereunder of any Indemnitees, unless such modification is required by the Laws of the State of Delaware.

(b) Without limiting the provisions of Section 6.7(a), during the period commencing as of the Effective Time and ending on the sixth (6th) anniversary of the Effective Time, Parent and the Surviving Corporation will to the extent permitted by the Laws of the State of Delaware: (i) indemnify and hold harmless each Indemnitee against and from any costs or expenses (including reasonable attorneys' fees), judgments, inquiries, fines, losses, claims, damages, liabilities and amounts paid in settlement in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, to the extent such claim, action, suit, proceeding or investigation arises out of or pertains to: (x) any action or omission or alleged action or omission in such Indemnitee's capacity as a director, officer, employee, fiduciary or agent of the Company or any of its Subsidiaries or affiliates; or (y) the Distribution, the Recapitalization or Pre-Merger Special Distribution, as the case may be, the Merger, the Merger Agreement and any transactions contemplated hereby; and (ii) pay in advance of the final disposition of any such claim, action, suit, proceeding or investigation the expenses (including reasonable attorneys' fees) of any Indemnitee upon receipt of an undertaking by or on behalf of such Indemnitee to repay such amount if it shall ultimately be determined that such Indemnitee is not entitled to be indemnified. Notwithstanding anything to the contrary contained in this Section 6.7(b) or elsewhere in this Agreement, neither Parent nor the Surviving Corporation shall (and Parent shall cause the Surviving Corporation not to) settle or compromise or consent to the entry of any judgment or otherwise seek termination with respect to any claim, action, suit, proceeding or investigation of a covered person for which indemnification may be sought under this Section 6.7(b) unless such settlement, compromise, consent or termination includes an unconditional release of such covered person from all liability arising out of such claim, action, suit, proceeding or investigation, and does not include an admission of fault or wrongdoing by any Indemnitee or such Indemnitee otherwise consents in writing to such settlement, compromise, consent or termination.

(c) Prior to the Effective Time, the Company shall obtain and fully pay the premium for the non-cancellable extension of the directors' and officers' liability coverage of the Company's existing directors' and officers' insurance policies and the Company's existing fiduciary liability insurance policies (collectively, the "**D&O Insurance**"), in each case for a claims reporting or discovery period of at least six (6) years from and after the Effective Time with respect to any claim related to any period of time at or prior to the Effective Time from an insurance carrier with the same or better credit rating as the Company's current insurance carrier with respect to D&O Insurance with terms, conditions, retentions and limits of liability that are no less favorable than the coverage provided under the Company's existing policies.

(d) The Indemnitees to whom this Section 6.7 applies shall be third party beneficiaries of this Section 6.7. The provisions of this Section 6.7 are intended to be for the benefit of each Indemnitee and his or her successors, heirs or Representatives.

(e) The rights of each Indemnitee under this Section 6.7 shall be in addition to any rights such person may have under the certificate of incorporation or bylaws of the Company, the Surviving Corporation or any of its Subsidiaries, or under any applicable Law or under any agreement of any Indemnitee with the Company or any of its Subsidiaries.

(f) Notwithstanding anything contained in Section 9.1 or Section 9.7 to the contrary, this Section 6.7 shall survive the consummation of the Merger indefinitely and shall be binding, jointly and severally, on all successors and assigns of Parent, the Surviving Corporation and its Subsidiaries, and shall be enforceable by the Indemnitees and their successors, heirs or representatives. In the event that Parent or the Surviving Corporation or any of its successors or assigns consolidates with or merges into any other person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or transfers or conveys all or a majority of its properties and assets to any person, then, and in each such case, proper provision shall be made so that the successors and assigns of Parent or the Surviving Corporation, as applicable, shall succeed to the obligations set forth in this Section 6.7.

Section 6.8 Notification of Certain Matters. The Company shall give prompt notice to Parent, and Parent shall give prompt notice to the Company, of (a) any notice or other communication received by such party from any Governmental Authority in connection with the this Agreement, the Merger or the transactions contemplated hereby, or from any person alleging that the consent of such person is or may be required in connection with the Merger or the transactions contemplated hereby, if the subject matter of such communication or the failure of such party to obtain such consent is reasonably likely to result in a Company Material Adverse Effect, (b) any actions, suits, written claims, investigations or proceedings commenced or, to such party's knowledge, threatened against, relating to or involving or otherwise affecting such party or any of its Subsidiaries which relate to this Agreement, the Merger or the transactions contemplated hereby and (c) or the discovery by a party to this Agreement of any fact, circumstance or event, the occurrence or non-occurrence of which, would reasonably be expected to cause any of the conditions of the obligations of such party to consummate the Merger as set forth in Article VII not to be satisfied or the satisfaction of which to be materially delayed in material breach of this Agreement.

Section 6.9 Public Announcements. The Company, Parent and Merger Sub shall consult with each other before issuing any press release or otherwise making any public statements with respect to this Agreement or the transactions contemplated hereby, and none of the parties shall issue any such press release or make any public statement prior to obtaining the other parties' written consent (which consent shall not be unreasonably withheld or delayed), except that no such consent shall be necessary to the extent disclosure may be required by Law, Order or applicable stock exchange rule or any listing agreement of any party hereto.

Section 6.10 Employee Matters.

(a) Parent shall provide or shall cause the Surviving Corporation to provide to employees of the Company and any of its Subsidiaries (the "**Company Employees**") compensation (base salary and bonus opportunity) that is, in the aggregate, no less favorable than the compensation provided by the Company immediately prior to Closing and benefits that are, in the aggregate, no less favorable than the benefits Parent to its similarly situated employees.

(b) For purposes of eligibility, vesting, benefit accrual and determination of level of benefits under the compensation and benefit plans, programs, agreements and arrangements of Parent, the Company, the Surviving Corporation or any respective subsidiary and affiliate thereof providing benefits to any Company Employees after the Closing (the "**New Plans**"), including for purposes of accrual of vacation and other paid time off and severance benefits under New Plans, each Company Employee shall be credited with his or her years of service with the Company, the Company Subsidiaries and their respective affiliates (and any additional service with any predecessor employer) before the Closing, to the same extent as such Company Employee was entitled, before the Closing, to credit for such service under any similar Company Benefit Plan. Parent shall continue to maintain Company Benefit Plans providing medical, dental, pharmaceutical and/or vision benefits until the end of the applicable plan year in which the Closing occurs. In addition, and without limiting the generality of the foregoing, Parent shall, to the extent permitted by applicable Law, take all reasonable steps to (x) waive all limitations as to pre-existing conditions exclusions, evidence of insurability requirements, waiting periods and actively-at-work or similar requirements with respect to participation and coverage requirements applicable to the Company Employees under any medical, dental, pharmaceutical, vision and/or disability benefit plans that such employees may be eligible to participate in after the Closing Date; and (y) provide Company Employees and their eligible dependents with credit for any co-payments, deductibles, out-of-pocket requirements and offsets (or similar payments) made under the Company Benefit Plans for the plan year in which the Closing occurs under the New Plans for the purposes of satisfying any applicable deductible, out-of-pocket, or similar requirements thereunder as if such amounts had been paid in accordance with such New Plans.

(c) Any vacation or paid time off accrued but unused by a Company Employee as of immediately prior to the Closing Date shall be credited to such Company Employee following the Closing Date ("**Carry Over Vacation**"). All future vacation accruals shall be subject to the terms of Parent's vacation policies, taking into account the balance of any Carry Over Vacation; provided that no Carry Over Vacation shall be subject to forfeiture.

(d) From the date hereof until the Closing Date, Parent shall have reasonable access, during normal business hours, to all of the Company's employees in order to discuss possible employment with the Surviving Corporation or Parent (or any of Parent's Subsidiaries) after the Closing Date.

Section 6.11 Merger Sub. Parent will take all actions necessary to (a) cause Merger Sub to perform its obligations under this Agreement and to consummate the Merger on the terms and conditions set forth in this Agreement, (b) cause the Surviving Corporation to perform its obligations under this Agreement and (c) ensure that, prior to the Effective Time, Merger Sub shall not conduct any business or make any investments other than as specifically contemplated by this Agreement, or incur or guarantee any indebtedness.

Section 6.12 No Control of the Company's Business. Nothing contained in this Agreement is intended to give Parent, directly or indirectly, the right to control or direct the Company's or its Subsidiaries' operations prior to the Effective Time. Prior to the Effective Time, the Company shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its and its Subsidiaries' operations.

Section 6.13 Rule 16b-3 Matters. Prior to the Effective Time, the Company may take such further actions, if any, as may be necessary or appropriate to ensure that the dispositions of equity securities of the Company (including derivative securities) pursuant to the transactions contemplated by this Agreement by any officer or director of the Company who is subject to Section 16 of the Exchange Act are exempt under Rule 16b-3 promulgated under the Exchange Act.

Section 6.14 CVR Agreement. At or immediately prior to the Effective Time, the Company shall execute and deliver, and the Company shall ensure that a duly qualified agent (the "**CVR Agent**") executes and delivers, a Contingent Value Rights Agreement in substantially the form attached hereto as Exhibit A (the "**CVR Agreement**"), subject to any reasonable revisions to the CVR Agreement that are requested by the CVR Agent and approved by Parent (which approval shall not be unreasonably withheld, conditioned or delayed). Parent and the Company shall cooperate, including by making changes to the form of CVR Agreement attached hereto as Exhibit A, as necessary to ensure that the CVRs are not subject to registration under the Securities Act, the Exchange Act or any applicable state securities or Blue Sky Laws. Notwithstanding any other provision of this Agreement, prior to the Closing Date, the Company shall use reasonable best efforts to arrange, and the Company shall be entitled to take all actions necessary to arrange, the assignment of the Company's right to receive the Escrows to the CVR Agent concurrently with the execution and delivery of the CVR Agreement. If the Company receives any Escrow Payment (as defined in the CVR Agreement) prior to the Closing Date that is not included in the Recapitalization or the Pre-Merger Special Distribution, as the case may be, the Company shall (a) deposit such Escrow Payment into a separate account, (b) not encumber such Escrow Payment or otherwise subject such Escrow Payment to any Lien and (c) at the Closing, deposit such Escrow Payment into the CVR Escrow Account (as defined in the CVR Agreement). Notwithstanding the foregoing or any other provision of this Agreement, the Company's board of directors shall have the right to elect that, if so determined, CVRs shall not be included in the Merger Consideration pursuant to this Agreement and shall instead be distributed as a part of the Recapitalization or the Pre-Merger Special Distribution, as the case may be. Prior to the Closing, Parent and the Company will agree in good faith in a side written letter agreement on mutually acceptable principles to (a) allow Parent to recover from the Escrows prior to their distribution to holders of CVRs the reasonable and documented cost of any counsel and other reasonable and documented costs of defending any dispute, claim or litigation relating to, arising out of or in connection with the CVR Agreement from the Escrows prior to their distribution to holders of CVRs (an "**Escrow Claim**") and (b) allow a representative of the holders of CVRs to dispute any Escrow Claim through a mutually agreed arbitration process (it being agreed that the costs of such arbitration and costs of any counsel engaged by such representative would be recoverable by such representative from the Escrows ahead of any amount recoverable by Parent from the Escrows). The maximum amount recoverable by Parent for Escrow Claims shall not exceed the amount of the Escrows not distributed to holders of CVRs at the time of submission of Parent's claim.

Section 6.15 Resignation of Directors. The Company shall use reasonable best efforts to obtain and deliver to Parent prior to and in connection with the Closing (to be effective as of the Effective Time) the resignation of each director of the Company and each of its Subsidiaries (in each case, in their capacities as directors and not employees).

Section 6.16 Recapitalization; Pre-Merger Special Distribution; Tax Characterization. Prior to the Closing, subject to applicable Laws, the board of directors of the Company either (a) shall declare, and the Company shall pay, the Pre-Merger Special Distribution to holders of record of issued and outstanding shares of Company Common Stock immediately prior to the Effective Time, or (b) shall, subject to obtaining the Requisite Stockholder Approval, instruct the Company to effect the Recapitalization by filing a certificate of amendment of the Restated Certificate of Incorporation of the Company in substantially the form attached hereto as Exhibit B (the "**Recapitalization Certificate**"); provided that payment of the Pre-Merger Special Distribution or the effectuation of the Recapitalization, as the case may be, shall be contingent on the effectiveness of the Merger and Parent, Merger Sub and the Company acknowledge and agree that the Recapitalization is both a condition to, and part of a plan that includes, the consummation of the Merger. Accordingly, Parent, Merger Sub and the Company shall treat, and shall cause their affiliates to treat, such Recapitalization and the conversion of Company Common Stock described in Section 3.1(b) as a single integrated transaction for U.S. federal income Tax purposes governed by *Zenz v. Quinlivan*, 213 F.2d 914 (6th Cir. 1954) and Revenue Ruling 54-458, 1954-2 C.B. 167, and shall file all Tax Returns and reports consistent with such treatment, shall not treat any portion of the Recapitalization as a dividend for U.S. federal income Tax purposes, and shall take no position inconsistent therewith in any such Tax Return or report or in any proceeding in respect of Taxes.

Section 6.17 RWI Policy. Parent may obtain after the date hereof (and not as a condition to Closing), and with the commercially reasonable assistance of the Company, at Parent's sole cost and expense, a buyer-side representation and warranty insurance policy from an insurance provider (the "**RWI Policy**").

Section 6.18 Tax Reporting. The parties hereto agree that the Surviving Corporation shall join the consolidated income Tax Return group of which Parent is the common parent corporation for U.S. federal income tax purposes (and for purposes of any similar state, local or foreign Tax Law) at the end of the Closing Date pursuant to Treasury Regulation Section 1.1502-76(b)(1)(ii)(A), and as a result, the Company will have a short Tax year ending on (and including) the Closing Date and will be included in Parent's consolidated U.S. federal (and similar state, local or foreign) income Tax Returns starting the day after the Closing Date. The parties hereto acknowledge and agree that any income Tax deduction arising from the bonuses, option cashouts, restricted stock units, or other compensation and transaction expenses payments made by the Company in connection with the Merger prior to or on the Closing Date or which constitute Excluded Liabilities shall be allocable to the Tax period ending on or prior to the Closing Date. In addition, the Company's Tax year for U.S. federal and state income Tax purposes was changed to end on March 31 each year, starting with its Tax year ending March 31, 2019, and further the Company made a cash distribution on the Company Common Stock on April 22, 2019 that was intended to be treated as a distribution in partial liquidation of the Company pursuant to Section 302(e) of the Code. In preparing its Tax Returns, the Company shall elect out of the installment method of reporting gain with respect to the Escrows in accordance with Section 453(d) of the Code and applicable Treasury Regulations and report the entire amount of the gain in the year of the applicable sales, using the maximum amount payable on the Escrows in reporting the amount of the resulting gain (excluding the amount treated as imputed interest to the Company). Furthermore, in the event that the right to receive payments from the Escrows due to the CVRs are distributed as a part of the Recapitalization or the Pre-Merger Special Distribution, as the case may be, the amount of the distribution attributable to the Escrows for income tax purposes shall be equal to the maximum amount payable on the Escrows as of the time of distribution (excluding the amount treated as imputed interest to the recipients). Each of Parent, the Company and the Surviving Corporation shall file all Tax Returns, and conduct all Tax investigations, audits, claims, procedures or proceedings consistently with this Section 6.18 unless otherwise required pursuant to a final determination within the meaning of Section 1313 of the Code.

ARTICLE VII
CONDITIONS TO THE MERGER

Section 7.1 Conditions to the Obligations of Each Party. The respective obligations of each party to consummate the Merger are subject to the satisfaction or (to the extent permitted by Law) waiver by the Company and Parent at or prior to the Effective Time of the following conditions:

(a) the Requisite Stockholder Approval approving the Merger and the Recapitalization (if submitted to holders of Company Common Stock for approval) shall have been obtained; and

(b) no Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Law or Order which is then in effect and has the effect of enjoining, limiting, restricting, restraining, or otherwise prohibiting the consummation of the Merger.

(c) The Pre-Merger Special Distribution shall have occurred or the Recapitalization shall have been effectuated.

Section 7.2 Conditions to the Obligations of Parent and Merger Sub. The respective obligations of Parent and Merger Sub to consummate the Merger are subject to the satisfaction or (to the extent permitted by Law) waiver by Parent at or prior to the Effective Time of the following further conditions:

(a) each of the representations and warranties of the Company contained in this Agreement, without giving effect to any materiality or "**Company Material Adverse Effect**" qualifications therein, shall be true and correct as of the date hereof and as of the Closing Date as though made on or as of such date, except for (i) any such representation and warranty expressly speaking as of an earlier date, in which case such representation and warranty shall be true and correct as of such earlier date, and (ii) such failures of such representations and warranties to be true and correct (as of any date) has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect as of the Effective Time with the same effect as though made as of the Effective Time;

(b) the Company shall have performed or complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Effective Time;

(c) the Company shall have delivered to Parent a certificate, dated the Effective Time and signed by its chief executive officer or another senior officer on behalf of the Company, certifying to such officer's knowledge on behalf of the Company to the effect that the conditions set forth in Section 7.2(a) and Section 7.2(b) have been satisfied; and

(d) since the date hereof, there shall not have been any effect, change, event or occurrence that has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 7.3 Conditions to the Obligations of the Company. The obligations of the Company to consummate the Merger are subject to the satisfaction or (to the extent permitted by Law) waiver by the Company at or prior to the Effective Time of the following further conditions:

(a) each of the representations and warranties of Parent and Merger Sub contained in this Agreement (without giving effect to any materiality or "**Parent Material Adverse Effect**" qualifications) shall be true and correct as of the date hereof and as of the Closing Date as though made on or as of such date, except for (i) any such representation and warranty expressly speaking as of an earlier date, in which case such representation and warranty shall be true and correct as of such earlier date, and (ii) such failures of such representations and warranties to be true and correct (as of any date) has not had and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect as of the Effective Time with the same effect as though made on and as of the Effective Time;

(b) Parent and Merger Sub shall have performed or complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by them on or prior to the Effective Time; and

(c) Parent shall have delivered to the Company a certificate, dated the Effective Time and signed by its chief executive officer or another senior officer on behalf of Parent, certifying to such officer's knowledge on behalf of Parent to the effect that the conditions set forth in Section 7.3(a) and Section 7.3(b) have been satisfied.

Section 7.4 Frustration of Conditions. None of the Company, Parent or Merger Sub may rely on the failure of any condition set forth in this Article VII to be satisfied if such failure was caused by such party's failure to comply with or perform any of its covenants or obligations set forth in this Agreement.

ARTICLE VIII

TERMINATION, AMENDMENT AND WAIVER

Section 8.1 Termination. Notwithstanding anything contained in this Agreement to the contrary, this Agreement may be terminated at any time prior to the Effective Time, whether before or after the Requisite Stockholder Approval is obtained (except as otherwise expressly noted), as follows:

(a) by mutual written consent of each of Parent and the Company duly authorized by each of their respective boards of directors (as well as the Committee in the case of the Company); or

(b) by either Parent or the Company, if:

(i) the Effective Time shall not have occurred on or before October 31, 2019 (the "**Termination Date**"); provided, however, that the right to terminate this Agreement pursuant to this Section 8.1(b)(i) shall not be available to any party if the failure of such party (including, in the case of Parent, the failure of Merger Sub) to perform any of its obligations under this Agreement, the failure to act in good faith or the failure to use its reasonable best efforts to consummate the Merger and the other transactions contemplated by this Agreement has been a principal cause of or resulted in the failure of the Merger to be consummated on or before such date; or

(ii) (A) a Law shall have been enacted, entered or promulgated prohibiting the consummation of the Merger on the terms contemplated hereby or (B) any Governmental Authority of competent jurisdiction shall have issued an Order or taken any other action permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement, and such Order or other action shall have become final and non-appealable; provided, however, that the party seeking to terminate this Agreement pursuant to this Section 8.1(b)(ii)(B) shall have used its reasonable best efforts to remove such Order or other action; and provided, further, that the right to terminate this Agreement under this Section 8.1(b)(ii)(B) shall not be available to a party if the issuance of such final, non-appealable Order was primarily due to the failure of such party, and in the case of Parent, including the failure of Merger Sub, to perform any of its obligations under this Agreement;

(iii) if the Requisite Stockholder Approval shall not have been obtained by the Company at the Stockholders' Meeting duly convened therefor or at any adjournment or postponement thereof; or

(c) by the Company if:

(i) Parent or Merger Sub shall have breached or failed to perform in any material respect any of its representations, warranties, covenants or other agreements set forth in this Agreement, which breach or failure to perform (x) would result in a failure of a condition set forth in Section 7.3(a) or Section 7.3(b) and (y) cannot be cured on or before the Termination Date or, if curable, is not cured by Parent within thirty (30) days of receipt by Parent of written notice of such breach or failure; provided, however, that the Company shall not have the right to terminate this Agreement pursuant to this Section 8.1(c)(i) if: the Company is then in material breach of any of its representations, warranties, covenants or agreements set forth in this Agreement, which breach would result in a failure of a condition set forth in Section 7.1(a), Section 7.1(a), or **Error! Reference source not found.**; or

(ii) Prior to receipt of the Requisite Stockholder Approval (x) the board of directors of the Company has determined to enter into a definitive agreement with respect to a Superior Proposal to the extent permitted by, and subject to the terms and conditions of, Section 6.6(c) and Section 6.6(d), and (y) concurrently with such termination, the Company pays to Parent the fee specified in Section 8.3(a)(ii)); or

(iii) all of the conditions set forth in Section 7.1 and Section 7.2 have been satisfied (other than those conditions that by their nature are to be satisfied by actions taken at the Closing), and Parent and Merger Sub fail to consummate the Merger within two (2) Business Days following the date the Closing should have occurred; or

(d) by Parent if:

(i) the Company shall have breached or failed to perform in any material respect any of its representations, warranties, covenants or other agreements set forth in this Agreement, which breach or failure to perform (x) would result in a failure of any condition set forth in Section 7.2(a), Section 7.2(b) or Section 7.2(c), and (y) cannot be cured on or before the Termination Date (giving effect to the possible extension thereof pursuant to Section 8.1(b)(i)) or, if curable, is not cured by the Company within thirty (30) days of receipt by the Company of written notice of such breach or failure; provided, however, that Parent shall not have the right to terminate this Agreement pursuant to this Section 8.1(d)(i) if: Parent or Merger Sub is then in material breach of any of its representations, warranties, covenants or agreements set forth in this Agreement, which breach would result in a failure of a condition set forth in Section 7.3(a) or Section 7.3(b); or

(ii) (x) the board of directors of the Company shall have made an Adverse Recommendation Change; (y) the Company enters into an Alternative Acquisition Agreement; or (z) the board of directors of the Company fails to include the Company Recommendation in the Proxy Statement.

Section 8.2 Effect of Termination. In the event that this Agreement is terminated and the Merger abandoned pursuant to Section 8.1, written notice thereof shall be given to the other party or parties, specifying the provisions hereof pursuant to which such termination is made and the basis therefor described in reasonable detail, and this Agreement shall forthwith become null and void and of no effect without liability on the part of any party hereto (or any of its Representatives), and all rights and obligations of any party hereto shall cease; provided, however, that, except as otherwise provided in Section 8.3 or in any other provision of this Agreement, no such termination shall relieve any party hereto of any liability or damages resulting from any breach of this Agreement prior to such termination, in which case the aggrieved party shall be entitled to all remedies available at Law or in equity; and provided further, that the Confidentiality Agreement, and the provisions of Section 6.5(b), Section 6.9, this Section 8.2, Section 8.3, Section 8.6, Article IX and Appendix A shall survive any termination of this Agreement pursuant to Section 8.1.

Section 8.3 Termination Fees.

(a) If, but only if, the Agreement is terminated by:

(i) (x) either Parent or the Company pursuant to Section 8.1(b)(i) or Section 8.1(b)(iii), or by Parent pursuant to Section 8.1(d)(i), Section 8.1(d)(ii)(x) or Section 8.1(d)(ii)(z) and (y) the Company (A) receives or has received a Competing Proposal from a Third Party after the date hereof, which Competing Proposal becomes publicly known, and (B) within twelve (12) months of the termination of this Agreement, enters into, agrees to or consummates a transaction regarding such Competing Proposal or any Competing Proposal, then the Company shall pay, or cause to be paid, to Parent an amount equal to Three Hundred Thirty Dollars ($330,000) (the "**Termination Fee**"), not later than the third (3rd) Business Day following the execution of the agreement relating to such transaction arising from such Competing Proposal (provided, however, that for purposes of this Section 8.1(c)(ii), the references to "twenty-five percent (25%)" in the definition of Competing Proposal shall be deemed to be references to "fifty percent (50%)"); or

(ii) the Company pursuant to Section 8.1(c)(ii) or Parent pursuant to Section 8.1(d)(ii)(y), then the Company shall pay, or cause to be paid, to Parent the Termination Fee;

(b) Notwithstanding anything to the contrary set forth in this Agreement:

(i) the parties agree that in no event shall the Company be required to pay the Termination Fee on more than one occasion; and

(ii) the parties agree that the Termination Fee shall be reduced by any amounts as may be required to be deducted or withheld therefrom under applicable Tax Law.

(c) Notwithstanding anything to the contrary set forth in this Agreement, but subject to Section 9.9, Parent's right to receive payment from the Company of the Termination Fee pursuant to Section 8.3(a) shall constitute the sole and exclusive remedy of Parent and Merger Sub against the Company and its Subsidiaries and any of their respective former, current or future general or limited partners, stockholders, members, managers, directors, officers, employees, agents, affiliates or assignees (collectively, the "**Company Related Parties**") for all losses and damages suffered as a result of the failure of the transactions contemplated by this Agreement to be consummated or for a breach or failure to perform hereunder or otherwise, and upon payment of such amount, none of the Company Related Parties shall have any further liability or obligation relating to or arising out of this Agreement or the transactions contemplated thereby (except that the Company shall also be obligated with respect to Section 8.3(d)).

(d) Each of the parties hereto acknowledges that (i) the agreements contained in this Section 8.3 are an integral part of the transactions contemplated by this Agreement, (ii) the Termination Fee is not a penalty, but is liquidated damages, in a reasonable amount that will compensate Parent in the circumstances in which such fee is payable for the efforts and resources expended and opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the transactions contemplated hereby, which amount would otherwise be impossible to calculate with precision, and (iii) without these agreements, the parties would not enter into this Agreement.

Section 8.4 Amendment. This Agreement may be amended by mutual agreement of the parties hereto by action taken by or on behalf of their respective boards of directors at any time whether before or after receipt of the Requisite Stockholder Approval; provided, however, that after the Requisite Stockholder Approval has been obtained, there shall not be any amendment that by Law or in accordance with the rules of any stock exchange requires further approval by the stockholders of the Company without such further approval of such stockholders nor any amendment or change not permitted under applicable Law. This Agreement may not be amended except by an instrument in writing signed by each of the parties hereto.

Section 8.5 Waiver. At any time prior to the Effective Time, subject to applicable Law, any party hereto may (a) extend the time for the performance of any obligation or other act of any other party hereto, (b) waive any inaccuracy in the representations and warranties of the other party contained herein or in any document delivered pursuant hereto, and (c) subject to the proviso of Section 8.4, waive compliance with any agreement or condition contained herein. Any such extension or waiver shall only be valid if set forth in an instrument in writing signed by the party or parties to be bound thereby. Notwithstanding the foregoing, no failure or delay by the Company, Parent or Merger Sub in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any other right hereunder. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

Section 8.6 Expenses; Transfer Taxes. All Expenses incurred in connection with this Agreement and the transactions contemplated by this Agreement shall be paid by the party incurring such expenses.

ARTICLE IX

GENERAL PROVISIONS

Section 9.1 Non-Survival of Representations, Warranties and Agreements. The representations, warranties, covenants and agreements in this Agreement and any certificate delivered pursuant hereto by any party hereto shall terminate at the Effective Time or, except as provided in Section 8.2, upon the termination of this Agreement pursuant to Section 8.1, as the case may be, except that this Section 9.1 shall not limit any covenant or agreement of the parties which by its terms contemplates performance after the Effective Time or after termination of this Agreement, including those contained in Section 6.7 and Section 6.14.

Section 9.2 Notices. All notices and other communications among the parties shall be in writing and shall be deemed to have been duly given (i) when delivered in person, (ii) when delivered after posting in the United States mail having been sent registered or certified mail return receipt requested, postage prepaid, (iii) when delivered by FedEx, UPS or other nationally recognized overnight delivery service, or (iv) when delivered by email (in each case in this clause (iv), solely if receipt is confirmed), addressed as follows:

if to Parent or Merger Sub:

TheMaven, Inc.
1500 Fourth Avenue, Suite 200
Seattle, Washington 98101
Attention: James C. Heckman
E-mail: jch@maven.io

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

Golenbock Eiseman Assor Bell & Peskoe LLP
711 Third Avenue, 17th Floor
New York, New York 10017
Attention: Andrew D. Hudders
E-mail: ahudders@golenbock.com

if to the Company:

TheStreet, Inc.
14 Wall Street, 15th Floor
New York, New York 10005
Attention: Eric Lundberg
E-mail: ericlundberg@thestreet.com

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

Orrick, Herrington & Sutcliffe LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105
Attention: Karen Dempsey; Richard Vernon Smith
E-mail: kdempsey@orrick.com**;** rsmith@orrick.com

Section 9.3 Interpretation; Certain Definitions. The parties have participated jointly in the negotiation and drafting of this Agreement. Consequently, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement. When a reference is made in this Agreement to an Article, Section, subsection, Appendix, Annex or Exhibit, such reference shall be to an Article, Section or subsection of, or an Appendix, Annex or Exhibit to, this Agreement, unless otherwise indicated. The table of contents and headings for this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any Law defined or referred to herein or in any agreement or instrument that is referred to herein means such Law as from time to time amended, modified or supplemented, including (in the case of statutes) by succession of comparable successor Laws. References to a person are also to its successors and permitted assigns. All references to "dollars" or "$" refer to currency of the United States of America.

Section 9.4 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced under any present or future Law, or public policy, (a) such term or other provision shall be fully separable, (b) this Agreement shall be construed and enforced as if such invalid, illegal or unenforceable provision had never comprised a part hereof, (c) all other conditions and provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable term or other provision or by its severance herefrom so long as the economic or legal substance of the Merger is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the Merger be consummated as originally contemplated to the fullest extent possible.

Section 9.5 Assignment. Neither this Agreement nor any rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of Law or otherwise) without the prior written consent of the other parties hereto.

Section 9.6 Entire Agreement. This Agreement (including the exhibits, annexes and appendices hereto) constitutes, together with the CVR Agreement, Confidentiality Agreement, the Company Disclosure Schedule and the Parent Disclosure Schedule, the entire agreement, and supersedes all other prior agreements and understandings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof.

Section 9.7 No Third-Party Beneficiaries. This Agreement is not intended to and shall not confer any rights or remedies upon any person other than the parties hereto and their respective successors and permitted assigns, except for (a) the rights of the Company's stockholders to receive the Merger Consideration at the Effective Time, (b) the right of the Company, on behalf of its stockholders to collect the Aggregate Cash Merger Consideration (or any portion thereof) and/or pursue damages (which shall include, to the extent proven, the total amount that could have been claimed by the Company's stockholders if such stockholders brought an action against Parent and Merger Sub and were recognized as intended third-party beneficiaries hereunder) in the event of Parent's or Merger Sub's breach of this Agreement or fraud, which right is hereby acknowledged and agreed by Parent and Merger Sub, (c) the provisions of Section 6.7, and (d) the provisions of Section 6.14, **Error! Reference source not found.** and Section 6.18. The representations and warranties in this Agreement are the product of negotiations among the parties hereto and are for the sole benefit of the parties hereto. Any inaccuracies in such representations and warranties are subject to waiver by the parties hereto in accordance with Section 8.5 without notice or liability to any other person. The representations and warranties in this Agreement may represent an allocation among the parties hereto of risks associated with particular matters regardless of the knowledge of any of the parties hereto. Accordingly, persons other than the parties hereto may not rely upon the representations and warranties in this Agreement as characterizations of actual facts or circumstances as of the date of this Agreement or as of any other date.

Section 9.8 Governing Law; Consent to Jurisdiction. This Agreement and all actions, proceedings or counterclaims (whether based on Contract, tort or otherwise) arising out of or relating to this Agreement or the actions of Parent, Merger Sub or the Company in the negotiation, administration, performance and enforcement thereof, shall be governed by, and construed in accordance with the laws of the State of Delaware, without giving effect to any choice or conflict of laws provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware. Each of the parties (i) irrevocably consents to the service of the summons and complaint and any other process (whether inside or outside the territorial jurisdiction of the Chosen Courts) in any action, proceeding or counterclaim relating to the Merger, for and on behalf of itself or any of its properties or assets, in accordance with Section 9.2 or in such other manner as may be permitted by applicable Law, and nothing in this Section 9.8 will affect the right of any party to serve legal process in any other manner permitted by applicable Law; (ii) irrevocably and unconditionally consents and submits itself and its properties and assets in any action, proceeding or counterclaim to the exclusive general jurisdiction of the Court of Chancery of the State of Delaware and any state appellate court therefrom within the State of Delaware (or, if the Court of Chancery of the State of Delaware declines to accept jurisdiction over a particular matter, any federal court within the State of Delaware) (the "**Chosen Courts**") in the event that any dispute or controversy arises out of this Agreement or the transactions contemplated hereby, including the Merger; (iii) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court; (iv) agrees that any action, proceeding or counterclaim arising in connection with this Agreement or the transactions contemplated hereby, including the Merger, will be brought, tried and determined only in the Chosen Courts; (v) waives any objection that it may now or hereafter have to the venue of any such action, proceeding or counterclaim in the Chosen Courts or that such action, proceeding or counterclaim was brought in an inconvenient court and agrees not to plead or claim the same; and (vi) agrees that it will not bring any action, proceeding or counterclaim relating to this Agreement or the transactions contemplated hereby, including the Merger, in any court other than the Chosen Courts. Each of Parent, Merger Sub and the Company agrees that a final judgment in any action, proceeding or counterclaim in the Chosen Courts will be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Law.

Section 9.9 Specific Performance. The parties agree that irreparable damage for which monetary damages, even if available, would not be an adequate remedy, would occur in the event that the parties hereto do not perform the provisions of this Agreement (including failing to take such actions as are required of it hereunder to consummate this Agreement) in accordance with its specified terms or otherwise breach such provisions. Accordingly, the parties acknowledge and agree that the parties shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, in addition to any other remedy to which they are entitled at Law or in equity. Each of the parties agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief on the basis that any other party has an adequate remedy at Law or that any award of specific performance is not an appropriate remedy for any reason at Law or in equity. Any party seeking an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement shall not be required to provide any bond or other security in connection with any such order or injunction.

Section 9.10 Counterparts. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile transmission or by e-mail of a .pdf attachment shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 9.11 WAIVER OF JURY TRIAL. EACH OF PARENT, MERGER SUB AND THE COMPANY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF PARENT, MERGER SUB OR THE COMPANY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT THEREOF.

[*Remainder of page intentionally left blank; signature page follows.*]

IN WITNESS WHEREOF, Parent, Merger Sub and the Company have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

PARENT:

THEMAVEN, INC.

By: /s/ James C. Heckman
Name: James C. Heckman
Title: CEO

MERGER SUB:

TST ACQUISITION CO., INC.

By: /s/ James C. Heckman
Name: James C. Heckman
Title: CEO

[Signature Page to Merger Agreement]

IN WITNESS WHEREOF, Parent, Merger Sub and the Company have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

COMPANY:

THESTREET, INC.

By: /s/ Eric F. Lundberg
Name: Eric F. Lundberg
Title: CEO and CFO

[Signature Page to Merger Agreement]

Appendix A

As used in the Agreement, the following terms shall have the following meanings:

"**1998 Plan**" shall mean the Company's 1998 Stock Incentive Plan, as amended and restated.

"**2007 Plan**" shall mean the Company's 2007 Performance Incentive Plan, as amended and restated.

"**Acceptable Confidentiality Agreement**" shall mean a customary confidentiality agreement containing terms no less favorable to the Company in the aggregate than the terms set forth in the Confidentiality Agreement; provided, however, that such confidentiality agreement shall not prohibit compliance by the Company with any of the provisions of Section 6.6.

"**Aggregate Cash Merger Consideration**" shall mean Sixteen Million Five Hundred Thousand Dollars ($16,500,000.00) in cash.

"**Blue Sky Laws**" shall mean state securities, takeover or "blue sky" laws.

"**Business Day**" shall mean any day other than a Saturday, Sunday or a day on which all banking institutions in New York, New York or Los Angeles, California are authorized or obligated by Law or executive order to close.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended.

"**Company Benefit Plan**" shall mean each material "employee pension benefit plan" (as defined in Section 3(2) of ERISA), each material "employee welfare benefit plan" (as defined in Section 3(1) of ERISA), and each other material plan, agreement, arrangement or policy (written or oral) relating to stock options, stock purchases, deferred compensation, bonus, severance, retention, fringe benefits or other employee benefits, in each case maintained or contributed to, or required to be maintained or contributed to, by the Company or its ERISA Affiliates for the benefit of any current or former employee or director of the Company or any of its subsidiaries, other than any plan, arrangement or policy mandated by applicable Law.

"**Company Lease**" shall mean any lease, sublease, sub-sublease, license and other agreement under which the Company or any of its Subsidiaries leases, subleases, licenses, uses or occupies (in each case whether as landlord, tenant, sublandlord, subtenant or by other occupancy arrangement), or has the right to use or occupy, now or in the future, any real property.

"**Company Material Adverse Effect**" shall mean any change, event, violation, inaccuracy, effect or circumstance (each, an "**Effect**") that, individually or taken together with all other Effects that have occurred prior to the date of determination of the occurrence of the Company Material Adverse Effect, (A) is or would reasonably be expected to be materially adverse to the business, financial condition or results of operations of the Company; or (B) would reasonably be expected to prevent or materially impair the consummation by the Company of the Merger prior to the Termination Date, and shall include the termination of the employment of either or both of Eric Lundberg or Margaret De Luna prior to Closing by the Company; provided, however, that, with respect to clause (A) only, none of the following (by itself or when aggregated) will be deemed to be or constitute a Company Material Adverse Effect or will be taken into account when determining whether a Company Material Adverse Effect has occurred or may, would or could occur (subject to the limitations set forth below): (i) changes in general economic conditions in the United States or any other country or region in the world, or changes in conditions in the global economy generally; (ii) changes in conditions in the financial markets, credit markets or capital markets in the United States or any other country or region in the world, including (1) changes in interest rates or credit ratings in the United States or any other country; (2) changes in exchange rates for the currencies of any country; or (3) any suspension of trading in securities (whether equity, debt, derivative or hybrid securities) generally on any securities exchange or over-the-counter market operating in the United States or any other country or region in the world; (iii) changes in conditions in the markets or industries in which the Company generally conducts business; (iv) changes in regulatory, legislative or political conditions in the United States or any other country or region in the world; (v) any geopolitical conditions, outbreak of hostilities, acts of war, sabotage, terrorism or military actions (including any escalation or general worsening of any such hostilities, acts of war, sabotage, terrorism or military actions) in the United States or any other country or region in the world; (vi) earthquakes, hurricanes, tsunamis, tornadoes, floods, mudslides, wild fires or other natural disasters, weather conditions and other force majeure events in the United States or any other country or region in the world; (vii) any Effect resulting from the announcement of this Agreement, the pendency of the Merger, the cessation or termination of the employment of any of Eric Lundberg and/or Margaret De Luna due to death or Disability or termination of the employment of James C. Cramer for any reason, including the impact of any of the foregoing on or loss of the relationships, contractual or otherwise of the Company with employees (except to the extent that such loss is due to Company employee terminations or departures the positions for which have not been filled or replaced through and as of the Closing and which exceed, in the aggregate since the public announcement of this Agreement, thirty percent (30%) of the total number of individuals employed by the Company as of the date hereof), suppliers, advertisers, sponsors, customers (including subscribers to digital subscription newsletters), partners, vendors or any other third person; (viii) the compliance by any party with the terms of this Agreement, including any action taken or refrained from being taken pursuant to or in accordance with this Agreement; (ix) any action taken or refrained from being taken, in each case to which Parent has expressly approved, consented to or requested in writing following the date hereof; (x) changes or proposed changes in GAAP or other accounting standards or in any applicable Laws (or the enforcement or interpretation of any of the foregoing); (xi) changes in the price or trading volume of the Company Common Stock, in and of itself (it being understood that any cause of such change may be deemed to constitute, in and of itself, a Company Material Adverse Effect and may be taken into consideration when determining whether a Company Material Adverse Effect has occurred); (xii) any failure, in and of itself, by the Company to meet (A) any public estimates or expectations of the Company's revenue, earnings or other financial performance or results of operations for any period; or (B) any internal budgets, plans, projections or forecasts of its revenues, earnings or other financial performance or results of operations (it being understood that any cause of any such failure may be deemed to constitute, in and of itself, a Company Material Adverse Effect and may be taken into consideration when determining whether a Company Material Adverse Effect has occurred); (xiii) the availability or cost of equity, debt or other financing to Parent or Merger Sub; (xiv) any Transaction Litigation or other claim, action, suit, arbitration, proceeding or investigation threatened, commenced, made or brought by any of the current or former stockholders of the Company (on their own behalf or on behalf of the Company) against the Company, any of its directors, officers or employees arising out of or related to the Merger or any other transaction contemplated by this Agreement; and (xv) any matters disclosed in the Company Disclosure Letter; except, with respect to clauses (i), (ii), (iii), (iv), (v), (vi) and (x) to the extent that such Effect has had a materially disproportionate adverse effect on the Company relative to other companies of a similar size operating in the industries in which the Company conducts business, in which case only the incremental disproportionate adverse impact may be taken into account in determining whether there has occurred a Company Material Adverse Effect.

"**Company Option**" shall mean each outstanding option to purchase shares of Company Common Stock under any of the Company Plans.

"**Company Plans**" shall mean the 1998 Plan and 2007 Plan.

"**Company Recommendation**" shall mean the recommendation of the board of directors of the Company that the stockholders of the Company adopt this Agreement and approve the transactions contemplated hereby, including the Merger.

"**Confidentiality Agreement**" shall mean the mutual confidentiality agreement, dated as January 28, 2019, between Parent and the Company.

"**Contract**" shall mean any written contract, subcontract, note, bond, mortgage, indenture, lease, license, sublicense or other binding agreement.

"**Disability**" shall mean the inability of an individual to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months as provided in Sections 22(e)(3) and 409A(a)(2)(c)(i) of the Code and will be determined by the board of directors of the Company on the basis of such medical evidence as the Board deems warranted under the circumstances.

"**DGCL**" shall mean the General Corporation Law of the State of Delaware.

"**Distribution**" shall mean the special cash distribution in the amount of approximately $94.3 million declared by the Company's board of directors, the 1-for-10 reverse stock split of the Company Common Stock approved by the Company's board of directors in connection therewith and all actions taken or to be taken by the Company to effect the foregoing, including payment of such special cash distribution to the Company's stockholders and amendment of the Company's Restated Certificate of Incorporation, as amended, to effect such reverse stock split (which distribution was paid on April 22, 2019 to the stockholders of record and which reverse stock-split was effective on April 26, 2019).

"**ERISA**" shall mean the Employee Retirement Income Security Act of 1974, as amended.

"**ERISA Affiliate**" shall mean any trade or business that, together with the Company, would be treated as a single employer pursuant to Section 4001(b) of ERISA.

"**Escrows**" means, collectively, (i) the escrows established pursuant to the Escrow Agreement, dated as of June 20, 2018, by and among The Street, Inc., Bankers Financial Products Corporation, S&P Global Market Intelligence Inc. and Citibank, National Association, as escrow agent; and (ii) the escrows established pursuant to the Escrow Agreement, dated as of February 14, 2019, by and among TheStreet, Inc., Euromoney Institutional Investor PLC and Citibank, National Association, as escrow agent.

"**Excess Cash Amount**" shall mean in an amount in cash, as determined in good faith by the Company immediately prior to the Effective Time and in accordance with GAAP, equal to (a) the aggregate amount of cash and cash equivalents of the Company and its subsidiaries immediately prior to the Effective Time *minus* (b) the aggregate amount of Excluded Liabilities (determined in accordance with Section 6.16 of the Company Disclosure Schedule).

"**Exchange Act**" shall mean the Securities Exchange Act of 1934, as amended.

"**Expenses**" shall mean all out-of-pocket expenses (including all fees and expenses of counsel, accountants, investment bankers, experts and consultants to a party hereto and its affiliates) incurred by a party or on its behalf in connection with or related to the authorization, preparation, negotiation, execution and performance of this Agreement, the preparation, printing, filing and mailing of the Proxy Statement and all SEC and other regulatory filing fees incurred in connection with the Proxy Statement, the solicitation of stockholder approvals, engaging the services of the Escrow Agent, the Paying Agent and the Rights Agent, obtaining third party consents, any other filings with the SEC and all other matters related to the closing of the Merger and the other transactions contemplated by this Agreement or the CVR Agreement.

"**GAAP**" shall mean the United States generally accepted accounting principles.

"**Governmental Authority**" shall mean any United States (federal, state or local) or foreign government, or any governmental, regulatory, judicial or administrative authority, agency or commission.

"**Indemnitee**" shall mean any individual who, on or prior to the Effective Time, was an officer, director or employee of the Company or served on behalf of the Company as an officer, director or employee of any of the Company's Subsidiaries or affiliates or any of their predecessors in all of their capacities (including as stockholder, controlling or otherwise) and the heirs, executors, trustees, fiduciaries and administrators of such officer, director or employee.

"**IRS**" shall mean the U.S. Internal Revenue Service.

"**knowledge**" shall mean the actual knowledge of the executive officers of the Company or Parent, as applicable.

"**Law**" shall mean any and all domestic (federal, state or local) or foreign laws, rules, regulations, statutes, orders, ordinance, judgments or decrees or other pronouncements by any Governmental Authority.

"**Lien**" shall mean liens, claims, mortgages, encumbrances, pledges, security interests or charges of any kind, other than licenses of or other grants of rights to use Intellectual Property Rights.

"**Order**" shall mean any decree, order, judgment, ruling, writ, injunction, temporary restraining order or other formal order in any suit or proceeding by or with any Governmental Authority.

"**Parent Material Adverse Effect**" shall mean any change, effect or circumstance that individually or in the aggregate, would reasonably be expected to prevent or materially delay or impair the ability of Parent to consummate the Merger and the other transactions contemplated by this Agreement.

"**Per Share Amount**" shall mean a cash amount equal to the quotient of (a) the Aggregate Cash Merger Consideration divided by (b) the number of shares of Company Common Stock issued and outstanding immediately prior to the Effective Time (other than those shares canceled or retired pursuant to Section 3.1(a)).

"**Permitted Lien**" shall mean (i) any Lien for Taxes not yet delinquent or for Taxes being contested in good faith for which adequate accruals or reserves have been established, (ii) Liens securing indebtedness or liabilities that are reflected in the Company SEC Documents or incurred in the ordinary course of business since the date of the most recent Annual Report on Form 10-K filed with the SEC by the Company and Liens securing indebtedness or liabilities that have otherwise been disclosed to Parent in writing, (iii) such Liens or other imperfections of title, if any, that do not have, individually or in the aggregate, a Company Material Adverse Effect, including (A) covenants, conditions and restrictions, easements, rights of way, licenses or claims of the same, whether or not shown by the public records (B) boundary line disputes, overlaps, encroachments and other matters, whether or not of record, that would be disclosed by an accurate survey or a personal inspection of the property, (C) rights of parties in possession, (D) any supplemental Taxes or assessments not shown by the public records and (E) title to any portion of the premises lying within the right of way or boundary of any public road or private road, (iv) Liens imposed or promulgated by Laws with respect to real property and improvements, including zoning regulations, (v) Liens that would be disclosed on current title reports or existing surveys, (vi) mechanics', materialmen's, carriers', workmen's, repairmen's, warehousemen's and similar Liens incurred in the ordinary course of business, (vii) Liens securing acquisition financing with respect to the applicable asset, including refinancings thereof, and (viii) leases, subleases, licenses or sublicenses granted to others in the ordinary course of business which do not materially interfere with the ordinary conduct of the business of the Company and do not secure any indebtedness.

"**person**" shall mean an individual, a corporation, a limited liability company, a partnership, an association, a trust or any other entity or organization, including a Governmental Authority.

"**Prior Transactions**" means, collectively, the transactions consummated pursuant to (a) the Membership Interest Purchase Agreement, dated as of December 6, 2018, by and between Euromoney Institutional Investor PLC and the Company, and (b) the Asset Purchase Agreement, dated as of June 20, 2018, by and among the Company, Bankers Financial Products Corporation and S&P Global Market Intelligence Inc.

"**Representatives**" means a party's directors, officers, employees, consultants, advisors (including, without limitation, attorneys, accountants, consultants, investment bankers, and financial advisors), agents and other representatives.

"**SEC**" shall mean the Securities and Exchange Commission.

"**Secretary of State**" shall mean the Secretary of State of the State of Delaware.

"**Securities Act**" shall mean the Securities Act of 1933, as amended.

"**Subsidiary**" of any person, shall mean any corporation, partnership, joint venture or other legal entity of which such person (either above or through or together with any other subsidiary), owns, directly or indirectly, more than 50% of the stock or other equity interests, the holders of which are generally entitled to vote for the election of the board of directors or other governing body of such corporation or other legal entity. For the avoidance of doubt, any reference to Subsidiaries of the Company refers to the Subsidiaries of the Company as of the date of this Agreement.

"**Tax**" or "**Taxes**" shall mean any and all taxes, fees, levies, duties, tariffs, imposts, and other similar charges (together with any and all interest, penalties and additions to tax) imposed by any governmental or taxing authority including without limitation taxes or other charges on or with respect to income, franchises, windfall or other profits, gross receipts, property, sales, use, capital stock, payroll, employment, social security, workers' compensation, unemployment compensation, or net worth; taxes or other charges in the nature of excise, withholding, ad valorem, stamp, transfer, value added, or gains taxes; license, registration and documentation fees; customs' duties, tariffs, and similar charges.

"**Tax Returns**" shall mean returns, reports and information statements, including any schedule or attachment thereto, with respect to Taxes required to be filed with the IRS or any other governmental or taxing authority.

"**Third Party**" shall mean any person or group other than Parent, Merger Sub and their respective affiliates.

"**Transaction Litigation**" shall mean any claim, action, suit, arbitration, proceeding or investigation commenced or threatened in writing against a party or any of its Subsidiaries or Affiliates or otherwise relating to, involving or affecting such party or any of its Subsidiaries or Affiliates, in each case in connection with, arising from or otherwise relating to or regarding the Merger or any other transaction contemplated by this Agreement, including any claim, action, suit, arbitration, proceeding or investigation alleging or asserting any misrepresentation or omission in the Proxy Statement, any Other Required Company Filing or any other communications to the stockholders of the Company.

"**Treasury Regulations**" shall mean the United States Federal Income Tax Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"**WARN Act**" shall mean the Worker Adjustment and Retraining Notification Act of 1988.

Exhibit 10.2

EXECUTION VERSION

STOCKHOLDER VOTING AGREEMENT

STOCKHOLDER VOTING AGREEMENT (this "Agreement"), dated as of June 11, 2019, by and among TheMaven, Inc., a Delaware corporation ("Parent") and the stockholders listed on Schedule I hereto (each, a "Stockholder" and collectively, the "Stockholders").

WITNESSETH:

WHEREAS, as of the date hereof, each Stockholder holds and is entitled to vote (or to direct the voting of) the number of shares of stock (the "Company Stock") of TheStreet, Inc., a Delaware corporation (the "Company"), set forth opposite such Stockholder's name on Schedule I hereto (with respect to each Stockholder, such shares of Company Stock set forth on Schedule I are referred to herein as the "Subject Shares");

WHEREAS, Parent, TST Acquisition Co., Inc., a Delaware corporation ("Merger Sub"), and the Company, have entered into an Agreement and Plan of Merger, dated as of June 10, 2019 (as may be amended from time to time, the "Merger Agreement"), pursuant to which, upon the terms and subject to the conditions set forth in the Merger Agreement, Merger Sub will merge with and into the Company (the "Merger"), with the Company surviving the Merger as a Subsidiary of Parent;

WHEREAS, as a condition to the willingness of Parent to enter into the Merger Agreement, and as an inducement and in consideration therefor, each Stockholder is entering into this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, representations, warranties, covenants and agreements contained herein, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Capitalized Terms. For purposes of this Agreement, capitalized terms used and not defined herein shall have the respective meanings ascribed to them in the Merger Agreement.

Section 1.2 Other Definitions. For purposes of this Agreement:

(a) "Affiliate" shall mean, with respect to any specified Person, any Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Person specified. For purposes of this Agreement, with respect to each Stockholder, the term "Affiliate" shall not include the Company and the Persons that directly, or indirectly through one or more intermediaries, are controlled by the Company.

(b) "Competing Proposal" shall mean, other than the transactions contemplated by this Agreement, any bona fide proposal or offer (other than a proposal or offer by Parent or any of its subsidiaries) from a Third Party relating to (i) a merger, reorganization, sale of assets, share exchange, consolidation, business combination, recapitalization, dissolution, liquidation, joint venture or similar transaction involving the Company or any of its subsidiaries whose assets, individually or in the aggregate, constitute twenty-five percent (25%) or more of the consolidated assets of the Company as determined on a book-value basis; (ii) the acquisition (whether by merger, consolidation, equity investment, joint venture or otherwise) by any person of twenty-five percent (25%) or more of the assets of the Company and its subsidiaries, taken as a whole as determined on a book-value basis; (iii) the acquisition in any manner, directly or indirectly, by any person of twenty-five percent (25%) or more of the issued and outstanding shares of Company Common Stock, (iv) any purchase, acquisition, tender offer or exchange offer that, if consummated, would result in any person beneficially owning twenty-five percent (25%) or more of the Company Common Stock or any class of equity or voting securities of the Company or any of its subsidiaries whose assets, individually or in the aggregate, constitute twenty-five percent (25%) or more of the consolidated assets of the Company as determined on a book-value basis.

(c) "Person" shall mean an individual, a corporation, a limited liability company, a partnership, an association, a trust or any other entity or organization, including a Governmental Authority.

(d) "Third Party" shall mean any person or group other than Parent, Merger Sub and their respective affiliates.

ARTICLE II
VOTING AGREEMENT AND PROXY GRANT

Section 2.1 Agreement to Vote the Subject Shares. Each Stockholder hereby agrees that, during the period commencing on the date hereof and continuing until the termination of this Agreement (such period, the "Voting Period"), at any meeting (or any adjournment or postponement thereof) of the Company's stockholders, however called, or in connection with any written consent of the of the Company's stockholders, such Stockholder shall vote (or cause to be voted) its Subject Shares (x) in favor of the approval and adoption of the Merger Agreement and the transactions contemplated thereby, including the Merger (and any actions directly required in furtherance thereof), (y) against any action, proposal, transaction or agreement that, to the knowledge of such Stockholder, is intended to result in a breach in any respect of any covenant, representation or warranty or any other obligation or agreement of the Company under the Merger Agreement or of any Stockholder under this Agreement, and (z) except as otherwise agreed to in writing in advance by Parent, against the following actions or proposals (other than the transactions contemplated by the Merger Agreement): (i) any extraordinary corporate transaction, such as a merger, share exchange, arrangement, reorganization, consolidation, business combination, recapitalization, liquidation, dissolution or similar transaction involving the Company or any of its respective Subsidiaries; (ii) any approval or consent regarding any Competing Proposal; (iii) any change in Persons who constitute the board of directors of the Company; and (iv) any other action or proposal involving the Company or any of its Subsidiaries that, to the knowledge of such Stockholder, is intended, or could reasonably be expected, to prevent, impede, interfere with, materially delay, postpone or materially adversely affect the transactions contemplated by the Merger Agreement. Any such vote shall be cast or consent shall be given in accordance with such procedures relating thereto as shall ensure that it is duly counted for purposes of determining that a quorum is present and for purposes of recording the results of such vote or consent.

Section 2.2 Grant of Proxy. Concurrently with the execution of this Agreement, each Stockholder hereby appoints, with respect to such Stockholder's Subject Shares, Parent, and any designee of Parent, and each of them individually, such Stockholder's sole and exclusive proxy and attorney-in-fact, with full power of substitution and resubstitution, to vote or act by written consent during the Voting Period with respect to such Stockholder's Subject Shares in the form of Exhibit A attached hereto. This proxy is given to secure the performance of the duties of each Stockholder under this Agreement. Each Stockholder shall take such further action or execute such other instruments as may be reasonably necessary to effectuate the intent of this proxy.

Section 2.3 **Nature of Proxy**. The proxy and power of attorney granted pursuant to Section 2.2 by each Stockholder shall be irrevocable during the Voting Period and shall be deemed to be coupled with an interest sufficient in law to support an irrevocable proxy and shall be valid and binding on any Person to whom the Stockholder may transfer any of its Subject Shares in breach of, or in accordance with, this Agreement. Each Stockholder hereby revokes any and all previous proxies with respect to such Stockholder's Subject Shares. Each Stockholder agrees not to grant any proxy (whether revocable or irrevocable) to any Person that conflicts with the proxy granted by such Stockholder pursuant to this Article II, and any attempt to do so shall be void and of no force and effect. The power of attorney granted herein is a durable power of attorney and shall survive the dissolution, bankruptcy, death or incapacity of such Stockholder.

ARTICLE III
COVENANTS

Section 3.1 **Generally**.

(a) Each Stockholder agrees that during the Voting Period if Parent and Merger Sub are in compliance with the terms of this Agreement and the Merger Agreement, except as contemplated by the terms of this Agreement, it shall not (i) sell, sell short, transfer (including by way of gift), tender, pledge, encumber, assign, grant any right to acquire (whether such right is exercisable immediately or only after the passage of time or upon the satisfaction of one or more conditions (whether or not within the control of such Stockholder)) or otherwise dispose of (collectively, a "Transfer"), or enter into any contract, option or other agreement with respect to, or consent to, a Transfer of, any or all of its Subject Shares or (ii) take any action that would have the effect of preventing, impeding, interfering with or adversely affecting its ability to perform its obligations under this Agreement.

(b) In the event of a stock dividend or distribution, or any change in the Company Stock by reason of any stock dividend or distribution, split-up, recapitalization, combination, exchange of shares or the like, the term "Subject Shares" shall be deemed to refer to and include, with respect to any Stockholder, such Stockholder's Subject Shares as well as all such stock dividends and distributions and any securities into which or for which any or all of its Subject Shares may be changed or exchanged or which are received in such transaction.

Section 3.2 **No Solicitation of Other Offers.** During the Voting Period, no Stockholder shall, and each Stockholder shall not authorize any of its Subsidiaries or controlled Affiliates and shall use commercially reasonable efforts not to permit any of its, its Subsidiaries' or its Affiliates' directors, officers, employees, agents or representatives to, directly or indirectly, (i) solicit, initiate or knowingly facilitate or encourage a Competing Proposal, (ii) furnish or disclose to any Third Party non-public information (or afford access to any of the properties, assets, books or records relating to the Company or any of its Subsidiaries) with respect to or in furtherance of or which would reasonably be likely to lead to a Competing Proposal, (iii) negotiate or engage in substantive discussions with any Third Party with respect to a Competing Proposal or (iv) enter into any agreement or agreement in principle with respect to a Competing Proposal.

Section 3.3 **No Effect on Directors**. Notwithstanding any of the provisions of this Agreement, the parties acknowledge that the Stockholders are represented on the Company's Board of Directors and agree that such persons will act in their capacities as directors of the Company solely in accordance with their duties to the Company and its stockholders.

Section 3.4 **Reasonable Efforts.** Parent shall (a) make promptly its filing, and thereafter make any other required submissions, under the HSR Act with respect to the Merger Agreement and the Merger and (b) use commercially reasonable efforts to take, or cause to be taken, all appropriate action, and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective the Merger as promptly as practicable, including using commercially reasonable efforts to obtain promptly all permits, consents, approvals, authorizations, qualifications and orders of Governmental Entities and parties to contracts with Parent or the Company or their Subsidiaries as are necessary for the consummation of the transactions contemplated by the Merger Agreement and to fulfill the conditions to the Merger.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF EACH STOCKHOLDER

Each Stockholder hereby represents and warrants to Parent that the following statements in this Article IV are true and correct as to such Stockholder:

Section 4.1 **Due Organization, etc**. The Stockholder is an entity duly formed and validly existing under the Laws of the jurisdiction of its organization. The Stockholder has all necessary limited partnership or limited liability company power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby by the Stockholder has been duly authorized by all necessary limited partnership or limited liability company action on the part of such Stockholder.

Section 4.2 **Ownership of the Subject Shares**. As of the date hereof, (i) the Stockholder is the lawful owner of its Subject Shares and has the sole power to vote (or cause to be voted) its Subject Shares and (ii) neither the Stockholder nor any controlled Affiliate of the Stockholder owns or holds any additional shares of any class of stock of the Company or other securities of the Company or any interest therein or any voting rights with respect to any securities of the Company. The Stockholder has good and valid title to its Subject Shares free and clear of any and all Liens, proxies and voting agreements of any nature or kind whatsoever, other than those created by this Agreement.

Section 4.3 **No Conflicts**. Other than compliance with the applicable requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), (i) no filing with any Governmental Entity, and no authorization, consent or approval of any other Person, is necessary for the execution and delivery of this Agreement by the Stockholder and the consummation by the Stockholder of the transactions contemplated hereby and (ii) none of the execution and delivery of this Agreement by the Stockholder, the consummation by the Stockholder of the transactions contemplated hereby or compliance by the Stockholder with any of the provisions hereof shall (A) conflict with or result in any breach of the organizational documents of the Stockholder, (B) result in, or give rise to, a violation or breach of or a default under any of the terms of any material contract, understanding, agreement or other instrument or obligation to which the Stockholder is a party or by which the Stockholder or any of its Subject Shares or assets may be bound, or (C) violate any applicable order, writ, injunction, decree, or judgment or, to the knowledge of such Stockholder, any statute, rule or regulation which, in the case of clauses (B) and (C), could reasonably be expected to materially adversely affect the Stockholder's ability to perform any of its obligations under this Agreement.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF PARENT

Parent hereby represents and warrants to the Stockholders as follows:

Section 5.1 **Due Organization, etc**. Parent is a corporation duly organized and validly existing under the Laws of Delaware. Parent has all necessary corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby by Parent has been duly authorized by all necessary action on the part of Parent.

Section 5.2 **No Conflicts**. Other than compliance with the applicable requirements of the Exchange Act, (a) no filing with any Governmental Entity, and no authorization, consent or approval of any other Person, is necessary for the execution of this Agreement by Parent and, except as provided in the Merger Agreement, for the consummation by Parent of the transactions contemplated hereby and (b) none of the execution and delivery of this Agreement by Parent or the consummation by Parent of the transactions contemplated hereby shall (i) conflict with or result in any breach of the organizational documents of Parent, (ii) result in a violation or breach of or a default under any of the terms of any material contract, understanding, agreement or other instrument or obligation to which Parent is a party or by which Parent or any of its assets may be bound, or (iii) violate any applicable order, writ, injunction, decree, judgment or, to the knowledge of Parent, any statute, rule or regulation which could reasonably be expected to materially adversely affect Parent's ability to perform any of its obligations under this Agreement.

Section 5.3 **Reliance by the Stockholders**. Parent understands and acknowledges that the Stockholders are entering into this Agreement in reliance upon the execution and delivery of the Merger Agreement by Parent.

ARTICLE VI
TERMINATION

Section 6.1 **Termination**. This Agreement shall terminate as to Parent and each Stockholder, and neither Parent nor any Stockholder shall have any rights or obligations hereunder and this Agreement shall become null and void and have no effect, upon the earliest to occur of (a) the mutual consent of Parent and each Stockholder, (b) the date of termination of the Merger Agreement in accordance with its terms, (c) the effectiveness of any modification, amendment, supplement or waiver to the Merger Agreement or any provision therein (in each case, as in effect on the date hereof) that (i) was not approved by each Stockholder and (ii) individually or in the aggregate (A) alters or changes the amount, kind or value of the Merger Consideration to be paid to each Stockholder in connection with the Merger (except as expressly contemplated by the terms of the Merger Agreement), (B) modifies an existing condition to the consummation of the Merger or creates an additional condition to the consummation of the Merger that is material to the consummation of the Merger or is reasonably likely to cause the Closing to be prevented or materially delayed or (C) has, or is reasonably likely to have, an adverse and disproportionate effect on each Stockholder in comparison to other stockholders of the Company, or (d) the Effective Time (as such term is defined in the Merger Agreement) (such date, the "Termination Date"); *provided, further, however*, that termination of this Agreement shall not prevent any party hereunder from seeking any remedies (at law or in equity) against any other party hereto for such party's breach of any of the terms of this Agreement. Notwithstanding the foregoing, Sections 7.4 through 7.11, inclusive, of this Agreement shall survive the termination of this Agreement.

ARTICLE VII
MISCELLANEOUS

Section 7.1 **Amendments, Waivers, etc**. This Agreement may not be amended, changed, supplemented, waived or otherwise modified, except upon the execution and delivery of a written agreement executed by each of the parties hereto. The failure of any party hereto to exercise any right, power or remedy provided under this Agreement or otherwise available in respect hereof at law or in equity, or to insist upon compliance by any other party hereto with its obligations hereunder, and any custom or practice of the parties at variance with the terms hereof shall not constitute a waiver by such party of its right to exercise any such or other right, power or remedy or to demand such compliance.

Section 7.2 **Public Announcements.** Parent consents to and authorizes the publication and disclosure by each Stockholder of this Agreement, including the nature of its commitments and obligations under this Agreement and such other matters as may be required in connection with the transactions contemplated by the Merger Agreement in any Form 4, Schedule 13D, Schedule 13G or other disclosure required by applicable Law, SEC or other Governmental Authority to be made by each Stockholder in connection with the Merger.

Section 7.3 **Notices**. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in person, by cable, telecopy, telegram or telex, by registered or certified mail (postage prepaid, return receipt requested), or by overnight courier, to the respective parties at the following addresses (or at such other address for a party as shall be specified by like notice):

If to Parent:

TheMaven, Inc.
1500 Fourth Avenue, Suite 200
Seattle, Washington 98101
Attention: James C. Heckman
E-mail: jch@maven.io

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

Golenbock Eiseman Assor Bell & Peskoe LLP
711 Third Avenue, 17th Floor
New York, New York 10017
Attention: Andrew D. Hudders
E-mail: ahudders@golenbock.com

If to any Stockholder, to such Stockholder at the address corresponding to such Stockholder's name on Schedule I

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

Orrick, Herrington & Sutcliffe LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105
Attention: Karen Dempsey; Richard V. Smith
E-mail: kdempsey@orrick.com; rsmith@orrick.com

Section 7.4 **Severability**. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced because of any rule of Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party to this Agreement. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties hereto as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

Section 7.5 **Entire Agreement**. This Agreement (together with the Merger Agreement, to the extent referred to herein and therein) constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof.

Section 7.6 **Assignment**. This Agreement shall not be assigned by operation of law or otherwise without the prior written consent of each of the parties, except that Parent may assign and transfer its rights and obligations hereunder to any direct or indirect wholly Subsidiary of Parent.

Section 7.7 **Parties in Interest**. This Agreement shall be binding upon and inure solely to the benefit of each party hereto and their respective successors and assigns, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 7.8 **Mutual Drafting**. Each party hereto has participated in the drafting of this Agreement, which each party acknowledges is the result of extensive negotiations between the parties.

Section 7.9 **Governing Law.** This Agreement shall be governed by, and construed in accordance with the laws of the State of Delaware, without giving effect to any choice or conflict of laws provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware.

Section 7.10 **Headings**. The descriptive headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 7.11 **Counterparts**. This Agreement may be executed in two or more counterparts, and by the different parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile transmission or by e-mail of a .pdf attachment shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 7.12 **WAIVER OF JURY TRIAL.** EACH OF PARENT, MERGER SUB AND THE COMPANY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF PARENT, MERGER SUB OR THE COMPANY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT THEREOF.

IN WITNESS WHEREOF, Parent and each Stockholder have caused this Agreement to be duly executed as of the day and year first above written.

PARENT:

THEMAVEN, INC.

By: /s/ James. C. Heckman
Name: James C. Heckman
Title: CEO

STOCKHOLDERS:

180 DEGREE CAPITAL CORP.

By: /s/ Daniel B. Wolf
Name: Daniel B. Wolfe
Title: President

THESTREET SPV SERIES - A SERIES OF 180 DEGREE CAPITAL MANAGEMENT, LLC

By: /s/ Daniel B. Wolf
Name: Daniel B. Wolfe
Title: President

Schedule I

Stockholder Name	Number of Shares of Stock

Exhibit A

IRREVOCABLE PROXY

The undersigned stockholder of TheStreet, Inc., a Delaware corporation (the "Company"), hereby irrevocably appoints TheMaven, Inc., a Delaware corporation ("Parent"), and any designee thereof, as the sole and exclusive attorney and proxy of the undersigned, with full power of substitution and resubstitution, to the full extent of the undersigned's rights with respect to the shares of capital stock of the Company owned by the undersigned beneficially and of record as of the date hereof, which shares are listed on Schedule I to this proxy (collectively, the "Owned Shares"), until the Expiration Date (as defined below). As used herein, the term "Expiration Date" shall mean the earliest to occur of: (a) the date of termination of the Agreement and Plan of Merger (the "Merger Agreement"), dated as of June 10, 2019, 2019, among the Company, Parent, and TST Acquisition Co., Inc., a Delaware corporation ("Merger Sub"), (b) the agreement of the parties to terminate this proxy or (c) the Effective Time (as defined in the Merger Agreement). The undersigned hereby revokes any and all previous proxies with respect to the undersigned's Owned Shares and no subsequent proxies (whether revocable or irrevocable) shall be given (and if given, shall not be effective) by the undersigned with respect to the Owned Shares that conflict with this proxy.

This proxy and power of attorney is intended to be irrevocable in accordance with the provisions of Section 212(e) of the General Corporation Law of the State of Delaware and is coupled with an interest sufficient in law to support an irrevocable proxy and is granted in consideration of Parent entering into the Merger Agreement and the Stockholder Voting Agreement, dated as of June 10, 2019, by and among Parent and the stockholders of the Company set forth in Schedule I thereto (the "Voting Agreement"), and shall be valid and binding on any person to whom the stockholder may transfer any of its Owned Shares. The attorney and proxy named above will be empowered at any time prior to the Expiration Date to vote or act by written consent with respect to the Owned Shares at every annual, special, adjourned or postponed meeting of the Company's stockholders, and in every written consent in lieu of such a meeting, or otherwise, as provided below. The power of attorney granted herein is a durable power of attorney and shall survive the dissolution, bankruptcy, death or incapacity of the undersigned stockholder of the Company.

The attorney and proxy named above may only exercise this proxy to vote the Owned Shares subject hereto at any time prior to the Expiration Date at any meeting (or any adjournment or postponement thereof) of the Company's stockholders, however called, or in connection with any written consent of the of the Company's stockholders, (x) in favor of the adoption of the Merger Agreement (and any actions directly required in furtherance thereof), (y) against any action, proposal, transaction or agreement that is intended to result in a breach in any respect of any covenant, representation or warranty or any other obligation or agreement of the Company under the Merger Agreement or of any Stockholder under the Voting Agreement, and (z) except as otherwise agreed to in writing in advance by Parent, against the following actions or proposals (other than the transactions contemplated by the Merger Agreement): (i) any extraordinary corporate transaction, such as a merger, share exchange, arrangement, reorganization, consolidation, business combination, recapitalization, liquidation, dissolution or similar transaction involving the Company or any of its respective Subsidiaries (as defined in the Merger Agreement); (ii) any approval or consent regarding any Competing Proposal (as defined in the Voting Agreement); (iii) any change in Persons who constitute the board of directors of the Company; and (iv) any other action or proposal involving the Company or any of its Subsidiaries that is intended, or could reasonably be expected, to prevent, impede, interfere with, materially delay, postpone or materially adversely affect the transactions contemplated by the Merger Agreement or the Voting Agreement. Any such vote shall be cast or consent shall be given in accordance with such procedures relating thereto as shall ensure that it is duly counted for purposes of determining that a quorum is present and for purposes of recording the results of such vote or consent.

The undersigned stockholder may vote the Owned Shares on all other matters.

* * * * * *

Any obligation of the undersigned hereunder shall be binding upon the successors and assigns of the undersigned.

Dated: June 10, 2019

180 DEGREE CAPITAL CORP.

By: _____
Name: Daniel B. Wolfe
Title: President

THESTREET SPV SERIES - A SERIES OF 180 DEGREE CAPITAL MANAGEMENT, LLC

By: _____
Name: Daniel B. Wolfe
Title: President

[SIGNATURE PAGE TO PROXY]

Exhibit 10.3

Note Purchase Agreement

dated as of June 10, 2019

by and among

theMaven, Inc.,
as the Borrower,

The Guarantors Named Herein,

BRF Finance Co., LLC,
as Agent and a Purchaser,

and

The Other Purchasers From Time to Time Party Hereto

NOTE PURCHASE AGREEMENT

This NOTE PURCHASE AGREEMENT (this "Agreement") is dated as of June 10, 2019 and entered into by and among **theMaven, Inc.**, a Delaware corporation (the "Borrower"), the Guarantors from time to time party hereto, each of the Purchasers from time to time named on Schedule I attached hereto or which become a Purchaser after the date hereof (together with their respective successors and permitted assigns, the "Purchasers" and each a "Purchaser") and **BRF Finance Co., LLC**, in its capacity as agent for the Purchasers ("Agent").

RECITALS

The Borrower has agreed to sell to the Purchasers and the Purchasers, acting severally and not jointly, have agreed to purchase from the Borrower the Borrower's 12.0% senior secured notes (the "Notes") in the aggregate principal amount of $20,000,000, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the Borrower, Guarantors, Agent and Purchasers agree as follows:

SECTION 1. DEFINITIONS AND ACCOUNTING TERMS

1.1. Certain Defined Terms. The capitalized terms not otherwise defined in this Agreement shall have the meanings set forth below:

"Affiliate" means, with respect to any Person, another Person: (a) directly or indirectly controlling, controlled by, or under common control with, the Person specified; (b) directly or indirectly owning or holding ten percent (10%) or more of any Equity Interest in the Person specified; or (c) ten percent (10%) or more of whose stock or other Equity Interest having ordinary voting power for the election of directors or the power to direct or cause the direction of management, is directly or indirectly owned or held by the Person specified; provided, however, that neither Agent nor any Purchaser shall be an Affiliate of any Note Party or of any Subsidiary of any Note Party for purposes of this definition. For purposes of this definition, "control" (including with correlative meanings, the terms "controlling", "controlled by" and "under common control with") means the possession directly or indirectly of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of Equity Interests, or by contract or otherwise.

"Agent" has the meaning assigned to that term in the introductory paragraph, together with any successor Agent appointed pursuant to Section 9.1(G).

"Agreement" has the meaning assigned to that term in the introductory paragraph hereof.

"Anti-Terrorism Laws" means (i) the Money Laundering Control Act of 1986 (i.e., 18 U.S.C. §§ 1956 and 1957), (ii) the Bank Secrecy Act, as amended by the USA PATRIOT Act, (iii) the laws, regulations and Executive Orders administered by the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC"), (iv) the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 and implementing regulations by the United States Department of the Treasury, (v) the Proceeds of Crime (Money Laundering) and, to the extent applicable to the Borrower or any of its Subsidiaries, the Terrorist Financing Act (Canada), (vi) any law enacted in the United States or any other jurisdiction in which the Borrower or any of its Subsidiaries operate prohibiting or directed against terrorist activities or the financing of terrorist activities (e.g., 18 U.S.C. §§ 2339A and 2339B), (vii) the foreign asset control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any enabling legislation or executive order relating thereto, or (viii) any similar laws relating to terrorism or money laundering enacted in the United States or any other jurisdictions in which the Borrower or any of its Subsidiaries operate, as any of the foregoing laws may from time to time be amended, renewed, extended, or replaced and all other legal requirements of any Governmental Authority governing, addressing, relating to, or attempting to eliminate, terrorist acts and acts of war and any regulations promulgated pursuant thereto.

"Applicable Law" means all laws, rules and regulations applicable to the Person, conduct, transaction, covenant, Note Document or contract in question, including all applicable common law and equitable principles; all provisions of all applicable state, provincial, federal and foreign constitutions, statutes, rules, regulations and orders of any Governmental Authority, and all orders, judgments and decrees of all applicable courts and arbitrators.

"Approved Fund" means any Fund that is administered or managed by (a) a Purchaser, (b) an Affiliate of a Purchaser or (c) an entity or an Affiliate of an entity that administers or manages a Purchaser.

"Assignment and Assumption Agreement" means an assignment and assumption Agreement in form acceptable to Agent.

"B. Riley" means BRF Finance Co., LLC and any Affiliate thereof as a Purchaser hereunder.

"Bankruptcy Code" means Title 11 of the United States Code, or any similar Federal or state law for the relief of debtors.

"Beneficial Ownership Regulation" means 31 C.F.R. §1010.230, as amended.

"Blocked Person" has the meaning assigned to that term in Section 4.11(B).

"Borrower" has the meaning assigned to that term in the introductory paragraph of this Agreement.

"Business Day" means any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in any such state are closed.

"Certificate of Exemption" has the meaning assigned to that term in Section 2.7.

"Change in Control" means each occurrence of any of the following:

(a) the acquisition, directly or indirectly, by any person or group (within the meaning of Section 13(d)(3) of the Exchange Act) (other than by B. Riley) of beneficial ownership of more than 50% of the aggregate outstanding voting or economic power of the Equity Interests of the Borrower;

(b) the Borrower shall cease to have beneficial ownership (as defined in Rule 13d-3 under the Exchange Act) of 100% of the aggregate voting or economic power of the Equity Interests of each other Note Party (other than in connection with any transaction explicitly permitted hereunder), free and clear of all Liens; or

(c) a "Change in Control" (or any comparable term or provision) occurs under or with respect to (i) any of the Equity Interests of the Borrower or any of its Subsidiaries, (ii) any Subordinated Indebtedness Document, or (iii) any Indebtedness of the Borrower or any of its Subsidiaries having an aggregate principal amount outstanding in excess of $500,000.

"Charges" means all taxes, charges, fees, imposts, levies or other assessments, including, without limitation, all net income, gross income, gross receipts, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation and property taxes, custom duties, fees, assessments, liens, claims and charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts, imposed by any taxing or other Governmental Authority, domestic or foreign (including, without limitation, the PBGC or any environmental agency or superfund), upon the Collateral, the Note Parties or any of their Affiliates, except Excluded Taxes.

"Closing" has the meaning assigned to such term in Section 2.2(A).

"Closing Date" means June 10, 2019.

"Collateral" means all property (whether real or personal, movable or immovable) with respect to which any security interests have been granted (or purported to be granted) pursuant to any Security Document.

"Control Agreement" has the meaning assigned to that term in Section 4.9(A).

"Default" means a condition, act or event that, after notice or lapse of time or both, would constitute an Event of Default if that condition, act or event were not cured or removed within any applicable grace or cure period.

"Default Rate" shall mean a rate of interest per annum equal to the rate of interest otherwise in effect from time to time pursuant to the terms of this Agreement plus 8.00%.

"Employee Benefit Plan" means any "employee benefit plan" within the meaning of Section 3(3) of ERISA (other than a Multiemployer Plan) which is subject to ERISA and (a) which is maintained by the Borrower, any Subsidiary or any ERISA Affiliate, or (b) with respect to which the Borrower, any Subsidiary or any ERISA Affiliate contributes or has an obligation to contribute.

"Equity Interests" of any Person means any and all shares, rights to purchase, options, warrants, general, limited or limited liability partnership interests, member interests, participation, or other equivalents of or interest in (regardless of how designated) equity of such Person, whether voting or nonvoting, including common stock, preferred stock, convertible securities or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor statute and all rules and regulations promulgated thereunder.

"ERISA Affiliate" means any Person, which together with the Borrower or a Subsidiary, would be deemed to be a "single employer" within the meaning of Section 414(b) or (c) of the IRC, or, solely for purposes of Section 302 of ERISA and Section 412 of the IRC, would be treated as a single employer under Section 414(m) or (o) of the IRC.

"Event of Default" has the meaning assigned to that term in Section 8.1.

"Exchange Act" means the Securities Exchange Act of 1934.

"Excluded Account" means (a) payroll accounts, trust accounts, escrow accounts, accounts used exclusively, and within the ordinary course of business, for withholding tax, goods and services tax, sales tax or payroll tax and other fiduciary accounts and (b) zero balance disbursement accounts.

"Excluded Taxes" has the meaning assigned to that term in Section 2.7(A).

"Executive Order No. 13224" means the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, as the same has been, or shall hereafter be, renewed, extended, amended or replaced.

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

"Fee Letter" means that certain fee letter dated as of the Closing Date between the Borrower and the Agent.

"Foreign Purchaser" has the meaning assigned to that term in Section 2.7(B).

"Fund" means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

"GAAP" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board that are applicable to the circumstances as of the date of determination.

"Governmental Authority" means (i) any international, foreign, federal, state, provincial, county or municipal government, or political subdivision thereof, (ii) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body or (iii) any court or administrative tribunal of competent jurisdiction.

"Guarantor(s)" means, collectively, each Subsidiary Guarantor and any other Person which guarantees the Obligations.

"Guaranty" means any guaranty of the Obligations executed by a Guarantor in favor of Agent, for its benefit and for the ratable benefit of the Secured Parties, in form and substance satisfactory to Agent, including pursuant to Section 10 hereof.

"Hazardous Material" means all or any of the following: (a) substances that are defined or listed in, or otherwise classified pursuant to, any environmental laws or regulations as "hazardous substances", "hazardous materials", "hazardous wastes", "toxic substances" or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity; (b) oil, petroleum or petroleum derived substances, natural gas, natural gas liquids or synthetic gas and drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; (c) any flammable substances or explosives or any radioactive materials; and (d) asbestos in any form or electrical equipment which contains any oil or dielectric fluid containing polychlorinated biphenyls.

"Indebtedness", as applied to any Person, means without duplication: (a) all indebtedness for borrowed money; (b) obligations under leases which in accordance with GAAP constitute capital leases; (c) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money; (d) any obligation owed for all or any part of the deferred purchase price of property or services (other than (i) trade accounts and accrued expenses payable in the ordinary course of business and not outstanding for more than sixty (60) days after the date on which such trade account payable was created, and (ii) accruals for payroll and other liabilities accrued in the ordinary course of business); (e) all Indebtedness of another Person secured by any Lien on any property or asset owned or held by such Person regardless of whether the Indebtedness secured thereby shall have been assumed by such Person or is non-recourse to the credit of such Person (but excluding, for the avoidance of doubt, letters of credit and similar instruments) and only to the extent of the fair market value of such property or assets; (f) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments; (g) all net obligations of such Person under interest rate protection agreement, foreign currency exchange agreement or other interest or currency exchange rate, interest rate swap, or other similar agreements, (h) any advances under any factoring arrangement; (i) the principal balance outstanding under any synthetic lease, off-balance sheet loan or similar off-balance sheet financing product; and (j) all guarantees by such Person of Indebtedness of others, to the extent of the liability of such Person under such guarantee.

"Indemnified Liabilities" has the meaning assigned to that term in Section 11.2.

"Indemnitees" has the meaning assigned to that term in Section 11.2.

"Intellectual Property" has the meaning assigned to that term in the Security Agreement.

"IRC" means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute and all rules and regulations promulgated thereunder.

"IRS" means the United States of America Internal Revenue Service or any successor thereto.

"Liabilities" has the meaning given that term in accordance with GAAP and shall include, without limitation, Indebtedness.

"Lien" means any lien (statutory or otherwise), mortgage, deed of trust, pledge, security interest, charge or encumbrance of any kind, whether voluntary or involuntary (including any conditional sale or other title retention agreement, any lease in the nature thereof, any trust, and any agreement to give any security interest).

"Material Adverse Effect" means a material adverse effect on (a) the business, operations, properties, assets or financial condition of the Borrower and its Subsidiaries taken as a whole; (b) the ability of the Note Parties (taken as a whole) to perform their respective obligations under the Note Documents, (c) the ability of Agent or any Purchaser to enforce or collect on the Obligations (after giving effect to any consents, waivers, amendments or other modifications not prohibited hereunder); or (d) the rights, remedies and benefits available to, or conferred upon, Agent and the Purchasers under the Note Documents.

"Maturity Date" means the earlier of (i) July 31, 2019 or (ii) the date that the Obligations have been accelerated pursuant to and in accordance with the terms of this Agreement.

"Multiemployer Plan" means any "multiemployer plan" (as such term is defined in Section 4001(a)(3) of ERISA) which is subject to ERISA and to which the Borrower, any Subsidiary Guarantor or any ERISA Affiliate contributes or has an obligation to contribute.

"Note Documents" means this Agreement, the Security Documents, the Notes (if any), the Fee Letter, the Perfection Certificate, the Sallyport Intercreditor Agreement (to the extent applicable), any Subordination Agreements, the Side Letter, and all other agreements executed by or on behalf of any Note Party and delivered concurrently herewith or at any time hereafter to or for Agent or any Purchaser in connection with the Notes, all as amended, restated, supplemented or modified from time to time.

"Note Party" means the Borrower and each Guarantor.

"Notes" has the meaning set forth in the recitals hereto.

"Obligations" means all obligations, liabilities and indebtedness of every nature of each Note Party from time to time owed to Agent, any Purchaser or any other Secured Party under the Note Documents (whether incurred before or after the Maturity Date).

"OFAC Sanctions Programs" means the laws, regulations and Executive Orders administered by OFAC, including but not limited to, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, as it has been or shall thereafter be renewed, extended, amended, or replaced, and the list of Specially Designated Nationals and Blocked Persons administered by OFAC, as such list may be amended from time to time.

"PBGC" means the Pension Benefit Guaranty Corporation established pursuant to Title IV of ERISA, or any successor agency or other Governmental Authority succeeding to the functions thereof.

"Pension Benefit Plan" means any Employee Benefit Plan subject to the provisions of Title IV of ERISA or the minimum funding standards under Section 412 of the IRC.

"Perfection Certificate" means the Perfection Certificate and the responses thereto provided by Note Parties and delivered to Agent.

"Permitted Encumbrances" means the following types of Liens:

(a) Liens for Taxes not yet due and payable, or being Properly Contested;

(b) statutory Liens of landlords, carriers, warehousemen, mechanics, vendors, materialmen and other similar liens imposed by law, which are incurred in the ordinary course of business for sums not more than thirty (30) days delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings diligently prosecuted, which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto and for which adequate reserves in accordance with GAAP are being maintained;

(c) Liens (other than any Lien imposed by ERISA) incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, statutory obligations, surety and appeal bonds, bids, leases, government contracts, performance and return of money bonds, trade contracts and other similar obligations (exclusive of obligations for the payment of borrowed money); provided, that, for the avoidance of doubt, any grant of a security interest under the UCC in the Collateral shall not be permitted under this sub-clause (c);

(d) zoning restrictions, building codes, land use laws, easements, licenses, reservations, provisions, covenants, waivers, rights-of-way, restrictions, minor irregularities of title (and with respect to leasehold interests, mortgages, obligations, Liens and other encumbrances incurred, created, assumed or permitted to exist and arising by, through or under a landlord, ground lessor or owner of the leased property, with or without consent of the lessee) and other similar charges or encumbrances with respect to real property not interfering in any material respect with the ordinary conduct of the business of the Borrower or any of its Subsidiaries and which do not secure obligations for payment of money;

(e) Liens in favor of Agent, on behalf of itself and the other Secured Parties;

(f) Liens existing on the Closing Date set forth on Schedule 7.3(B) including replacement Liens, provided, that (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased, (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured or benefited thereby is permitted by Section 7.1(B);

(g) precautionary financing statements filed in connection with operating leases;

(h) Liens consisting of judgment or judicial attachment liens with respect to judgments the existence of which do not constitute an Event of Default; provided, that, the holder of such judgment Lien has not commenced any enforcement action;

(i) licenses, sublicenses, leases or subleases (including any license of Intellectual Property) granted to third parties in the ordinary course of business or not materially interfering with the business of the Borrower or any of its Subsidiaries;

(j) Liens in favor of collecting banks arising under Section 4-210 of the UCC;

(k) Liens arising from customary rights of set-off, revocation, refund or chargeback in favor of a bank or other depositary institution where the Borrower or any of its Subsidiaries maintains deposits (other than deposits intended as cash collateral) in the ordinary course of business;

(l) Liens consisting of contractual obligations of the Borrower or any of its Subsidiaries to sell or otherwise dispose of assets solely to the extent such disposition is permitted hereunder; and

(m) Liens consisting of customary security deposits under operating leases entered into by the Borrower or a Subsidiary in the ordinary course of business.

"Person" means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and governments and agencies and political subdivisions thereof.

"Properly Contested" means, in the case of any Taxes of any Person that are not paid as and when due or payable by reason of such Person's bona fide dispute concerning its liability to pay the same or concerning the amount thereof: (a) such Taxes are being properly contested in good faith by appropriate proceedings promptly instituted and diligently conducted; (b) such Person has established appropriate reserves as shall be required in conformity with GAAP; (c) the non-payment of such Taxes will not have a Material Adverse Effect or will not result in the forfeiture of any assets of such Person; (d) no Lien is imposed upon any of such Person's assets with respect to such Taxes unless such Lien (x) is at all times junior and subordinate in priority to the Liens in favor of the Agent (except only with respect to property Taxes that have priority as a matter of Applicable Law) and (y) enforcement of such Lien is stayed during the period prior to the final resolution or disposition of such dispute.

"Purchaser" or "Purchasers" has the meaning assigned to such term in the introductory paragraph of this Agreement.

"Register" has the meaning assigned to that term in Section 11.12(C).

"Reportable Event" means a reportable event described in Section 4043(c) of ERISA or the regulations promulgated thereunder other than an event for which the requirement to provide notice to the PBGC has been waived.

"Requisite Purchasers" means, as of the date of determination thereof, Purchasers holding more than fifty percent (50%) of the outstanding Notes.

"Responsible Officer" means the president, any vice president, the chief financial officer, the director of finance or the controller of any Note Party or any other officer having substantially the same authority and responsibility.

"Restricted Junior Payment" means: (a) any dividend or other distribution, direct or indirect, on account of any Equity Interests of the Borrower or any of its Subsidiaries now or hereafter outstanding; (b) any payment or prepayment of principal of, premium, if any, or interest on, or any redemption, conversion, exchange, retirement, defeasance, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Equity Interests of the Borrower or any of its Subsidiaries now or hereafter outstanding; (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any Equity Interests of the Borrower or any of its Subsidiaries now or hereafter outstanding; (d) any payment by any Note Party of any management, consulting or similar fees to any Affiliate of the Borrower or any of its Subsidiaries, whether pursuant to a management agreement or otherwise; (e) any voluntary prepayment of any Indebtedness of the Borrower or any of its Subsidiaries (other than the Obligations), or (f) any payment or prepayment of principal of, premium, if any, interest, fees, redemption, exchange, purchase, retirement, defeasance, sinking fund or similar payment with respect to any Subordinated Indebtedness.

"Sallyport Indebtedness Documents" means that certain Account Sale and Purchase Agreement, dated as of March 8, 2018, by and between the Borrower and Sallyport Commercial Finance, LLC and all other agreements entered into in connection therewith.

"Sallyport Intercreditor Agreement" means that certain intercreditor agreement to be entered into after the date hereof, by and among the Agent, Sallyport Commercial Finance, LLC, and certain of the Note Parties.

"SEC" means the United States Securities and Exchange Commission.

"Secured Parties" means Agent, any Purchaser and any Indemnitees.

"Securities Act" means the Securities Act of 1933, as amended and together with all rules, regulations and interpretations thereunder or related thereto.

"Security Agreement" means that certain Pledge and Security Agreement dated as of the Closing Date by and among the Note Parties and Agent.

"Security Documents" means the Security Agreement and all other agreements as shall from time to time secure or relate to the Obligations, or any part thereof.

"Side Letter" means that certain side letter dated as of the Closing Date by and among the Borrower and Agent.

"Subsidiary" means, with respect to any Person, any corporation, association or other business entity of which more than fifty percent (50%) of the total voting power of Equity Interests (or equivalent ownership or controlling interest) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof. Unless the context otherwise clearly requires, any reference to a "Subsidiary" is a reference to a Subsidiary of the Borrower.

"Subsidiary Guarantor" means each direct or indirect Subsidiary of the Borrower, whether now existing or hereafter created or acquired.

"Subordinated Creditor" means any Person that shall have entered into a Subordination Agreement with the Agent, on behalf of the Secured Parties.

"Subordinated Debentures" means, collectively, 12% Senior Secured Subordinated Convertible Debenture of the Borrower due December 31, 2020, with B. Riley FBR, Inc. as Holder, issued December 12, 2018, 12% Senior Secured Subordinated Convertible Debenture of the Borrower due December 31, 2020, with BRC Partners Opportunity Fund, LP as Holder, issued December 12, 2018, 12% Senior Secured Subordinated Convertible Debenture of the Borrower due December 31, 2020, with Dialectic Antithesis Partners, LP, as Holder, issued December 12, 2018, 12% Senior Secured Subordinated Convertible Debenture of the Borrower due December 31, 2020, with B. Riley FBR, Inc. as Holder, issued March 18, 2019, 12% Senior Secured Subordinated Convertible Debenture of the Borrower due December 31, 2020, with John Fitchthorn as Holder, issued March 18, 2019, 12% Senior Secured Subordinated Convertible Debenture of the Borrower due December 31, 2020, with Strome Mezzanine Fund II, LP as Holder, issued March 18, 2019, 12% Senior Secured Subordinated Convertible Debenture of the Borrower due December 31, 2020, with B. Riley FBR, Inc. as Holder, issued March 27, 2019, 12% Senior Secured Subordinated Convertible Debenture of the Borrower due December 31, 2020, with SFS Growth Fund, LP as Holder, issued March 27, 2019, and 12% Senior Secured Subordinated Convertible Debenture of the Borrower due December 31, 2020, with Todd Sims, Inc. as Holder, issued April 8, 2019, issued pursuant to those certain Securities Purchase Agreements by and among the Borrower and the purchasers party thereto dated as of December 12, 2018, March 18, 2019, March 27, 2019, and April 8, 2019, respectively.

"Subordinated Indebtedness" means (a) the Subordinated Debentures and (b) other unsecured Indebtedness of any Note Party, in each case, which has a maturity date that is at least 181 days later than the Maturity Date and the terms of which (including, without limitation, payment terms, interest rates, covenants, remedies, defaults and other material terms) are reasonably satisfactory to the Agent and the Requisite Purchasers and which has been expressly subordinated in right of payment to all Indebtedness of such Note Party under the Note Documents (i) by the execution and delivery of a Subordination Agreement, or (ii) otherwise on terms and conditions reasonably satisfactory to the Agent and the Requisite Purchasers.

"Subordinated Indebtedness Documents" means all documents evidencing Subordinated Indebtedness, including, without limitation, each subordinated promissory note or agreement issued by a Note Party to a Subordinated Creditor, and each other promissory note, instrument and agreement executed in connection therewith, all on terms and conditions reasonably satisfactory to the Agent and the Requisite Purchasers.

"Subordination Agreement" means each subordination agreement by and among, as applicable, the Agent, the applicable Note Parties, the applicable Subsidiaries of the Note Parties and the applicable Subordinated Creditor, each in form and substance satisfactory to the Agent and the Requisite Purchasers and each evidencing and setting forth the senior priority of the Obligations over such Subordinated Indebtedness and to the extent applicable, Liens.

"Taxes" has the meaning assigned to that term in Section 2.7(A).

"Tax Liabilities" has the meaning assigned to that term in Section 2.7(A).

"Termination Event" means (i) a Reportable Event with respect to any Pension Benefit Plan; (ii) the withdrawal of any Note Party or any ERISA Affiliate from any Pension Benefit Plan during a plan year in which such entity was a "substantial employer" as defined in Section 4001(a)(2) of ERISA; (iii) the providing of notice of intent to terminate any Pension Benefit Plan in a distress termination described in Section 4041(c) of ERISA; (iv) the institution by the PBGC of proceedings to terminate any Pension Benefit Plan or Multiemployer Plan; (v) any event or condition which could reasonably be expected to (a) constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Benefit Plan, (b) result in the termination of a Multiemployer Plan pursuant to Section 4041A of ERISA or (c) result in the imposition of any Lien on the assets of any Note Party by operation of Section 4069 of ERISA; or (vi) the partial or complete withdrawal within the meaning of Sections 4203 and 4205 of ERISA of any Note Party or any ERISA Affiliate from a Multiemployer Plan resulting in withdrawal liability to any Note Party.

"TheStreet" means TheStreet, Inc., a Delaware corporation.

"Transactions" means collectively, the transactions contemplated by the TS Acquisition Documents, the Note Documents (including with respect to the issuance of Notes on such date), and the financial accommodations contemplated herein and therein.

"TS Acquisition" means the merger, pursuant to the terms of the TS Acquisition Documents, of TheStreet and TST AcquisitionCo, with TheStreet continuing as the surviving corporation.

"TS Acquisition Agreement" means that certain Agreement and Plan of Merger, dated as of the Closing Date, among the Borrower, TST AcquisitionCo, and TheStreet.

"TS Acquisition Documents" means, collectively, (i) the TS Acquisition Agreement, (ii) the TS Escrow Agreement, and (iii) all related agreements entered into in connection with the TS Acquisition, in each case of the preceding clauses (i)-(iii), in form and substance satisfactory to the Agent and the Purchasers.

"TS Escrow Agreement" means that certain Escrow Agreement, dated as of the Closing Date, by and among the Borrower, TheStreet, and Citibank, N.A.

"TST AcquisitionCo" means TST ACQUISITION CO., INC., a Delaware corporation.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, however, to the extent the law of any other state or other jurisdiction applies to the attachment, perfection, priority or enforcement of any Lien granted to Agent in any of the Collateral, "UCC" means the Uniform Commercial Code as in effect in such other state or jurisdiction for purposes of the provisions hereof relating to such attachment, perfection, priority or enforcement of a Lien in such Collateral. To the extent this Agreement defines the term "Collateral" by reference to terms used in the UCC, each of such terms shall have the broadest meaning given to such terms under the UCC as in effect in any state or other jurisdiction.

"USA PATRIOT Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001 (Title III of Pub. L. 107-56, Oct. 26, 2001).

1.2. UCC Defined Terms. The following terms used in this Agreement shall have the respective meanings provided for in the UCC: "Accounts", "Account Debtor", "Chattel Paper", "Deposit Account", "Documents", "General Intangibles", and "Inventory".

1.3. Accounting Terms. For purposes of this Agreement, all accounting terms not otherwise defined herein shall have the meanings assigned to such terms in conformity with GAAP. Financial statements and other information furnished to Agent or any Purchaser shall be prepared in accordance with GAAP (as in effect at the time of such preparation) on a consistent basis. For all purposes hereunder, only those leases (assuming for purposes hereof that such leases were in existence on January 1, 2015) that would have constituted capital leases or financing leases in conformity with GAAP on January 1, 2015, shall be considered capital leases or financing leases hereunder, and all calculations and deliverables under this Agreement or any other Note Document shall be made or delivered, as applicable, in accordance therewith.

1.4. Other Definitional Provisions. References to "Sections" and "Schedules" shall be to Sections, and Schedules, respectively, of this Agreement unless otherwise specifically provided. Any of the terms defined in Section 1.1 or otherwise in this Agreement may, unless the context otherwise requires, be used in the singular or the plural depending on the reference. In this Agreement, words importing any gender include the other genders; the words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation"; the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or"; references to agreements and other contractual instruments shall be deemed to include subsequent amendments, assignments, and other modifications thereto, but only to the extent such amendments, assignments and other modifications are not prohibited by the terms of this Agreement or any other Note Document; references to Persons include their respective permitted successors and assigns or, in the case of governmental Persons, Persons succeeding to the relevant functions of such Persons; and unless the context requires otherwise, all references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations.

SECTION 2. NOTES

2.1. Authorization of Notes.

(A) The Borrower has authorized the issue and sale of Notes in the aggregate principal amount of $20,000,000.

(B) Interest on the Notes is payable on the Maturity Date, and shall accrue on the outstanding principal amount of the Notes at an aggregate rate of 12.0% per annum, provided that, after the occurrence and during the continuance of an Event of Default, the Notes shall bear interest at the Default Rate, provided further, that in no event shall the amount paid or agreed to be paid by the Borrower as interest and premium on any Note exceed the highest lawful rate permissible under the law applicable thereto, provided further, that in the event that any interest is not paid on the Maturity Date, then (i) such interest shall be capitalized and added to the principal amount of the Notes on the Maturity Date and (ii) any interest accruing on the principal amount of the Notes thereafter shall, until so paid, continue to be capitalized and added to the principal amount of the Notes on the first Business Day of each week thereafter.

(C) The obligations of the Borrower under the Note Documents shall be guaranteed by each of the Guarantors.

2.2. Sales; Closing.

(A) The Borrower will issue and sell to each Purchaser and, subject to the terms and conditions hereof and in reliance upon the representations and warranties of the Borrower and Guarantors contained herein and in the other Note Documents, each Purchaser, acting severally and not jointly, will purchase from the Borrower, at the Closing, such Notes as are specified on that portion of Schedule I attached hereto as is applicable to such Purchaser. The aggregate purchase price of the Notes shall be $20,000,000. The closing of the sale and purchase of the Notes hereunder (the "Closing") shall take place at the office of Choate, Hall & Stewart LLP, Two International Place, Boston, MA 02110 on the Closing Date. The Closing shall occur not later than 3:00 P.M. Boston, Massachusetts time on the Closing Date. At the Closing, the Borrower will deliver to each Purchaser the Notes specified on Schedule I to be purchased by such Purchaser at the Closing against payment of the purchase price thereof to (or for the benefit of) the Borrower in immediately available funds in accordance with the wire instructions set forth in the disbursement direction letter delivered by the Borrower to Agent on the Closing Date.

(B) Delivery of the Notes to be purchased by each Purchaser at the Closing shall be made in the form of one or more Notes. If at the Closing, the Borrower shall fail to tender the Notes to be delivered to each Purchaser thereat as provided herein, each Purchaser shall, at its election, be relieved of all further obligations under this Agreement, without thereby waiving any other rights it may have by reason of such failure or such non-fulfillment.

2.3. Computation of Interest and Fees. All computations of interest and fees hereunder shall be made on the basis of the actual number of days elapsed over a 360-day year. Each determination by the Purchasers of an interest amount or fee hereunder shall be made in good faith and, except for manifest error, shall be final, conclusive and binding for all purposes.

2.4. Prepayments and Repayments.

(A) Mandatory Prepayments. If the Borrower or any of its Subsidiaries receives any of the Escrow Funds (as defined in the TS Escrow Agreement), the Borrower or such Subsidiary shall promptly (and in any event within one (1) Business Day after receipt thereof) prepay the Obligations in an amount equal to such Escrow Funds so received. All prepayments pursuant to this Section 2.4(A) shall be applied to the Notes on a pro-rata basis.

(B) Optional Prepayments and Repayments.The Borrower may, at its option, prepay all or any part of the Notes at any time, and from time to time, without penalty or premium.In the case of each optional prepayment, the Borrower shall give at least two (2) days prior written notice thereof to each holder of any Notes. Each such notice shall set forth: (a) the date fixed for prepayment; (b) the aggregate principal amount of Notes to be prepaid on such date; and (c) the aggregate principal amount of Notes held by such holder to be prepaid on such date and the amount of accrued interest to be paid to such holder on such date.All prepayments pursuant to this Section 2.4(B) shall be applied to the Notes on a pro-rata basis.

2.5. [Reserved.]

2.6. [Reserved.]

2.7. Taxes.

(A) No Deductions. Any and all payments or reimbursements made hereunder shall be made free and clear of and without deduction for any and all taxes, levies, imposts, deductions, charges or with the Borrower, and all liabilities with respect thereto (all such taxes, levies, imposts, deductions, charges or with the Borrower and all liabilities with respect thereto referred to herein as "Tax Liabilities"; excluding, however, (i) Taxes imposed on or measured by the net income (however denominated), franchise and branch profits Taxes of any Purchaser or Agent by the jurisdiction under the laws of which Agent or such Purchaser is organized or doing business or any political subdivision thereof, (ii) Taxes imposed on or measured by the net income (however denominated), franchise and branch profits Taxes of any Purchaser or Agent by the jurisdiction of such Purchaser's or Agent's applicable lending office (or relevant office for receiving payments from or on account of the Borrower or making funds available to or for the benefit of the Borrower) or any political subdivision, (iii) U.S. federal withholding Taxes that are (or would be) required to be withheld on amounts payable to or for the account of any Purchaser or Agent pursuant to a law in effect on the date on which (A) such Purchaser acquires an interest in the Notes or such Agent becomes Agent or (B) such Purchaser changes its office for receiving payments by or on account of the Borrower or making funds available to or for the benefit of the Borrower, except in each case to the extent that, pursuant to Section 2.7, amounts with respect to such Taxes were payable either to such Agent or Purchaser's predecessor immediately before such Purchaser or Agent became a party hereto or to such Agent or Purchaser immediately before it changed its office for receiving payments by or on account of the Borrower or making funds available to or for the benefit of the Borrower, (iv) Taxes attributable to such recipient's failure to comply with Section 2.7, (v) U.S. backup withholding Taxes, (vi) Taxes imposed under FATCA on any Purchaser or Agent, (vii) Taxes imposed by a jurisdiction as a result of any connection between the recipient and such jurisdiction other than any connection arising solely from (and that would not have existed but for) executing, delivering, being a party to, engaging in any transactions pursuant to, performing its obligations under or enforcing any Note Document, (viii) Taxes resulting from the gross negligence or willful misconduct of the Purchaser or Agent as determined by a court of competent jurisdiction in a final non-appealable judgment and (ix) penalties, interest and additions to Tax relating to any of the foregoing (all Taxes included in clauses (i) through (ix), the "Excluded Taxes", and together with the Tax Liabilities, the "Taxes")) unless the applicable withholding agent is compelled by law to make payment subject to such Tax Liabilities. If any applicable withholding agent shall be required by law to deduct any such Tax Liabilities from or in respect of any sum payable hereunder to Agent or any Purchaser, then the sum payable hereunder shall be increased as may be necessary so that, after making all required deductions, Agent or such Purchaser receives an amount equal to the sum it would have received had no such deductions been made.

(B) Status of Purchasers. Any Purchaser that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Note Document shall deliver to Borrower and Agent, at the time or times reasonably requested by Borrower or Agent, such properly completed and executed documentation reasonably requested by Borrower or Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Purchaser, if reasonably requested by Borrower or Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by Borrower or Agent as will enable Borrower or Agent to determine whether or not such Purchaser is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth below in this paragraph (B)) shall not be required if in the Purchaser's reasonable judgment such completion, execution or submission would subject such Purchaser to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Purchaser (it being understood that providing any information currently required by any U.S. federal income tax withholding form shall not be considered prejudicial to the position of a Purchaser).

Without limiting the generality of the preceding paragraph, each Purchaser organized under the laws of a jurisdiction outside the United States (a "Foreign Purchaser") as to which payments to be made under this Agreement are exempt from United States withholding tax or are subject to United States withholding tax at a reduced rate under an applicable statute or tax treaty shall provide to Borrower and Agent (1) a properly completed and executed IRS Form W-8BEN, W-8BEN-E or Form W-8ECI or other applicable form, certificate or document prescribed by the IRS or reasonably requested by Agent or Borrower, certifying as to such Foreign Purchaser's entitlement to such exemption or reduced rate of withholding with respect to payments to be made to such Foreign Purchaser under this Agreement, and, in the case of a Foreign Purchaser claiming the benefits of the exemption for portfolio interest under Section 881(c) of the IRC, a certificate, in a form reasonably acceptable to Borrower and Agent, showing such Foreign Purchaser is not a "bank" within the meaning of Section 881(c)(3)(A) of the IRC, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the IRC or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the IRC (a "Certificate of Exemption"). Prior to becoming a Purchaser under this Agreement and within fifteen (15) days after a reasonable written request of Borrower or Agent from time to time thereafter, each Foreign Purchaser that becomes a Purchaser under this Agreement shall provide a Certificate of Exemption to Borrower and Agent.

If a Foreign Purchaser is entitled to an exemption with respect to payments to be made to such Foreign Purchaser under this Agreement (or to a reduced rate of withholding) and does not provide the information in the preceding paragraph establishing its entitlement to such exemption to Borrower and Agent within the time periods set forth in the preceding paragraph, Note Parties shall withhold taxes from payments to such Foreign Purchaser at the applicable statutory rates and no Note Party shall be required to pay any additional amounts as a result of such withholding; provided, however, that all such withholding shall cease at such time that such Foreign Purchaser establishes its entitlement to such exemption to Borrower and Agent.

Each Purchaser that is a "U.S. Person" within the meaning of Section 7701(a)(30) of the IRC shall execute and deliver to the relevant Borrower and Agent, on or prior to the date on which such Purchaser becomes a Purchaser under this Agreement, and from time to time thereafter upon the request of Borrower or Agent, two properly completed and duly signed original copies of Form W-9 or any successor form that such Purchaser is entitled to provide at such time, establishing an exemption from United States backup withholding requirements; provided, however, that if a Purchaser is a disregarded entity for U.S. federal income tax purposes, it shall provide the appropriate withholding form of its owner (together with appropriate supporting documentation). The Borrower shall not be required to pay additional amounts in respect of Taxes to any Purchaser pursuant to this Section 2.7 to the extent that the obligation to pay such additional amounts would not have arisen but for the failure of such Purchaser to comply with this Section 2.7.

Each Purchaser shall, whenever a lapse in time or change in circumstances renders such documentation expired, obsolete or inaccurate in any material respect, deliver promptly to Borrower and Agent updated or other appropriate documentation (including any new documentation reasonably requested by the applicable withholding agent) or promptly notify Borrower and Agent of its inability to do so. Unless the applicable withholding agent has received forms or other documents satisfactory to it indicating that payments under any Note Document to or for a Purchaser are not subject to withholding tax or are subject to such tax at a rate reduced by an applicable tax treaty, Agent or other applicable withholding agent shall withhold amounts required to be withheld by Applicable Law from such payments at the applicable statutory rate.

Notwithstanding this Section 2.7, a Purchaser shall not be required to deliver any form pursuant to this Section 2.7 that such Purchaser is not legally able to deliver.

(C) Withholding Taxes under FATCA. If a payment made to a Purchaser under the Note Documents would be subject to withholding tax imposed by FATCA if such Purchaser fails to comply with the applicable requirements of FATCA (including the reporting requirements contained in Section 1471(b) or 1472(b) of the IRC), such Purchaser shall deliver to Borrower and Agent (i) a certification signed by the chief financial officer, principal accounting officer, treasurer or controller, and (ii) other documentation reasonably requested by Borrower and Agent sufficient for Agent and Borrower to comply with their obligations under FATCA and to determine that such Purchaser has complied with such applicable reporting requirements; provided that if such Purchaser fails to provide any documentation described in clause (i) or (ii) hereof, Borrower or Agent shall be entitled to withhold all amounts required to comply with FATCA, by setoff or otherwise. Each of Agent and Borrower shall provide notice to the other party in the event Agent or Borrower, as applicable, reasonably determines that a Purchaser (and/or any participant of such Purchaser) is not complying with the requirements of FATCA (including the reporting requirements contained in Section 1471(b) or 1472(b) of the IRC, as applicable); provided that failure to provide such notice shall not result in liability to either party. If, at any time, Agent or Borrower reasonably believe that a Purchaser and/or its participant is not complying with the requirements of FATCA (including the reporting requirements contained in Section 1471(b) or 1472(b) of the IRC, as applicable), Agent or Borrower may withhold all amounts required to comply with FATCA, by setoff or otherwise.

(D) Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any taxes as to which it has been indemnified pursuant to this Section 2.7 (including by the payment of additional amounts pursuant to this Section 2.7), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the taxes giving rise to such refund), net of all out-of-pocket expenses (including taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (D) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other person.

(E) Each party's obligations under this Section 2.7 shall survive the replacement of a Purchaser and the repayment, satisfaction or discharge of all Obligations.

SECTION 3. CONDITIONS TO PURCHASE OF NOTES

3.1. Closing Date. The effectiveness of this Agreement and the obligations of each Purchaser to purchase the Notes on the Closing Date, are subject to satisfaction of all of the terms and conditions set forth below, except to the extent that any of the following items are permitted to be delivered by a date after the Closing Date:

(A) Note Documents. Agent shall have received, in form and substance reasonably satisfactory to Agent and the Purchasers, this Agreement, the Fee Letter, the Security Documents and certificates evidencing any stock being pledged hereunder, together with undated stock powers executed in blank, and all other Note Documents, each duly executed by the applicable parties thereto.

(B) Security Interests. Agent shall have received satisfactory evidence that all security interests and liens granted to Agent for the benefit of Agent and the other Secured Parties pursuant to the Security Documents or the other Note Documents have been duly perfected liens on the Collateral to the extent such perfection is required hereunder or under any other Note Document.

(C) Representations and Warranties. The representations and warranties contained herein and in the other Note Documents shall be true and correct in all material respects (or in all respects with respect to any representation or warranty which by its terms is limited as to materiality, in each case, after giving effect to such qualification) on and as of the Closing Date.

(D) Fees. The Borrower shall have paid all fees due to Agent or any Purchaser and payable on the Closing Date, including, without limitation, all fees payable under the Fee Letter.

(E) No Default. No event shall have occurred and be continuing or would result from purchasing a Note that would constitute an Event of Default or a Default.

(F) Performance of Agreements. Each Note Party shall have performed in all material respects all agreements and satisfied all conditions which any Note Document provides shall be performed by it on or before the Closing Date.

(G) No Prohibition. No order, judgment or decree of any court, arbitrator or Governmental Authority shall purport to enjoin or restrain Agent or any Purchaser from purchasing any Notes.

(H) Payment Direction Letter; Funds Flow Memorandum; Etc. Agent shall have received a letter of direction from the Borrower directing where the proceeds of the Notes are to be made and attaching a funds-flow memorandum setting forth the sources and uses of such proceeds.

(I) Corporate Documents. Agent and Purchasers shall have customary corporate resolutions, certificates and similar documents as the Agent or any Purchasers shall reasonably require, which shall be, as applicable, certified by the applicable Governmental Authority as of a recent date.

(J) TS Acquisition Documents. Agent and the Purchasers have received complete copies of all applicable TS Acquisition Documents (including all exhibits, schedules and disclosure letters referred to therein or delivered pursuant thereto, if any) and all amendments thereto, waivers relating thereto and other side letters or agreements affecting the terms thereof. Each of the foregoing shall be in form and substance reasonably satisfactory to Agent and the Purchasers and none of such documents and agreements shall have been amended or supplemented, nor shall have any of the provisions thereof been waived, except pursuant to a written agreement or instrument which has heretofore been delivered to, and approved in writing by, Agent and the Purchasers. Each of the conditions precedent to the execution of the TS Acquisition Documents to be executed on the Closing Date shall have been satisfied to the reasonable satisfaction of Agent and Purchasers, and not waived, except with the consent of Agent and the Purchasers.

(K) Other Documents. Agent and Purchasers shall have received such other documents as Agent, any Purchaser or their respective counsel may have reasonably requested.

SECTION 4. REPRESENTATIONS, WARRANTIES AND CERTAIN COVENANTS

To induce Agent and each Purchaser to enter into the Note Documents and to purchase the Notes, each Note Party represents, warrants and covenants to Agent and each Purchaser that:

4.1. Organization, Powers, Capitalization.

(A) Organization and Powers. The Borrower and each of its Subsidiaries (i) is an entity duly organized, incorporated or established (as the case may be), validly existing and, to the extent applicable, in good standing under the laws of its jurisdiction of organization, incorporation or establishment (as the case may be), (ii) is qualified to do business in all states, provinces and other jurisdictions where such qualification is required except where failure to be so qualified could not reasonably be expected to have a Material Adverse Effect, and (iii) has all requisite power and authority to (x) own and operate its properties, to carry on its business as now conducted and proposed to be conducted and (y) to enter into each Note Document to which it is a party.

(B) Capitalization. The authorized capital stock or other Equity Interests of the Borrower and the other Note Parties as of the date hereof is as set forth on Schedule 4.1(B). As of the Closing Date, the jurisdiction of organization, incorporation or establishment (as the case may be), owner of outstanding equity interests and percentage of outstanding equity interests held by owner with respect to the Borrower and its Subsidiaries is as set forth on Schedule 4.1(B) and Schedule 4.1(B) includes all preemptive or other outstanding rights, options, warrants, conversion rights or similar agreements or understandings for the purchase or acquisition from the Borrower or any of its Subsidiaries of any shares of capital stock or other Equity Interests of any such entity as of the Closing Date. All issued and outstanding shares of capital stock or other Equity Interests of Borrower and each Subsidiary is duly authorized and validly issued, fully paid, non-assessable (if applicable), free and clear of all Liens other than Permitted Encumbrances, and such Equity Interests were issued in compliance with all applicable state, provincial, federal and foreign laws concerning the issuance of securities.

4.2. Authorization of Borrowing, No Conflict.

(A) Each Note Party has the power and authority to incur the Obligations and to grant security interests in the Collateral.

(B) On the Closing Date, the execution, delivery and performance of the Note Documents by each Note Party signatory thereto will have been duly authorized by all necessary company and shareholder action.

(C) The execution, delivery and performance by each Note Party of each Note Document to which it is a party and the consummation of the transactions contemplated by the Note Documents by each Note Party (i) do not contravene any material Applicable Law or the corporate charter or bylaws or other organizational documents of any Note Party, (ii) will not result in or require the creation or imposition of any Lien of any nature whatsoever upon any properties or assets of the Borrower or any of its Subsidiaries, other than liens created by the Note Documents in favor of the Agent, and (iii) do not require any approval of the interest holders of any Note Party or any approval or consent of any Person under any material contractual obligation of any Note Party, other than consents or approvals that have been obtained and that are still in force and effect or that will be obtained after the date hereof to the extent set forth in Schedule 5.8, or the failure of which to obtain would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

(D) The Note Documents are the legally valid and binding obligations of the Note Parties party thereto, each enforceable against the Note Parties party thereto in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

4.3. Solvency. After giving effect to the Transactions, (a) the fair value of the assets of the Borrower and its Subsidiaries, on a consolidated basis, exceeds, on a consolidated basis, their debts and liabilities (whether subordinated, contingent or otherwise), (b) the present fair saleable value of the property of the Borrower and its Subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay their debts and other liabilities (whether subordinated, contingent or otherwise), on a consolidated basis, as such debts and other liabilities become absolute and matured, (c) the Borrower and its Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities (whether subordinated, contingent or otherwise), as such liabilities become absolute and matured, and (d) the Borrower and its Subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business for which they have unreasonably small capital.

4.4. Insurance. The Borrower and each of its Subsidiaries maintains and shall continue to maintain adequate insurance policies and shall provide Agent with evidence of such insurance coverage for liability, property damage, and business interruption with respect to its business and properties against loss or damage of the kinds customarily carried or maintained by corporations of established reputation engaged in similar businesses and on such terms and in such amounts reasonably acceptable to Agent. Each Note Party shall cause Agent at all times to be named as lender loss payee and additional insured, as applicable, on all insurance policies and shall insure that Agent receives notice of cancellation with respect to all such insurance policies, in each case pursuant to appropriate endorsements in form and substance reasonably satisfactory to Agent and shall collaterally assign to Agent, for itself and on behalf of the other Secured Parties, as security for the payment of the Obligations all business interruption insurance of each Note Party.

4.5. Compliance with Laws; Government Authorizations; Consents. Neither the Borrower nor any of its Subsidiaries is in violation of any law, ordinance, rule, regulation, order, policy, guideline or other requirement of (a) any Governmental Authority in all jurisdictions in which the Borrower or any of its Subsidiaries is now doing business, and (b) any Governmental Authority otherwise having jurisdiction over the conduct of the Borrower or any of its Subsidiaries or any of their respective businesses, or the ownership of any of their respective properties, in any case, which violation would subject the Borrower or any of its Subsidiaries, or any of their respective officers to criminal liability could reasonably be expected to result in a material liability to the Borrower and its Subsidiaries and no such violation has been alleged in writing. The Borrower and each of its Subsidiaries will comply with the requirements of all Applicable Laws, ordinances, rules, regulations, orders, policies, guidelines or other requirements of (a) any Governmental Authority as now in effect and which may be imposed in the future in all jurisdictions in which the Borrower or any of its Subsidiaries is now doing business or may hereafter be doing business, and (b) any government authority otherwise having jurisdiction over the conduct of the Borrower or any of its Subsidiaries or any of their respective businesses, or the ownership of any of its respective properties, except to the extent the noncompliance with which could reasonably be expected to result in a material liability to the Borrower and its Subsidiaries.

4.6. Governmental Regulation. Neither the Borrower nor any of its Subsidiaries is subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or to any federal or state statute or regulation limiting its ability to incur indebtedness for borrowed money.

4.7. Access to Accountants and Management. The Borrower, on behalf of itself and each of its Subsidiaries, authorizes Agent and Purchasers to discuss the financial condition and financial statements of the Borrower and its Subsidiaries with Note Parties' accountants upon reasonable notice to Note Parties of its intention to do so, and authorizes Note Parties' accountants to respond to all of Agent's and any Purchaser's inquiries; provided however, Agent and/or the Purchasers shall submit such inquiries to Borrower prior to contacting any such representatives, and Borrower shall be present at all times during any such discussions. Agent and each Purchaser may, confer at reasonable times during normal business hours with the Borrower and its Subsidiaries' senior management and key employees directly regarding the Borrower and its Subsidiaries' business, operations and financial condition.

4.8. Inspection. Each Note Party shall, and the Borrower shall cause each of its Subsidiaries to, permit Agent and any authorized representatives designated by Agent to visit and inspect any of the properties of any Note Party or any Subsidiary, including their financial and accounting records, and, in conjunction with such inspection, to make copies and take extracts therefrom, and to discuss their affairs, finances and business with their officers and the Note Parties' accountants, at such reasonable times during normal business hours. If any of the properties, books or records of any Note Party or any Subsidiary are in the possession of a third party, each of the Borrower and such Subsidiary authorizes that third party to permit any Person designated by Agent in writing or any agents thereof to have access to perform inspections or audits and to respond to Agent's request for information concerning such property, books and records to the same extent as if such information was held by such Note Party or Subsidiary.

4.9. Control Agreements.

(A) Within twenty (20) days after the Closing Date, each Note Party shall cause each of its Deposit Accounts (other than Excluded Accounts), lockbox accounts and securities accounts to be subject to a "springing" account control agreement in form and substance reasonably satisfactory to Agent (a "Control Agreement"). No Note Party will open any new Deposit Accounts, lockbox account or securities account (other than "Excluded Accounts") unless a Control Agreement is entered into concurrently with the opening thereof.

(B) All account debtors or other payment obligors of such Note Party shall be directed to directly remit all payments on each Note Party's Accounts directly to a Deposit Account subject to a Control Agreement and each Note Party will immediately deposit in a Deposit Account subject to a Control Agreement all payments received from account debtors or other payments constituting proceeds of Collateral received by such Note Party in the identical form in which such payment was made, whether by cash or check.

(C) Agent agrees that it shall only be permitted to give instructions or directions under any Control Agreement after the occurrence and during the continuance of an Event of Default. In addition, if the Event of Default giving rise to such instructions is cured or waived, as applicable, and no other Event of Default exists at such time, Agent shall give notice to the applicable bank canceling instructions provided in accordance with this Section 4.9.

(D) Each Note Party hereby agrees that all payments made to any Deposit Account, securities account or otherwise received by Agent and whether on the Accounts or as proceeds of other Collateral or otherwise, in each case, to the extent constituting Collateral, will be subject to the Lien of Agent, for the benefit of itself and the other Secured Parties. If any Note Party, or any of their respective Affiliates, employees, agents or any other Persons acting for or in concert with such Note Party, shall receive any monies, checks, notes, drafts or any other payments relating to and/or proceeds of any Note Party's Accounts or other Collateral, such Note Party or such Person shall hold such instrument or funds in trust for Agent, and immediately upon receipt thereof, shall remit the same or cause the same to be remitted, in kind, to a Deposit Account subject to a Control Agreement and, if requested by Agent after the occurrence and during the continuance of an Event of Default, to Agent at its address set forth in Section 11.3 below.

4.10. Payment of Taxes by Agent. If any of the Collateral includes a charge for any Tax payable to any Governmental Authority, Agent is hereby authorized (but in no event obligated) in its reasonable discretion and upon reasonable prior notice to Borrower (so as to afford the Borrower the opportunity to pay or contest such Tax) to pay the amount thereof to the proper Governmental Authority for the account of any Note Party and to charge the Note Party's account therefore.

4.11. Anti-Terrorism Laws; OFAC; FCPA.

(A) Neither the Borrower nor any of its Subsidiaries is in violation of any Anti-Terrorism Law or engages in any transaction that evades or avoids or attempts to violate any of the Anti-Terrorism Laws.

(B) Neither the Borrower nor any of its Subsidiaries is any of the following (each a "Blocked Person"): (A) a Person that is prohibited pursuant to any of the OFAC Sanctions Programs, including a Person named on OFAC's list of Specially Designated Nationals and Blocked Persons; (B) a Person that is owned or controlled by, or that owns or controls any Person described in (A) above; or (C) a Person with which any Purchaser is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law.

(C) Neither the Borrower nor any of its Subsidiaries deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to any OFAC Sanctions Programs.

(D) No part of the proceeds of the Notes will be used, directly or, to the Borrower knowledge, indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

4.12. Security Documents. Except as otherwise contemplated hereby or under any other Note Document, the provisions of the Security Documents, together with such filings and other actions required to be taken hereby or by the applicable Security Documents, are effective to create in favor of the Agent, for the benefit of the Secured Parties, a legal, valid, enforceable and perfected Lien on all right, title and interest of the respective Note Parties in the Collateral described therein.

4.13. Offer of Notes. Assuming (i) the Notes are issued, sold and delivered under the circumstances contemplated by this Agreement and (ii) the accuracy of the representations and warranties of Purchasers set forth in Section 11.22(A) and their compliance with the agreements set forth herein and therein, it is not necessary in connection with the offer, sale and delivery of the Notes to Purchasers in the manner contemplated by this Agreement to register the Notes under the Securities Act. No Note Party has, directly or indirectly, offered, sold or solicited any offer to buy, and no Note Party will, directly or indirectly, offer, sell or solicit any offer to buy, any security of a type or in a manner which would be integrated with the sale of the Notes and require the Notes to be registered under the Securities Act. None of the Note Parties, their respective Affiliates or any Person acting on any of their behalf (other than Purchasers, as to whom the Note Parties make no representation or warranty) has engaged or will engage in any form of general solicitation or general advertising (within the meaning of Rule 502(c) under the Securities Act) in connection with the offering of the Notes.

SECTION 5. REPORTING AND OTHER AFFIRMATIVE COVENANTS

Each Note Party covenants and agrees that so long as any of the Obligations remain outstanding (other than contingent indemnification obligations to the extent no claims giving rise thereto have been asserted by the Person entitled thereto), each Note Party shall perform all covenants in this Section 5.

5.1. Notices and Reports.

(A) TS Acquisition. Concurrently with delivery of any notices to any other party under the TS Acquisition Agreement, TS Escrow Agreement, or any other TS Acquisition Document, the Note Party shall deliver a copy thereof to the Agent. Promptly upon receipt of any notice from any other party under the TS Acquisition Agreement, TS Escrow Agreement, or any other TS Acquisition Document, the Note Party shall deliver a copy thereof to the Agent.

(B) Material Occurrences. The Borrower shall promptly notify Agent and Purchasers in writing upon the occurrence of (a) any Event of Default or Default with such notice stating that it is a "Notice of Default"; (b) each and every default by any Note Party or any Subsidiary which might result in the acceleration of the maturity of any Indebtedness having an outstanding principal amount in excess of $500,000 individually or $1,000,000 in the aggregate, including the names and addresses of the holders of such Indebtedness with respect to which there is a default existing or with respect to which the maturity has been or could be accelerated, and the amount of such Indebtedness; and (c) any other development in the business or affairs of any Note Party or any Subsidiary which could reasonably be expected to have a Material Adverse Effect; in each case describing the nature thereof and the action such Note Party or such Subsidiary propose to take with respect thereto.

(C) Litigation. The Borrower shall promptly notify Agent and the Purchasers in writing of any litigation, suit or administrative proceeding affecting the Borrower or any of its Subsidiaries, whether or not the claim is covered by insurance, and of any suit or administrative proceeding, (i) in which the amount of damages claimed is in excess of $500,000 individually or $1,000,000 in the aggregate, (ii) in which injunctive or similar relief is sought and which, if adversely determined, could reasonably be expected to have a Material Adverse Effect, or (iii) in which the relief sought is an injunction or other stay of the performance of this Agreement or any other Note Document.

(D) Default Notices. The Borrower shall promptly notify Agent and the Purchasers in writing of any "default" or "event of default" under any of the documents governing the Sallyport Indebtedness or any Subordinated Indebtedness.

(E) Other Reports. The Borrower shall furnish Agent and the Purchasers as soon as available, but in any event within five (5) days after the issuance thereof, with (copies of all material notices sent to or from the holders of the Sallyport Indebtedness, the Subordinated Debentures or any other holders of Indebtedness.

(F) Additional Information. The Borrower shall furnish Agent and Purchases with such additional information as Agent or any Purchaser shall reasonably request in order to enable Agent to determine whether the terms, covenants, provisions and conditions of this Agreement have been complied with by the Borrower and its Subsidiaries.

(G) SEC Filings. Promptly upon transmission thereof, the Borrower shall furnish to Agent copies of all registration statements (without exhibits) and all reports, if any, which it files with the SEC (or any Governmental Authority or agency succeeding to the functions of the SEC).

5.2. Beneficial Ownership. At any time or from time to time upon the request of Agent, each Note Party will, at its expense, promptly provide Purchasers with any information and documentation reasonably requested for purposes of compliance with the Beneficial Ownership Regulation or other applicable anti-money laundering laws under 31 U.S.C. 5318(h) and its implementing regulations.

5.3. [Reserved.]

5.4. Use of Proceeds and Margin Security. The Borrower will only use the proceeds of the Notes as follows: (i) $16,500,000 of such proceeds will be deposited with Citibank, N.A. pursuant to the TS Escrow Agreement to be used as the consideration for the TS Acquisition, (ii) $1,135,000 of such proceeds will be used to pay fees and expenses associated with the Transactions, (iii) $400,000 of such proceeds will be reserved by the Borrower to pay the interest which will become due and payable hereunder (such reserved amount to be held in a Deposit Account of the Borrower which, within twenty (20) days after the Closing Date, is subject to a Control Agreement), and (iv) the remainder will be used for general corporate purposes of the Borrower. The Borrower shall use the proceeds of all Notes for proper business purposes consistent with all Applicable Laws, statutes, rules and regulations. No portion of the proceeds of any Note shall be used for the purpose of purchasing or carrying margin stock within the meaning of Regulation U, or in any manner that might cause the borrowing or the application of such proceeds to violate Regulation T or Regulation X or any other regulation of the Board of Governors of the Federal Reserve System or to violate the Exchange Act.

5.5. Maintenance of Properties and Existence. The Note Parties shall, and shall cause their respective Subsidiaries to, maintain and preserve all of their respective material properties (including as relates to Intellectual Property) which are necessary or useful in the proper conduct of their business in good working order and condition, ordinary wear and tear excepted and make or cause to be made all appropriate repairs, renewals and replacements thereof, and comply at all times with the provisions of all material leases to which it is a party as lessee, so as to prevent any loss or forfeiture thereof or thereunder, in each case. Each Note Party will and shall cause each of its Subsidiaries to (i) maintain and preserve and maintain in full force and effect its organizational existence and good standing under the laws of its jurisdiction of incorporation, organization or formation, and (ii) maintain rights, privileges, permits, licenses, authorizations and approvals, and become or remain duly qualified and in good standing in each jurisdiction in which the character of the properties owned or leased by such Note Party or in which the transaction of its business makes such qualification necessary, in each case under this clause (ii), except where the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

5.6. Additional Guarantors; Collateral; Further Assurances.

(A) The Borrower shall promptly notify the Agent when, and provide evidence satisfactory to the Agent that, the conditions to the consummation of the TS Acquisition (including the requisite stockholder consent) have been satisfied. Substantially concurrently with the consummation of the TS Acquisition, the Borrower shall cause TheStreet (as the surviving entity in such merger) to become a Guarantor hereunder and cause TheStreet to execute and deliver (x) a joinder agreement in form and substance satisfactory to Agent, (y) each document that would have been required by Section 3.1 to be delivered to Agent with respect to such Subsidiary had such Subsidiary been a Guarantor on the Closing Date, and (z) such other documents as Agent may reasonably request, all such documents to be in form and substance reasonably satisfactory to Agent and the Requisite Purchasers.

(B) Without limiting the foregoing clause (A), it is the intent of the parties that any other Subsidiary that is established, created or acquired by the Borrower or any other Note Party after the Closing Date become a Guarantor hereunder. Note Parties shall cause any such Subsidiary to become a Guarantor hereunder concurrently with the creation or acquisition thereof and shall cause such Subsidiary to execute and deliver (x) a joinder agreement in form and substance satisfactory to Agent, (y) each document that would have been required by Section 3.1 to be delivered to Agent with respect to such Subsidiary had such wholly-owned Subsidiary been a Guarantor on the Closing Date, and (z) such other documents as Agent may reasonably request, including opinions of counsel, all such documents to be in form and substance reasonably satisfactory to Agent and the Requisite Purchasers.

(C) The Note Parties acknowledge that it is their intention to provide Agent with a Lien on all of the Collateral, subject only to Liens permitted hereunder. The Note Parties shall from time to time promptly notify Agent of the acquisition by any Note Party of any material property constituting Collateral in which Agent does not then hold a perfected Lien, or the creation or existence of any such property constituting Collateral, and such Person shall, upon request by Agent, promptly, and in any event within 5 days of such request, execute and deliver to Agent or cause to be executed and delivered to Agent pledge agreements, security agreements, or other like agreements with respect to such property, together with such other documents, certificates, opinions of counsel and the like as Agent shall reasonably request in connection therewith, in form and substance reasonably satisfactory to Agent, such that Agent shall receive valid and perfected Liens with respect to Collateral on all such property constituting Collateral.

(D) Without limiting the foregoing, the Note Parties shall (and, subject to the extent applicable hereinafter set forth, shall cause each of their Subsidiaries to) take such additional actions and execute such documents as the Agent or Requisite Purchasers may reasonably require from time to time in order to carry out more effectively the purposes of this Agreement or any other Note Document.

5.7. Investment Banker. The Borrower agrees that the Borrower shall retain B. Riley as the Borrower's exclusive investment banker in connection with any effort by the Borrower to issue Equity Interests or borrow money or to enter into any merger, sale or acquisition transaction so long as such engagement is on commercial terms substantially consistent with those in the investment banking industry required by firms of similar scope of operations in the United States.

5.8. Post-Closing Obligations. The Borrower shall deliver, or cause to be delivered, the agreements, instruments and other documents set forth on Schedule 5.8 within the applicable time periods specified therein or in each case, such later date as may be agreed by the Agent in its sole discretion.

SECTION 6. [RESERVED]

SECTION 7. NEGATIVE COVENANTS

Each Note Party covenants and agrees that so long as any of the Obligations remain outstanding (other than contingent indemnification obligations to the extent no claims giving rise thereto have been asserted by the Person entitled thereto), such Note Party shall not, and will not permit any of its Subsidiaries to, violate any of the covenants set forth in this Section 7.

7.1. Indebtedness and Liabilities. No Note Party will, or will permit any Subsidiary to, directly or indirectly create, incur, assume, guaranty, or otherwise become or remain directly or indirectly liable, on a fixed or contingent basis, with respect to any Indebtedness except:

(A) the Obligations;

(B) Indebtedness existing on the Closing Date and identified on Schedule 7.1, but not any extensions, renewals or replacements of such Indebtedness except (i) renewals and extensions expressly provided for in the agreements evidencing any such Indebtedness as the same are in effect on the date of this Agreement, and (ii) refinancings and extensions of any such Indebtedness if the terms and conditions thereof, taken as a whole, are not less favorable to the obligor thereon than the Indebtedness being refinanced or extended, and the weighted average life to maturity thereof is greater than or equal to that of the Indebtedness being refinanced or extended; provided, such Indebtedness permitted under the immediately preceding clause (i) or (ii) above shall not (x) include Indebtedness of an obligor that was not an obligor with respect to the Indebtedness being extended, renewed or refinanced, or (y) exceed in a principal amount the Indebtedness being renewed, extended or refinanced (plus an amount equal to any unpaid accrued interest and premiums thereunder and other fees and expenses incurred in connection with such refinancing or extension);

(C) Indebtedness in the form of guarantees permitted by Section 7.2;

(D) Indebtedness consisting of customer deposits received by a Note Party or any Subsidiary in the ordinary course of business;

(E) Indebtedness consisting of intercompany loans permitted by Section 7.4;

(F) Indebtedness of the Borrower arising under the Sallyport Indebtedness Documents in an aggregate principal amount not to exceed $3,500,000;

(G) Indebtedness of the Borrower arising under the Subordinated Debentures in an aggregate principal amount of $15,205,528, *less* any principal payments of such Indebtedness made on or after the date hereof;

(H) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, provided that such Indebtedness is extinguished within ten (10) Business Days after its incurrence.

7.2. Guarantees. Neither any Note Party nor any of its Subsidiaries will guaranty, endorse, or otherwise in any way become or be responsible for any obligations of any other Person, whether directly or indirectly by agreement to purchase the indebtedness of any other Person or through the purchase of goods, supplies or services, or maintenance of working capital or other balance sheet covenants or conditions, or by way of stock purchase, capital contribution, advance or loan for the purpose of paying or discharging any indebtedness or obligation of such other Person or otherwise, except:

(A) as provided under the Note Documents;

(B) for endorsements of instruments or items of payment for collection in the ordinary course of business;

(C) guarantees by Note Parties of the obligations of other Note Parties;

(D) guarantees existing as of the Closing Date and listed in Schedule 7.2(D), including extension and renewals thereof which do not increase the amount of such guarantees as of the date of such extension or renewal (plus an amount equal to any unpaid accrued interest and premiums thereunder and other fees and expenses incurred in connection with such refinancing or extension);

(E) guarantees incurred in the ordinary course of business with respect to leases and other obligations not constituting Indebtedness; and

(F) guarantees arising with respect to customary indemnification obligations in favor of (i) sellers in connection with acquisitions permitted hereunder and (ii) purchasers in connection with dispositions permitted hereunder.

7.3. Transfers, Liens and Related Matters.

(A) Transfers. No Note Party will, or will permit any of its Subsidiaries to, sell, assign (by operation of law or otherwise) or otherwise dispose of, or grant any option with respect to any of the Collateral or the assets of any Note Party or any of its Subsidiaries, except:

(1) dispositions of Inventory in the ordinary course of business;

(2) dispositions of cash in the ordinary course of business;

(3) dispositions of (i) obsolete or worn out property and assets in the ordinary course of business, or (ii) property or assets no longer used or useful in the conduct of the business of the Borrower or its Subsidiaries;

(4) licenses, sublicenses, leases or subleases (excluding Intellectual Property license) granted to third parties in the ordinary course of business and not materially interfering with the business of the Borrower and any of its Subsidiaries;

(5) licensing or sublicensing on a non-exclusive basis of Intellectual Property in the ordinary course of business; and

(6) dispositions from any Note Party to any other Note Party;

provided however, no dispositions of Intellectual Property made to any Person (other than a Note Party) shall constitute a disposition permitted hereunder unless such disposition is subject to a non-exclusive royalty-free license of such Intellectual Property in favor of the Agent for use in connection with the exercise of rights and remedies of the Secured Parties under the Note Documents in respect of the Collateral, which license shall be substantially similar to the license described in Section 7.5(c) of the Security Agreement (or otherwise reasonably satisfactory to the Agent and the Requisite Purchasers).

(B) Liens. Except for Permitted Encumbrances, no Note Party will, or will permit any of its Subsidiaries to, directly or indirectly create, incur, assume or permit to exist any Lien on or with respect to any of the Collateral or any other assets or any proceeds, income or profits therefrom.

(C) No Negative Pledges. No Note Party will, or will permit any of its Subsidiaries to enter into or assume any agreement (other than (i) the Note Documents, (ii) the Sallyport Indebtedness Documents, (iii) the Subordinated Debentures, and (iv) any instrument or other document evidencing a Permitted Encumbrance (or the Indebtedness secured thereby) restricting on customary terms the transfer of any property or assets subject to such Permitted Encumbrance) prohibiting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired.

(D) No Restrictions on Subsidiary Distributions to Note Parties. No Note Party will, or will permit any of its Subsidiaries to, directly or indirectly create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any such Subsidiary to directly or indirectly: (i) pay dividends or make any other distribution on any of such Subsidiary's Equity Interests owned by a Note Party; (ii) pay any indebtedness owed to a Note Party; (iii) make loans or advances to a Note Party; or (iv) transfer any of its property or assets to a Note Party; provided that the foregoing shall not apply to:

(1) restrictions and conditions imposed by Applicable Law;

(2) restrictions and conditions under the Note Documents;

(3) restrictions and conditions existing on the Closing Date and listed on Schedule 7.3(D) and any extensions, renewals, refinancings, replacements, refundings, or modifications thereon (so long as any such extensions, renewals, refinancings, replacements, refundings, or modifications do not make any restriction or condition less favorable to the Borrower or any of its Subsidiaries in any material respect);

(4) restrictions and conditions imposed by organizational documents as of the Closing Date;

(5) customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale and pertaining only to such Subsidiary; provided that such sale is permitted hereunder;

(6) customary restrictions and conditions contained in agreements relating to a disposition of assets permitted by this agreement;

(7) restrictions and conditions that were binding on a Subsidiary or assets at the time such Subsidiary or assets were acquired, so long as such restrictions and conditions were not entered into in contemplation of this provision;

(8) customary restrictions or conditions imposed by an agreement governing Indebtedness permitted hereunder; and

(9) customary provisions in leases, licenses and other agreements restricting subletting, sublicensing or assignments, including the granting of a Lien.

7.4. Investments and Loans. No Note Party will, or will permit any of its Subsidiaries to, make or permit to exist investments in or loans to any other Person, except:

(A) loans and advances to employees for moving, entertainment, travel and other similar expenses in the ordinary course of business in an aggregate outstanding amount not in excess of $50,000 at any time;

(B) loans and investments by a Note Party to or in another Note Party;

(C) loans and investments by Subsidiaries that are not Note Parties to or in other Subsidiaries that are not Note Parties;

(D) Restricted Junior Payments permitted under Section 7.5 that constitute investments;

(E) loans and investments existing on the Closing Date and set forth on Schedule 7.4(E);

(F) the TS Acquisition;

(G) the creation of wholly-owned Subsidiaries, subject to compliance with the terms of Sections 5.6; and

(H) other investments in an outstanding amount not to exceed $100,000 in the aggregate at any time.

provided however, with respect to any investment consisting of Intellectual Property, such investment of Intellectual Property in any Person (other than a Note Party) shall not constitute an investment permitted hereunder unless such investment is subject to a non-exclusive royalty-free license of such Intellectual Property in favor of the Agent for use in connection with the exercise of rights and remedies of the Secured Parties under the Note Documents in respect of the Collateral, which license shall be substantially similar to the license described in Section 7.5(c) of the Security Agreement (or otherwise reasonably satisfactory to the Agent and the Requisite Purchasers).

7.5. Restricted Junior Payments. No Note Party will directly or indirectly declare, order, pay, make or set apart any sum for any Restricted Junior Payment, except that:

(A) Note Parties and their Subsidiaries may make distributions to Note Parties;

(B) The Borrower may, and the other Note Parties and their Subsidiaries may make distributions to the Borrower to allow the Borrower to, repurchase its (or its direct or indirect parent) Equity Interests from directors, executive officers, members of management or employees of the Borrower and its Subsidiaries upon the death, disability, retirement or termination of such directors, executive officers, members of management or employees, so long as no Default or Event of Default is then existing or would be created thereby and the aggregate amount of cash expended by the Borrower does not exceed $10,000 in the aggregate after the Closing Date;

(C) Note Parties and their Subsidiaries may make payments of interest and principal with respect to intercompany indebtedness incurred from a Note Party;

(D) Subsidiaries that are not Note Parties may make payments of interest and principal with respect to intercompany indebtedness incurred from another Subsidiary that is not a Note Party;

(E) Note Parties and their Subsidiaries may make payments permitted by Section 7.8(B); and

(F) Note Parties may make payments of principal, interest and other amounts with respect to Subordinated Indebtedness to the extent expressly permitted under the terms of the applicable Subordination Agreement.

7.6. Restriction on Fundamental Changes. No Note Party will, or will permit any of its Subsidiaries to:

(A) enter into any transaction of merger or consolidation;

(B) liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution); and

(C) except as permitted by Section 7.3, convey, sell, lease, sublease, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any substantial part of its business or assets, or the Equity Interests of any of its Subsidiaries, whether now owned or hereafter acquired,

provided, however, with respect to each of the foregoing clauses (A), (B) and (C):

(x) (i) Note Parties may merge with and into each other and/or into the Borrower, so long as, in the case of a merger with the Borrower, Borrower is the surviving entity, or (ii) Note Parties (other than the Borrower) may convey all or substantially all of their assets to each other or to the Borrower, or (iii) Note Parties (other than the Borrower) may liquidate, wind-up or dissolve, so long as any assets of such Note Party are transferred to another Note Party; and

(y) TST AcquisitionCo may merge with TheStreet in connection with the TS Acquisition, subject to compliance with Section 5.6(A).

7.7. Division. Notwithstanding anything herein or any other Note Document to the contrary, no Note Party that is a limited liability company may divide itself into two or more limited liability companies or series thereof (pursuant to a "plan of division" as contemplated under the Delaware Limited Liability Company Act or otherwise) without the prior written consent of the Agent.

7.8. Transactions with Affiliates. Except as expressly permitted by Section 7.5, no Note Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of the Borrower; provided, however, that the Note Parties and their Subsidiaries may enter into or permit to exist any such transaction if the terms of such transaction are not less favorable to such Note Party or that Subsidiary, as the case may be, than those that might be obtained at the time from a Person who is not an Affiliate; provided further that the foregoing restrictions shall not apply to:

(A) any transaction among any two or more Note Parties;

(B) reasonable and customary fees paid to members of the board of directors (or similar governing body) of the Note Parties and their Subsidiaries that are not employees of any of the Note Parties or their Subsidiaries; and

(C) transactions described in Schedule 7.8.

7.9. Conduct of Business. From and after the Closing Date, the Borrower will not, and will not permit any of its Subsidiaries to, engage in any business other than businesses of the type engaged in by the Borrower and its Subsidiaries on the Closing Date and the TheStreet on the Closing Date, and, in either case, other businesses reasonably related thereto.

7.10. Tax Consolidations. No Note Party will file or consent to the filing of any consolidated income tax return with any Person other than the Borrower, the Note Parties and their Subsidiaries unless required by Applicable Law.

7.11. TS Acquisition Documents. No Note Party will amend, modify or change the terms of any TS Acquisition Document without the prior written consent of the Agent. No Note Party will deliver any Joint Release Instruction under (and as defined in) the TS Escrow Agreement without the prior written consent of the Agent; provided however, in the event that such Joint Release Instructions are being delivered to release the escrowed funds solely to pay the consideration under the TS Acquisition Agreement after the occurrence of the Effective Time pursuant to (and as defined in) the TS Acquisition Agreement, (i) the prior written consent of the Agent shall not be required to deliver such Joint Release Escrow Instructions and (ii) the Borrower shall promptly deliver a copy of such Joint Release Escrow Instructions to the Agent.

7.12. Changes to Indebtedness Documents. No Note Party will amend, modify or change the terms of any Subordinated Indebtedness Document or the Sallyport Indebtedness Documents without the prior written consent of the Agent.

7.13. Sales and Lease-Backs. No Note Party shall, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which such Note Party (a) has sold or transferred or is to sell or to transfer to any other Person (other than the Borrower or any of its Subsidiaries), or (b) intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by such Note Party (other than the Borrower or any of its Subsidiaries) in connection with such lease.

7.14. Anti-Terrorism Laws. No Note Party shall, nor shall any Note Party permit any Subsidiary or any Person that, directly or indirectly, is in control of a Note Party to:

(A) conduct any business or engage in any transaction or dealing with any Blocked Person, including the making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person;

(B) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order No. 13224;

(C) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in the Executive Order No. 13224, the USA PATRIOT Act, or any other Anti-Terrorism Law; or

(D) become (including by virtue of being owned or controlled by a Blocked Person), own or control a Blocked Person or any Person that is the target of sanctions imposed by the United Nations or the European Union including the making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person.

7.15. Trading with the Enemy Act. No Note Party shall, nor shall any Note Party permit any Subsidiary or any Person that, directly or indirectly, is in control of a Note Party to engage in any business or activity in violation of the Trading with the Enemy Act.

SECTION 8. DEFAULT, RIGHTS AND REMEDIES

8.1. Event of Default. "Event of Default" means the occurrence or existence of any one or more of the following:

(A) Payment. Failure to pay any amount of principal, interest, fees, or any other amount payable hereunder or pursuant to any other Note Document after the same shall become due; or

(B) Breach of Warranty. Any representation, warranty, certification or other statement made by any Note Party in any Note Document or in any statement or certificate at any time given by such Person in writing pursuant or in connection with any Note Document is false in any material respect on the date made (without duplication of other materiality qualifiers contained therein); or

(C) Breach of Certain Provisions. Failure of any Note Party to perform or comply with any term or condition contained in Section 5.1, Section 5.4, Section 5.5 (with respect to each Note Party's corporate existence only), Section 5.6, Section 5.7, Section 5.8, or Section 7; or

(D) Other Defaults Under Note Documents. The Borrower or any of its Subsidiaries defaults in the performance of or compliance with any term contained in this Agreement other than those otherwise set forth in this Section 8.1, or defaults in the performance of or compliance with any term contained in any other Note Document and such default, in any such case, is not remedied within ten (10) days; or

(E) Default in Other Agreements. (1) Failure of any Note Party to pay when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) any principal or interest on any Indebtedness (other than the Obligations) having a principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) in excess of $500,000 individually or $1,000,000 in the aggregate for all such Indebtedness and such failure continues after the applicable grace or notice period, if any, specified in the document relating thereto on the date of such failure, or (2) any breach or default with respect to any Indebtedness of any Note Party (other than the Obligations) having a principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) in excess of $500,000 individually or $1,000,000 in the aggregate for all such Indebtedness and such failure continues beyond any applicable grace period, if such failure to breach or default entitles the holder to cause such Indebtedness to become or be declared due prior to its stated maturity (without regard to any subordination terms with respect thereto); or

(F) Change in Control. A Change In Control occurs; or

(G) Involuntary Bankruptcy; Appointment of Receiver, etc. (1) A court enters a decree or order for relief with respect to any Note Party in an involuntary case under any applicable bankruptcy, winding-up, insolvency or other similar law now or hereafter in effect, which decree or order is not stayed or other similar relief is not granted under any applicable federal, provincial or state law; or (2) the continuance of any of the following events for thirty (30) days unless dismissed, bonded or discharged: (a) an involuntary case is commenced against any Note Party, under any applicable bankruptcy, insolvency winding-up, or other similar law now or hereafter in effect; or (b) a receiver, liquidator, sequestrator, trustee, custodian or other fiduciary having similar powers over any Note Party, or over all or a substantial part of their respective property, is appointed; or

(H) Voluntary Bankruptcy; Appointment of Receiver, etc. (1) Any Note Party commences a voluntary case under any applicable bankruptcy, winding-up, insolvency or other similar law now or hereafter in effect, or consents to the entry of an order for relief in an involuntary case or to the conversion of an involuntary case to a voluntary case under any such law or consents to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or (2) any Note Party makes any assignment for the benefit of creditors; or (3) any Note Party voluntarily ceases to conduct its business in the ordinary course; or (4) the board of directors (or similar governing body) of any Note Party adopts any resolution or otherwise authorizes action to approve any of the actions referred to in this Section 8.1(H); or

(I) ERISA. A Termination Event shall have occurred that has resulted in liability to the Borrower and its Subsidiaries in an aggregate amount in excess of $500,000 individually or $1,000,000 in the aggregate with respect to all Termination Events and such liability remains unpaid for a period of two (2) Business Days; provided, that, no Lien is imposed on the Borrower, any of its Subsidiaries or their respective assets with respect to such liability; or

(J) Judgment, Attachments and Litigation. Any (i) money judgment, writ or warrant of attachment, or similar process involving an amount in any individual case in excess of $500,000 individually or $1,000,000 in the aggregate for all judgments (in any case not adequately covered by insurance that has not been denied as to which the insurance company has acknowledged coverage) is entered or filed against any Note Party or any of its respective assets and remains undischarged, unvacated, unbonded or unstayed for a period of thirty (30) days; or (ii) non-monetary judgment which could reasonably be expected to have a Material Adverse Effect is entered or filed against any Note Party or any of its respective assets and remains undischarged, unvacated, unbonded or unstayed for a period of thirty (30) days; or

(K) Invalidity of Subordination Provisions. The subordination and/or intercreditor provisions (if any) of any agreement or instrument governing the Subordinated Indebtedness or the Sallyport Indebtedness (if any) shall for any reason be revoked or invalidated, or otherwise cease to be in full force and effect (other than in accordance with its terms), or any Note Party shall contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder, or the Obligations, for any reason shall not have the priority contemplated by this Agreement or such subordination and/or intercreditor provisions; or

(L) Solvency. Any Note Party admits in writing its present or prospective inability to pay its debts as they become due; or

(M) Injunction. Any Note Party is enjoined, restrained or in any way prevented by the order of any court or any administrative or regulatory agency from conducting all or any material part of its business and such order continues for thirty (30) days or more and such order could reasonably be expected to have a Material Adverse Effect; or

(N) Invalidity of Note Documents. Any material provision of any of the Note Documents for any reason, other than a partial or full release in accordance with the terms thereof, ceases to be in full force and effect or is declared to be null and void, or any Note Party denies that it has any further liability under any Note Documents to which it is party, or gives notice to such effect; or

(O) Failure of Security. Agent, on behalf of itself and the other Secured Parties, does not have or ceases to have a valid, perfected security interest in any material portion of the Collateral (after giving effect to any releases permitted hereunder), in each case, for any reason other than (x) the failure of Agent or any other Secured Party to take any action within its control, or (y) as expressly contemplated by the Note Documents; or

(P) Damage, Strike, Casualty. Any material damage to, or loss, theft or destruction of, any Collateral, whether or not insured, or any strike, lockout, labor dispute, embargo, condemnation, act of God or public enemy, or other casualty which causes, for more than fifteen (15) consecutive days beyond the coverage period of any applicable business interruption insurance, the cessation or substantial curtailment of revenue producing activities at any facility of the Borrower or any of its Subsidiaries if any such event or circumstance could reasonably be expected to have a Material Adverse Effect; or

(Q) Licenses and Permits. The loss, suspension or revocation of, or failure to renew, any license or permit now held or hereafter acquired by any Note Party or any of their respective Subsidiaries, if such loss, suspension, revocation or failure to renew could reasonably be expected to have a Material Adverse Effect; or

(R) Material Adverse Effect. A Material Adverse Effect shall occur; or

(S) Forfeiture. There is filed against any Note Party or any of its Subsidiaries any civil or criminal action, suit or proceeding under any federal, state or foreign racketeering statute (including, without limitation, the Racketeer Influenced and Corrupt Organization Act of 1970), which action, suit or proceeding (1) is not dismissed within one hundred twenty (120) days; and (2) could reasonably be expected to result in the confiscation or forfeiture of any material portion of the Collateral.

8.2. Acceleration. Upon the occurrence of any Event of Default described in the foregoing Sections 8.1(G) or 8.1(H), all Obligations shall automatically become immediately due and payable, without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by each Note Party. Upon the occurrence and during the continuance of any other Event of Default, Agent may, and upon demand by Requisite Purchasers shall, by written notice to Borrower, declare all or any portion of the Obligations to be, and the same shall forthwith become, immediately due and payable.

8.3. Remedies. If any Event of Default shall have occurred and be continuing, in addition to and not in limitation of any other rights or remedies available to Agent and the other Secured Parties at law or in equity, Agent may, and shall upon the request of Requisite Purchasers, exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Collateral) and other Applicable Law and may also (a) require Note Parties to, and each Note Party hereby agrees that it will, at its expense and upon request of Agent forthwith, assemble all or part of the Collateral as directed by Agent and make it available to Agent at a place to be designated by Agent which is reasonably convenient to both parties; (b) withdraw all cash in any Deposit Account subject to a Control Agreement and apply such monies in payment of the Obligations in the manner provided in Section 8.6; and (c) without notice or demand or legal process, enter upon any premises of any Note Party and take possession of the Collateral. Each Note Party agrees that, to the extent notice of sale of the Collateral or any part thereof shall be required by law, at least ten (10) days' notice to Borrower of the time and place of any public disposition or the time after which any private disposition (which notice shall include any other information required by law) is to be made shall constitute reasonable notification. At any disposition of the Collateral (whether public or private), if permitted by law, Agent (at the direction of the Requisite Purchasers) may bid (which bid may be, in whole or in part, in the form of cancellation of indebtedness, credit bid or set-off) for the purchase, lease, or licensing of the Collateral or any portion thereof for the account of the Secured Parties. Agent shall not be obligated to make any disposition of Collateral regardless of notice of disposition having been given. Each Note Party shall remain liable for any deficiency. Agent may adjourn any public or private disposition from time to time by announcement at the time and place fixed therefor, and such disposition may, without further notice, be made at the time and place to which it was so adjourned. Agent is not obligated to make any representations or warranties in connection with any disposition of the Collateral. To the extent permitted by law, each Note Party hereby specifically waives all rights of redemption, stay or appraisal, which it has or may have under any law now existing or hereafter, enacted. Agent shall not be required to proceed against any Collateral and may proceed against one or more Note Parties directly.

8.4. Appointment of Attorney-in-Fact. Each Note Party hereby constitutes and appoints Agent as such Note Party's attorney-in-fact with full authority in the place and stead of such Note Party and in the name of such Note Party, Agent or otherwise, from time to time in Agent's discretion while an Event of Default is continuing to take any action and to execute any instrument that Agent may deem necessary or advisable to accomplish the purposes of this Agreement, including: (a) to ask, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral; (b) to enforce the obligations of any Account Debtor or other Person obligated on the Collateral and enforce the rights of any Note Party with respect to such obligations and to any property that secures such obligations; (c) to file any claims or take any action or institute any proceedings that Agent may deem necessary or desirable for the collection of or to preserve the value of any of the Collateral or otherwise to enforce the rights of Agent and the other Secured Parties with respect to any of the Collateral; (d) to pay or discharge taxes or Liens levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by Agent in its sole discretion, and such payments made by Agent to become Obligations, due and payable immediately without demand; (e) to sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, assignments, verifications and notices in connection with Accounts, Chattel Paper or General Intangibles and other Documents relating to the Collateral; and (f) generally to take any act required of any Note Party under Section 4 or Section 5 of this Agreement or any Security Document, and to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Agent were the absolute owner thereof for all purposes, and to do, at Agent's option and Note Parties' expense, at any time or from time to time, all acts and things that Agent deems necessary to protect, preserve or realize upon the Collateral. Each Note Party hereby ratifies and approves all acts of Agent made or taken pursuant to this Section 8.4. The appointment of Agent as each Note Party's attorney and Agent's rights and powers are coupled with an interest and are irrevocable until payment in full, in cash, of all Obligations (other than contingent indemnification obligations to the extent no claims giving rise thereto have been asserted by the Person entitled thereto).

8.5. Limitation on Duty of Agent and Purchasers with Respect to Collateral. Beyond the safe custody thereof, Agent and each other Secured Party shall have no duty with respect to any Collateral in its possession (or in the possession of any agent or bailee) or with respect to any income thereon or the preservation of rights against prior parties or any other rights pertaining thereto. Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which Agent accords its own property. Neither Agent nor any other Secured Party shall be liable or responsible for any loss or damage to any of the Collateral, or for any diminution in the value thereof, by reason of the act or omission of any warehouse, carrier, forwarding agency, consignee, broker or other agent or bailee selected by Note Parties or selected by Agent in good faith.

8.6. Application of Proceeds. Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, (a) each Note Party irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Agent from or on behalf of any Note Party, and Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received at any time or times after the occurrence and during the continuance of an Event of Default against the Obligations in such manner as Agent may deem advisable notwithstanding any previous application by Agent, but in all events subject to Section 8.6(b), and (b) after the occurrence and during the continuance of an Event of Default, Agent may, and upon the direction of the Requisite Purchasers shall, apply all proceeds of the Collateral, and in any event Agent shall apply any proceeds of Collateral with respect to any sale of, collection from or other realization upon all or any part of the Collateral pursuant to the exercise in accordance with the terms of the Note Documents by Agent of its rights or remedies during an Event of Default or received in connection with an insolvency proceeding with respect to any Note Party, subject to the provisions of this Agreement, as follows: (i) first, ratably to pay the Obligations in respect of any fees, expense reimbursements, indemnities and other amounts then due and payable to Agent until paid in full; (ii) second, ratably to pay the Obligations in respect of any fees, expense reimbursements and indemnities then due and payable to the Purchasers until paid in full; (iii) third, ratably to pay interest then due and payable in respect of the Obligations until paid in full; (iv) fourth, ratably to pay principal of the Obligations (or, to the extent such Obligations are contingent, to provide cash collateral in respect of such Obligations in accordance with this Agreement) until paid in full; (v) fifth, to the ratable payment of all other Obligations then due and payable; and (v) last, any balance remaining shall be delivered to the Borrower or to whomever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. All amounts allocated pursuant to the foregoing clauses (ii) through (v) to the Purchasers shall be allocated among and distributed to the Purchasers pro rata based on each Purchaser's share of the Obligations.

8.7. Waivers; Non-Exclusive Remedies. No failure on the part of Agent or any other Secured Party to exercise, and no delay in exercising and no course of dealing with respect to, any right under this Agreement or the other Note Documents shall operate as a waiver thereof; nor shall any single or partial exercise by Agent or any other Secured Party of any right under this Agreement or any other Note Document preclude any other or further exercise thereof or the exercise of any other right. The rights in this Agreement and the other Note Documents are cumulative and shall in no way limit any other remedies provided by law.

SECTION 9. AGENT

9.1. Agent.

(A) Appointment. Each Purchaser hereto and, upon obtaining an interest in any Note, any participant, transferee or other assignee of any Purchaser irrevocably appoints, designates and authorizes BRF Finance Co., LLC as Agent to take such actions or refrain from taking such action as its agent on its behalf and to exercise such powers hereunder and under the other Note Documents as are delegated by the terms hereof and thereof, together with such powers as are reasonably incidental thereto. Neither Agent nor any of its directors, officers, employees or agents shall be liable for any action so taken. The provisions of this Section 9.1 are solely for the benefit of Agent and Purchasers and neither the Borrower nor any other Note Party shall have any rights as a third party beneficiary of any of the provisions hereof (other than as set forth in Sections 9.1(G), (H) and (K)). In performing its functions and duties under this Agreement and the other Note Documents, Agent shall act solely as agent of Purchasers and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for the Borrower or any other Note Party. Agent may perform any of its duties hereunder, or under the Note Documents, by or through its agents or employees.

(B) Nature of Duties. Agent shall have no duties, obligations or responsibilities except those expressly set forth in this Agreement or in the other Note Documents. Agent shall not have by reason of this Agreement a fiduciary, trust or agency relationship with or in respect of any Purchaser, the Borrower or any other Note Party. Each Purchaser shall make its own appraisal of the credit worthiness of each Note Party, and shall have independently taken whatever steps it considers necessary to evaluate the financial condition and affairs of Note Parties, and Agent shall have no duty or responsibility, either initially or on a continuing basis, to provide any Purchaser with any credit or other information with respect thereto (other than as expressly required herein), whether coming into its possession before the Closing Date or at any time or times thereafter.

(C) Rights, Exculpation, Etc. Neither Agent nor any of its officers, directors, employees or agents shall be liable to any Purchaser for any action taken or omitted by them hereunder or under any of the Note Documents, or in connection herewith or therewith, except that Agent shall be liable to the extent of its own gross negligence or willful misconduct as determined by a final non-appealable judgment by a court of competent jurisdiction. Agent shall not be liable for any apportionment or distribution of payments made by it in good faith and if any such apportionment or distribution is subsequently determined to have been made in error, the sole recourse of any Purchaser to whom payment was due but not made, shall be to recover from other Purchasers any payment in excess of the amount to which they are determined to be entitled (and such other Purchasers hereby agree to return to such Purchaser any such erroneous payments received by them). Neither Agent nor any of its agents or representatives shall be responsible to any Purchaser for any recitals, statements, representations or warranties herein or for the execution, effectiveness, genuineness, validity, enforceability, collectability, or sufficiency of this Agreement or any of the other Note Documents or the transactions contemplated thereby, or for the financial condition of any Note Party. Agent shall not be responsible for or be required to make any inquiry concerning (i) the performance or observance of any of the terms, provisions or conditions of this Agreement or any of the other Note Documents, (ii) the financial condition of any Note Party, (iii) the contents of any certificate, report or other document delivered hereunder or any other Note Document or in connection herewith or therewith, or (iv) the existence or possible existence of any Default or Event of Default. Agent may at any time request instructions from Purchasers with respect to any actions or approvals which by the terms of this Agreement or of any of the other Note Documents Agent is permitted or required to take or to grant, and if such instructions are promptly requested, Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from any action or withholding any approval under any of the Note Documents until it shall have received such instructions from Requisite Purchasers or all or such other portion of the Purchasers as shall be prescribed by this Agreement. Without limiting the foregoing, no Purchaser shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting under this Agreement or any of the other Note Documents in accordance with the instructions of Requisite Purchasers in the absence of an express requirement for a greater percentage of Purchaser approval hereunder for such action.

(D) Reliance. Agent shall be under no duty to examine, inquire into, or pass upon the validity, effectiveness or genuineness of this Agreement, any other Note Document, or any instrument, document or communication furnished pursuant hereto or in connection herewith. Agent shall be entitled to rely, and shall be fully protected in relying, upon any written or oral notices, statements, certificates, orders or other documents or any telephone message or other communication (including any writing or fax) believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person. With respect to all matters pertaining to this Agreement or any of the other Note Documents and its duties hereunder or thereunder, Agent shall be entitled to rely upon the advice of legal counsel, independent accountants, and other experts selected by Agent in its sole discretion.

(E) Indemnification. Purchasers will reimburse and indemnify Agent for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including, without limitation, reasonable attorneys' fees and expenses), advances or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against Agent in any way relating to or arising out of this Agreement or any of the other Note Documents or any action taken or omitted by Agent under this Agreement or any of the other Note Documents, in proportion to each Purchaser's pro rata share of the Obligations, but only to the extent that any of the foregoing is not promptly reimbursed by Note Parties; provided, however, no Purchaser shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, advances or disbursements resulting from Agent's gross negligence or willful misconduct as determined by a final non-appealable judgment by a court of competent jurisdiction. If any indemnity furnished to Agent for any purpose shall, in the opinion of Agent, be insufficient or become impaired, Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against, even if so directed by Purchasers or Requisite Purchasers, until such additional indemnity is furnished. The obligations of Purchasers under this Section 9.1(E) shall survive the payment in full of the Obligations and the termination of this Agreement.

(F) B. Riley Individually. With respect to the Notes purchased by it as a Purchaser, B. Riley shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Purchaser. The terms "Purchasers" or "Requisite Purchasers" or any similar terms shall, unless the context clearly otherwise indicates, include B. Riley in its individual capacity as a Purchaser or one of the Requisite Purchasers. B. Riley, either directly or through strategic affiliations, may lend money to, acquire equity or other ownership interests in, provide advisory services to and generally engage in any kind of banking, trust or other business with any Note Party as if it were not acting as Agent pursuant hereto and without any duty to account therefor to Purchasers. B. Riley, either directly or through strategic affiliations, may accept fees and other consideration from any Note Party for services in connection with this Agreement or otherwise without having to account for the same to Purchasers.

(G) Successor Agent.

(1) Resignation. Agent may resign from the performance of all its agency functions and duties hereunder at any time by giving at least five (5) Business Days' prior written notice to Borrower and the Purchasers. Such resignation shall take effect upon the acceptance by a successor Agent of appointment as provided below.

(2) Appointment of Successor. Upon any such notice of resignation pursuant to Section 9.1(G)(1) above, Requisite Purchasers shall appoint a successor Agent. If a successor Agent shall not have been so appointed within said thirty (30) Business Day period, the retiring Agent, upon notice to Borrower, may then appoint a successor Agent who shall serve as Agent until such time, if any, as Requisite Purchasers appoint a successor Agent as provided above.

(3) Successor Agent. Upon the acceptance of any appointment as Agent under the Note Documents by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from its duties and obligations under the Note Documents. After any retiring Agent's resignation as Agent, the provisions of this Section 9, Section 11.1 and Section 11.2 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent.

(H) Collateral and Guaranty Matters.

(1) Release of Collateral. Purchasers hereby irrevocably authorize and direct Agent to release (or, in the case of sub-clause (c) below, release or subordinate) any Lien granted to or held by Agent upon any Collateral (a) upon payment and satisfaction of all Obligations (other than contingent indemnification obligations to the extent no claims giving rise thereto have been asserted by the Person entitled thereto) or (b) constituting property being sold or disposed of, if the applicable Note Party certifies to Agent that the sale, disposition or lien is made or granted in compliance with the provisions of this Agreement (and Agent may rely in good faith conclusively on any such certificate, without further inquiry); or (c) of any Subsidiary Guarantor being released pursuant to Section 9.1(H)(2).

(2) Release of Guaranty. Purchasers hereby irrevocably authorize and direct Agent to release any Subsidiary Guarantor from its obligations under its Guaranty and under the other Note Documents to which it is a party if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder.

(3) Confirmation of Authority; Execution of Releases. Without in any manner limiting Agent's authority to act without any specific or further authorization or consent by Purchasers (as set forth in Sections 9.1(H)(1) and 9.1(H)(2) above), each Purchaser agrees to confirm in writing, upon request by Agent or Borrower, the authority to release any (i) Collateral conferred upon Agent under Section 9.1(H)(1) and (ii) to release any Subsidiary Guarantor under Section 9.1(H)(2). To the extent any Note Party requests that Agent release (or subordinate) any Lien granted to or held by Agent as authorized under Section 9.1(H)(1) or release any Subsidiary Guarantor under Section 9.1(H)(2), (a) Agent shall, and is hereby irrevocably authorized by Purchasers to, execute such documents as may be necessary to evidence (I) the release of the Liens granted to Agent, for the benefit of Agent and Purchasers, upon such Collateral and (II) the release of such Subsidiary Guarantor; provided, however, that Agent shall not be required to execute any such document on terms which, in Agent's opinion, would expose Agent to liability or create upon Agent any obligation or entail any consequence other than the release of such Liens or the release of such Subsidiary Guarantor without recourse or warranty, and (b) Note Parties shall provide at least ten (10) Business Days (or such shorter period as agreed to by Agent in its reasonable discretion) prior written notice of any request for any document evidencing such release (or subordination) of the Liens or such release of the Subsidiary Guarantor and Note Parties agree that any such release (or subordination) shall not in any manner discharge, affect or impair the Obligations or any Liens or any Liens granted to Agent on behalf of Agent and Purchasers upon (or obligations of any Note Party, in respect of) all interests retained by any Note Party, including, without limitation, the proceeds of any sale, all of which shall continue to constitute part of the property covered by this Agreement or the Note Documents.

(4) Absence of Duty. Agent shall have no obligation whatsoever to any Purchaser or any other Person to assure that the property covered by this Agreement or the Note Documents exists or is owned by any Note Party or is cared for, protected or insured or has been encumbered or that the Liens granted to Agent on behalf of Agent and Purchasers herein or pursuant hereto have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Agent in this Agreement or in any of the other Note Documents.

(I) Agency for Perfection. Agent and each Purchaser hereby appoint each other Purchaser as agent for the purpose of perfecting Agent's security interest in assets which, in accordance with the Uniform Commercial Code in any applicable jurisdiction, can be perfected by possession or control. Should any Purchaser (other than Agent) obtain possession of any such assets, such Purchaser shall notify Agent thereof, and, promptly upon Agent's request therefor, shall deliver such assets to Agent or in accordance with Agent's instructions. Agent may file such proofs of claim or documents as may be necessary or advisable in order to have the claims of Agent and the Purchasers (including any claim for the reasonable compensation, expenses, disbursements and advances of Agent and the Purchasers, their respective agents, financial advisors and counsel), allowed in any judicial proceedings relative to any Note Party and/or its Subsidiaries, or any of their respective creditors or property, and shall be entitled and empowered to collect, receive and distribute any monies, securities or other property payable or deliverable on any such claims. Any custodian in any judicial proceedings relative to any Note Party and/or its Subsidiaries is hereby authorized by each Purchaser to make payments to Agent and, in the event that Agent shall consent to the making of such payments directly to the Purchasers, to pay to Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Agent, its agents, financial advisors and counsel, and any other amounts due Agent. Nothing contained in this Agreement or the other Note Documents shall be deemed to authorize Agent to authorize or consent to or accept or adopt on behalf of any Purchaser any plan of reorganization, arrangement, adjustment or composition affecting the Notes, or the rights of any holder thereof, or to authorize Agent to vote in respect of the claim of any Purchaser in any such proceeding, except as specifically permitted herein.

(J) Exercise of Remedies. Each Purchaser agrees that it will not have any right individually to enforce or seek to enforce this Agreement or any other Note Document or to realize upon any collateral security for the Obligations, unless instructed to do so by Agent, it being understood and agreed that such rights and remedies may be exercised only by Agent. Without limiting the generality of the foregoing, neither Agent nor Purchasers may exercise any right that it might otherwise have under Applicable Law to credit bid at foreclosure sales, uniform commercial code sales or other similar sales or dispositions of any of the Collateral except as authorized by the Requisite Purchasers.

9.2. Notice of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default except with respect to defaults in the payment of principal, interest and fees required to be paid to Agent for the account of Purchasers, unless Agent shall have received written notice from a Purchaser or Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". Agent will notify each Purchaser of its receipt of any such notice.

9.3. Action by Agent. Agent shall take such action with respect to any Default or Event of Default as may be requested by Requisite Purchasers in accordance with Section 8. Unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to any Default or Event of Default as it shall deem advisable or in the best interests of Purchasers.

9.4. Amendments, Waivers and Consents.

(A) Percentage of Purchasers Required. Except as otherwise provided herein or in any of the other Note Documents, no amendment, modification, termination or waiver of any provision of this Agreement or any other Note Document, or consent to any departure by any Note Party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Requisite Purchasers (or, Agent, if expressly set forth herein or in any of the other Note Documents) and the applicable Note Party; provided however, no amendment, modification, termination, waiver or consent shall:

(1) subject any Purchaser to any additional obligation or reduce the principal of or the rate of interest on any Note (other than as a result of any waiver of the applicability of any post-default increase) or reduce the fees payable with respect to any Note or postpone or extend any scheduled date fixed for any payment of principal of, or interest, fees, or premium on, the Notes payable to any Purchaser, in each case, without the consent of each Purchaser directly and adversely affected thereby;

(2) amend the definition of Requisite Purchasers without the consent of each Purchaser directly and adversely affected thereby;

(3) amend, modify or waive any provision of this Section 9.4 without the consent of each Purchaser directly and adversely affected thereby;

(4) release all or substantially all of the Collateral or all or substantially all of the value of the Guaranties (except as expressly provided in the Note Documents), without the consent of each Purchaser;

(5) consent to the assignment, delegation or other transfer by any Note Party of any of its rights and obligations under any Note Document, without the consent of each Purchaser;

(6) without the consent of Agent, amend, modify or waive any provision of this Agreement or any other Note Document as same applies to Agent or as same relates to the rights or obligations of such Agent;

(7) amend, modify or waive any provision hereof in any manner that would alter the order of treatment or the pro rata sharing of payments required thereby without the consent of each Purchaser directly and adversely affected thereby; or

(8) subordinate (x) all or substantially all of the Liens granted pursuant to the Note Documents or (y) the Obligations, in each case other than as otherwise expressly permitted hereunder.

Any amendment, modification, termination, waiver or consent effected in accordance with this Section 9 shall be binding upon each Purchaser or future Purchaser and, if signed by a Note Party, on such Note Party.

(B) Specific Purpose or Intent. Each amendment, modification, termination, waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No amendment, modification, termination, waiver or consent shall be required for Agent to take additional Collateral.

Notwithstanding anything in this Section 9.4, Agent and the Borrower, without the consent of either Requisite Purchasers or all Purchasers, may execute amendments to this Agreement and the other Note Documents, to (1) cure any ambiguity, omission, defect or inconsistency therein, or (2) grant a new Lien for the benefit of the Secured Parties, extend an existing Lien over additional property for the benefit of the Secured Parties or join additional Persons as Note Parties.

9.5. Set-Off and Sharing of Payments.

(A) In addition to any rights now or hereafter granted under Applicable Law and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Event of Default, each Purchaser is hereby authorized by each Note Party at any time or from time to time, without notice or demand (each of which is hereby waived by each Note Party) to set-off and to appropriate and to apply any and all (a) balances held by such Purchaser at any of its offices for the account of Note Parties (regardless of whether such balances are then due to Note Parties), and (b) other property at any time held or owing by such Purchaser to or for the credit or for the account of Note Parties, against and on account of any of the Obligations; except that no Purchaser shall exercise any such right without the prior written consent of Agent.

(B) If any Purchaser shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Notes or other obligations hereunder resulting in such Purchaser receiving payment of a proportion of the aggregate amount of its Notes and accrued interest thereon or other such obligations greater than its pro rata share thereof as provided herein, then the Purchaser receiving such greater proportion shall (a) notify Agent of such fact, and (b) purchase (for cash at face value) participations in the Notes and such other obligations of the other Purchasers, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Purchasers ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Notes and other amounts owing them; provided that:

(1) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(2) the provisions of this paragraph shall not be construed to apply to (x) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement, or (y) any payment obtained by a Purchaser as consideration for the assignment of any of its Notes to any assignee, other than to the Borrower or any Subsidiary thereof (as to which the provisions of this paragraph shall apply).

(C) Each Note Party consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Purchaser acquiring a participation pursuant to the foregoing arrangements may exercise against each Note Party rights of setoff and counterclaim with respect to such participation as fully as if such Purchaser were a direct creditor of each Note Party in the amount of such participation.

9.6. Intercreditor and Subordination Agreements. Each Purchaser and each other holder of Obligations irrevocably (a) authorizes and directs the Agent to execute and deliver the Sallyport Intercreditor Agreement and each Subordination Agreement on behalf of such Purchaser or such holder and to take all actions (and execute all documents) required (or deemed advisable) by it in accordance with the terms of such agreements, in each case without any further consent, authorization or other action by such Purchaser or holder, (b) agrees that, upon the execution and delivery thereof, such Purchaser and holder will be bound by the provisions of the Sallyport Intercreditor Agreement and each Subordination Agreement as if it were a signatory thereto and will take no actions contrary to the provisions of the Intercreditor Agreement, and (c) agrees that no such Purchaser or holder shall have any right of action whatsoever against the Agent as a result of any action taken by Agent pursuant to this Section or in accordance with the terms of the Sallyport Intercreditor Agreement and each Subordination Agreement.

SECTION 10. GUARANTY.

10.1. Unconditional Guaranty. Each Guarantor hereby unconditionally guarantees, as a primary obligor and not merely as a surety, jointly and severally with each other Guarantor when and as due, whether at maturity, by acceleration, by notice of prepayment or otherwise, the due and punctual performance of all Obligations. Without limiting the generality of the foregoing, each Guarantor's liability shall extend to all amounts that constitute part of the Obligations and would be owed by any Note Party to Agent or the other Secured Parties under any Note Document but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving any Note Party. Each payment made by any Guarantor pursuant to the guaranty contained in this Section 10 (the "Guaranty") shall be made in lawful money of the United States in immediately available funds, (a) without set-off or counterclaim and (b) free and clear of and without deduction or withholding for or on account of any present and future Charges and any conditions or restrictions resulting in Charges unless Guarantor is compelled by law to make payment subject to such Charges.

10.2. Charges. All Charges in respect of the Guaranty or any amounts payable or paid under the Guaranty shall be paid by Guarantors when due and in any event prior to the date on which penalties attach thereto. Each Guarantor will indemnify Agent and each of the other Secured Parties against and in respect of all such Charges. Without limiting the generality of the foregoing, if any Charges or amounts in respect thereof must be deducted or withheld from any amounts payable or paid by any Guarantor hereunder, such Guarantor shall pay such additional amounts as may be necessary to ensure that Agent and each of the other Secured Parties receives a net amount equal to the full amount which it would have received had payment (including any additional amounts payable under this Section 10.2) not been made subject to such Charges.

10.3. Waivers of Notice, Demand, etc. Each Guarantor hereby absolutely, unconditionally and irrevocably waives (a) promptness, diligence, notice of acceptance, notice of presentment of payment and any other notice hereunder, (b) demand of payment, protest, notice of dishonor or nonpayment, notice of the present and future amount of the Obligations and any other notice with respect to the Obligations, (c) any requirement that Agent or any other Secured Party protect, secure, perfect or insure any security interest or Lien or any property subject thereto or exhaust any right or take any action against any other Note Party, or any Person or any Collateral, (d) any other action, event or precondition to the enforcement hereof or the performance by each such Guarantor of the Obligations, and (e) any defense arising by any lack of capacity or authority or any other defense of any Note Party or any notice, demand or defense by reason of cessation from any cause of Obligations (other than payment and performance in full in cash of the Obligations by the Note Parties) and any defense that any other guarantee or security was or was to be obtained by Agent.

10.4. No Invalidity, Irregularity, etc. No invalidity, irregularity, voidableness, voidness or unenforceability of this Agreement or any other Note Document or any other agreement or instrument relating thereto, or of all or any part of the Obligations or of any collateral security therefor shall affect, impair or be a defense hereunder.

10.5. Independent Liability. The Guaranty is one of payment and performance, not collection, and the obligations of each Guarantor under this Guaranty are independent of the Obligations of the other Note Parties, and a separate action or actions may be brought and prosecuted against any Guarantor to enforce the terms and conditions of this Section 10, irrespective of whether any action is brought against any other Note Party or other Persons or whether any other Note Party or other Persons are joined in any such action or actions. Each Guarantor waives any right to require that any resort be had by Agent or any other Secured Party to any security held for payment of the Obligations or to any balance of any deposit account or credit on the books of any Agent or any other Secured Party in favor of any Note Party or any other Person. No election to proceed in one form of action or proceedings, or against any Person, or on any Obligations, shall constitute a waiver of Agent's right to proceed in any other form of action or proceeding or against any other Person unless Agent has expressed any such waiver in writing. Without limiting the generality of the foregoing, no action or proceeding by Agent against any Note Party under any document evidencing or securing indebtedness of any Note Party to Agent shall diminish the liability of any Guarantor hereunder, except to the extent Agent receives actual payment on account of Obligations by such action or proceeding, notwithstanding the effect of any such election, action or proceeding upon the right of subrogation of any Guarantor in respect of any Note Party.

10.6. Liability Absolute. The liability of each Guarantor under the Guaranty shall be absolute, unlimited and unconditional and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason, including, without limitation, any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any claim, defense or set-off, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any other Obligation or otherwise. Without limiting the generality of the foregoing, the obligations of each Guarantor shall not be discharged or impaired, released, limited or otherwise affected by:

(i) any change in the manner, place or terms of payment or performance, and/or any change or extension of the time of payment or performance of, release, renewal or alteration of, or any new agreements relating to any Obligation, any security therefor, or any liability incurred directly or indirectly in respect thereof, or any rescission of, or amendment, waiver or other modification of, or any consent to departure from, this Agreement or any other Note Document, including any increase in the Obligations resulting from the extension of additional credit to the Borrower or otherwise;

(ii) any sale, exchange, release, surrender, loss, abandonment, realization upon any property by whomsoever at any time pledged or mortgaged to secure, or howsoever securing, all or any of the Obligations, and/or any offset there against, or failure to perfect, or continue the perfection of, any Lien in any such property, or delay in the perfection of any such Lien, or any amendment or waiver of or consent to departure from any other guaranty for all or any of the Obligations;

(iii) the failure of Agent or any other Secured Party to assert any claim or demand or to enforce any right or remedy against the Borrower or any other Note Party or any other Person under the provisions of this Agreement or any Note Document or any other document or instrument executed and delivered in connection herewith or therewith;

(iv) any settlement or compromise of any Obligation, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and any subordination of the payment of all or any part thereof to the payment of any obligation (whether due or not) of any Note Party to creditors of any Note Party other than any other Note Party;

(v) any manner of application of Collateral, or proceeds thereof, to all or any of the Obligations, or any manner of sale or other disposition of any Collateral for all or any of the Obligations or any other assets of any Note Party; and

(vi) other than payment and performance in full in cash of the Obligations by the Note Parties, any other agreements or circumstance (including any statute of limitations) of any nature whatsoever that may or might in any manner or to any extent vary the risk of any Guarantor, or that might otherwise at law or in equity constitute a defense available to, or a discharge of, the Guaranty and/or the obligations of any Guarantor, or a defense to, or discharge of, any Note Party or any other Person or party hereto or the Obligations or otherwise with respect to the Notes or other financial accommodations to the Borrower pursuant to this Agreement and/or the Note Documents.

10.7. Action by Agent Without Notice. Agent shall have the right to take any action set forth in Section 8.3 or any other Security Document without notice to or the consent of any Guarantor and each Guarantor expressly waives any right to notice of, consent to, knowledge of and participation in any agreements relating to any of the above or any other present or future event relating to Obligations whether under this Agreement or otherwise or any right to challenge or question any of the above and waives any defenses of such Guarantor which might arise as a result of such actions.

10.8. Application of Proceeds. Agent may at any time and from time to time (whether prior to or after the revocation or termination of this Agreement) without the consent of, or notice to, any Guarantor, and without incurring responsibility to any Guarantor or impairing or releasing the Obligations, apply any sums by whomsoever paid or howsoever realized to any Obligations regardless of what Obligations remain unpaid.

10.9. Continuing Effectiveness.

(A) Reinstatement. The Guaranty provisions herein contained shall continue to be effective or be reinstated, as the case may be, if claim is ever made upon Agent or any other Secured Party for repayment or recovery of any amount or amounts received by such Person in payment or on account of any of the Obligations and such Person repays all or part of said amount for any reason whatsoever, including, without limitation, by reason of any judgment, decree or order of any court or administrative body having jurisdiction over such Person or the respective property of each, or any settlement or compromise of any claim effected by such Person with any such claimant (including any Note Party); and in such event each Guarantor hereby agrees that any such judgment, decree, order, settlement or compromise or other circumstances shall be binding upon such Guarantor, notwithstanding any revocation hereof or the cancellation of any note or other instrument evidencing any Obligation, and each Guarantor shall be and remain liable to Agent and/or the other Secured Parties for the amount so repaid or recovered to the same extent as if such amount had never originally been received by such Person(s).

(B) No Marshalling. Agent shall not be required to marshal any assets in favor of any Guarantor, or against or in payment of Obligations.

(C) Priority of Claims. No Guarantor shall be entitled to claim against any present or future security held by Agent from any Person for Obligations in priority to or equally with any claim of Agent, or assert any claim for any liability of any Note Party to any Guarantor in priority to or equally with claims of Agent for Obligations, and no Guarantor shall be entitled to compete with Agent with respect to, or to advance any equal or prior claim to any security held by Agent for Obligations.

(D) Invalidated Payments. If any Note Party makes any payment to Agent, which payment is wholly or partly subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to any Person under any federal or provincial statute or at common law or under equitable principles, then to the extent of such payment, the Obligation intended to be paid shall be revived and continued in full force and effect as if the payment had not been made, and the resulting revived Obligation shall continue to be guaranteed, uninterrupted, by each Guarantor hereunder.

(E) Assignment and Waiver. All present and future monies payable by any Note Party to any Guarantor, whether arising out of a right of subrogation or otherwise, are assigned to Agent for its benefit and for the ratable benefit of the other Secured Parties as security for such Guarantor's liability to Agent and the other Secured Parties hereunder and, after the occurrence and during the continuance of any Event of Default, each Guarantor waives any right to demand any and all present and future monies payable by any Note Party to such Guarantor, whether arising out of a right of subrogation or otherwise. This assignment and waiver shall only terminate upon payment in full in cash of the Obligations (other than contingent indemnification obligations to the extent no claims giving rise thereto have been asserted by the Person entitled thereto).

(F) Payments to Guarantors. Each Note Party acknowledges the assignment and waiver contained in sub-clause (E) above, and agrees to make no payments to any Guarantor after the occurrence and during the continuance of an Event of Default without the prior written consent of Agent. Each Note Party agrees to give full effect to the provisions hereof.

(G) Limitation of Liability. Agent, other Secured Parties, and each Guarantor hereby confirm that it is the intention of all such Persons that the Guaranty and the obligations of each Guarantor thereunder not constitute a fraudulent transfer or conveyance under any federal, state, provincial or foreign bankruptcy, insolvency, receivership or similar law to the extent applicable to the Guaranty and the obligations of each Guarantor thereunder. To effectuate the foregoing intention, Agent, other Secured Parties and each Guarantor hereby irrevocably agree that the obligations of each Guarantor under the Guaranty at any time shall be limited to the maximum amount as will result in the obligations of such Guarantor under the Guaranty not constituting a fraudulent transfer or conveyance.

(H) Right of Contribution. Each Subsidiary Guarantor hereby agrees that to the extent that a Subsidiary Guarantor shall have paid more than its proportionate share of any payment made hereunder in respect of the Obligations of such Guarantor under the Guaranty contained in this Section 10, such Subsidiary Guarantor shall be entitled to seek and receive contribution from and against any other applicable Subsidiary Guarantor hereunder which has not paid its proportionate share of such payment in respect of the Obligations of such Guarantor under the Guaranty contained in this Section 10. Each Subsidiary Guarantor's right of contribution shall be subject to the terms and conditions of Section 10.9(E). The provisions of this Section 10.9 shall in no respect limit the obligations and liabilities of any Subsidiary Guarantor to the Secured Parties, and each Subsidiary Guarantor shall remain liable to the Secured Parties, for the full amount guaranteed by such Subsidiary Guarantor hereunder.

10.10. Enforcement. Upon the occurrence and during the continuance of any Event of Default, Agent may, and upon written request of the Requisite Purchasers shall, without notice to or demand upon any Note Party or any other Person, declare any obligations of such Guarantor hereunder immediately due and payable, and shall be entitled to enforce the obligations of each Guarantor. Upon such declaration by Agent, and subject to Section 9.5, Agent and the other Secured Parties are hereby authorized at any time and from time to time to set-off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by Agent or the other Secured Parties to or for the credit or the account of any Guarantor against any and all of the obligations of each Guarantor now or hereafter existing hereunder, whether or not Agent or the other Secured Parties shall have made any demand hereunder against any other Note Party and although such obligations may be contingent and unmatured. The rights of Agent and the other Secured Parties hereunder are in addition to other rights and remedies (including other rights of set-off) which Agent and the other Secured Parties may have. Upon such declaration by Agent, with respect to any claims (other than those claims referred to in the immediately preceding paragraph) of any Guarantor against any Note Party (the "Claims"), Agent shall have the full right on the part of Agent in its own name or in the name of such Guarantor to collect and enforce such Claims by legal action, proof of debt in bankruptcy or other liquidation proceedings, vote in any proceeding for the arrangement of debts at any time proposed, or otherwise, Agent and each of its officers being hereby irrevocably constituted attorneys-in-fact for each Guarantor for the purpose of such enforcement and for the purpose of endorsing in the name of each Guarantor any instrument for the payment of money. Upon such declaration by Agent, each Guarantor will receive as trustee for Agent and will pay to Agent forthwith upon receipt thereof any amounts which such Guarantor may receive from any Note Party on account of the Claims. Each Guarantor agrees that no payment on account of the Claims or any security interest therein shall be created, received, accepted or retained during the continuance of any Event of Default nor shall any financing statement be filed with respect thereto by any Guarantor.

10.11. Statute of Limitations. Any acknowledgment or new promise, whether by payment of principal or interest or otherwise and whether by any Note Party or others with respect to any of the Obligations shall, if the statute of limitations in favor of any Guarantor against Agent or the Purchasers shall have commenced to run, toll the running of such statute of limitations and, if the period of such statute of limitations shall have expired, prevent the operation of such statute of limitations.

10.12. Interest. All amounts due, owing and unpaid from time to time by any Guarantor hereunder shall bear interest at the interest rate per annum then chargeable with respect to the Notes.

10.13. Acknowledgement. Each Guarantor acknowledges receipt of a copy of each of this Agreement and the other Note Documents. Each Guarantor has made an independent investigation of the Note Parties and of the financial condition of the Note Parties. Neither Agent nor any other Secured Party has made and neither Agent nor any other Secured Party does make any representations or warranties as to the income, expense, operation, finances or any other matter or thing affecting any Note Party nor has Agent or any other Secured Party made any representations or warranties as to the amount or nature of the Obligations of any Note Party to which this Section 10 applies as specifically herein set forth, nor has Agent or any other Secured Party or any officer, agent or employee of Agent or any other Secured Party or any representative thereof, made any other oral representations, agreements or commitments of any kind or nature, and each Guarantor hereby expressly acknowledges that no such representations or warranties have been made and such Guarantor expressly disclaims reliance on any such representations or warranties.

10.14. Continuing Effectiveness. The provisions of this Section 10 shall remain in effect until the payment in full in cash of all Obligations (other than contingent indemnification obligations to the extent no claims giving rise thereto have been asserted by the Person entitled thereto) and shall be subject to reinstatement as set forth in Section 10.9. Payments received from Guarantors pursuant to this Section 10 shall be applied in accordance with Section 8.7.

SECTION 11. MISCELLANEOUS

11.1. Expenses and Attorneys' Fees. Whether or not the transactions contemplated hereby shall be consummated, each Note Party agrees to promptly pay all reasonable and documented: (a) fees, costs and expenses incurred by Agent and the Purchasers (including reasonable attorneys' fees and expenses) in connection with the examination, review, due diligence investigation, documentation and closing of the financing arrangements evidenced by the Note Documents; (b) fees, costs and expenses incurred by Agent and the Purchasers (including reasonable attorneys' fees and expenses) incurred in connection with the review, negotiation, preparation, documentation, execution and administration of the Note Documents, the Notes, and any amendments, waivers, consents, forbearances and other modifications relating thereto or any subordination or intercreditor agreements, including reasonable documentation charges assessed by Agent and the Purchasers for amendments, waivers, consents and any other related documentation; (c) fees, costs and expenses (including reasonable attorneys' fees and expenses) incurred by Agent and any Purchaser in creating, perfecting and maintaining perfection of Liens in favor of Agent, on behalf of Agent and Secured Parties; (d) fees, costs and expenses incurred by Agent in connection with forwarding to the Borrower the proceeds of the Notes including Agent's or any Purchasers' standard wire transfer fee; (e) fees, costs, expenses and bank charges, including bank charges for returned checks, incurred by Agent and any Purchaser in establishing, maintaining and handling lock box accounts, blocked accounts or other accounts for collection of the Collateral; and (f) fees, costs, expenses (including reasonable attorneys' fees and expenses) of Agent and any Purchaser and costs of settlement incurred in collecting upon or enforcing rights against the Collateral or incurred in any action to enforce this Agreement or the other Note Documents or to collect any payments due from the Borrower or any other Note Party under this Agreement or any other Note Document or incurred in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement, whether in the nature of a "workout" or in connection with any insolvency or bankruptcy proceedings or otherwise. All such fees, costs and expenses shall be part of the Obligations, payable on demand and secured by the Collateral.

11.2. Indemnity. In addition to the payment of expenses pursuant to Section 11.1, whether or not the transactions contemplated hereby shall be consummated, each Note Party agrees to indemnify, pay and hold Agent, each Purchaser, and the officers, directors, employees, agents, consultants, auditors, persons engaged by Agent or any Purchaser, to evaluate or monitor the Collateral, Affiliates and attorneys of Agent, each Purchaser and such holders (collectively called the "Indemnitees") harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for such Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnitee shall be designated a party thereto) that may be imposed on, incurred by, or asserted against that Indemnitee, in any manner relating to or arising out of this Agreement or the other Note Documents, the consummation of the transactions contemplated by this Agreement, the statements contained in the commitment letters, if any, delivered by Agent or any Purchaser, Agent's and each Purchaser's agreement to purchase the Notes hereunder, the use or intended use of the proceeds of any of the Notes or the exercise of any right or remedy hereunder or under the other Note Documents, including, without limitation any actual or alleged presence or release of Hazardous Materials on or from any property owned, occupied or operated by the Borrower or any of its Subsidiaries, or any environmental liability related in any way to the Borrower or any of its Subsidiaries or any of their respective properties (the "Indemnified Liabilities"); provided that no Note Party shall have any obligation to any Indemnitee hereunder with respect to Indemnified Liabilities arising from the gross negligence or willful misconduct of that Indemnitee as determined by a final non-appealable judgment by a court of competent jurisdiction. For the avoidance of doubt, this Section 11.2 shall not apply with respect to Charges (which, solely for the purpose of this Section 11.2, shall include Excluded Taxes) other than Charges that represent losses, liabilities, damages, etc. with respect to indemnity payments on a non-Charge claim**.** Payments under this Section 11.2 shall be made by the Borrower to the Agent for the benefit of the relevant Indemnitee.

11.3. Notices. Unless otherwise specifically provided herein, all notices shall be in writing addressed to the respective party as set forth on Schedule 11.3 (or (i) with any respect to any Purchaser not party hereto on the Closing Date, in an Assignment and Assumption Agreement or in a notice to Agent and Borrower or (ii) to such other address as the party addressed shall have previously designated by written notice to the serving party, given in accordance with this Section 11.3) and may be personally served, faxed, sent by overnight courier service or United States mail, or, to the extent acceptable to the Agent, e-mail; and notices shall be deemed to have been given: (a) if delivered in person, when delivered; (b) if delivered by fax, upon sender's receipt of confirmation of proper transmission on the date of transmission if transmitted on a Business Day before 4:00 p.m. New York City time or, if not, on the next succeeding Business Day; (c) if delivered by overnight courier, two (2) days after delivery to such courier properly addressed; (d) if delivered by U.S. Mail, four (4) Business Days after depositing in the United States mail, with postage prepaid and properly addressed; or (e) if delivered by e-mail, upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement).

11.4. Survival of Representations and Warranties and Certain Agreements. All agreements, representations and warranties made herein shall survive the execution and delivery of this Agreement and the purchase of the Notes hereunder. Notwithstanding anything in this Agreement or implied by law to the contrary, the agreements of each Note Party, Agent, and Purchasers set forth in Sections 2.7, 9.1(E), 10.9(A), 10.9(D), 11.1, 11.2, 11.6, 11.13, 11.14, and 11.15 shall survive the payment of the Notes and the termination of this Agreement.

11.5. Indulgence Not Waiver. No failure or delay on the part of Agent, any Purchaser or any holder of any Note in the exercise of any power, right or privilege hereunder or under any Note shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege.

11.6. Marshaling; Payments Set Aside. Neither Agent nor any Purchaser shall be under any obligation to marshal any assets in favor of any Note Party or any other party or against or in payment of any or all of the Obligations. To the extent that any Note Party makes a payment or payments to Agent and/or any Purchaser or Agent and/or any Purchaser enforces its security interests or exercises its rights of set-off, and such payment or payments or the proceeds of such enforcement or set-off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state, provincial or federal law, common law or equitable cause, then to the extent of such recovery, the Obligations or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred.

11.7. Entire Agreement. This Agreement and the other Note Documents embody the entire agreement among the parties hereto and supersede all prior commitments, agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof, and may not be contradicted or varied by evidence of prior, contemporaneous, or subsequent oral agreements or discussions of the parties hereto.

11.8. Severability. The invalidity, illegality or unenforceability in any jurisdiction of any provision in or obligation under this Agreement or the other Note Documents shall not affect or impair the validity, legality or enforceability of the remaining provisions or obligations under this Agreement or the other Note Documents. In the event of any such invalidity, illegality, or unenforceability, the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

11.9. Purchasers' Obligations Several; Independent Nature of Purchasers' Rights. The obligation of each Purchaser hereunder is several and not joint and neither Agent nor any Purchaser shall be responsible for the obligation of any other Purchaser hereunder. Nothing contained in any Note Document and no action taken by Agent or any Purchaser pursuant hereto or thereto shall be deemed to constitute Purchasers to be a partnership, an association, a joint venture or any other kind of entity.

11.10. Headings. Section and subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

11.11. APPLICABLE LAW. THIS AGREEMENT AND THE OTHER NOTE DOCUMENTS SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK, EXCEPT TO THE EXTENT ANY SUCH OTHER NOTE DOCUMENT EXPRESSLY SELECTS THE LAW OF ANOTHER JURISDICTION AS GOVERNING LAW THEREOF, IN WHICH CASE THE LAW OF SUCH OTHER JURISDICTION SHALL GOVERN.

11.12. Successors and Assigns.

(A) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Note Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of Agent and each Purchaser. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the Indemnitees) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(B) Assignments by Purchasers. Any Purchaser may at any time assign to one or more Persons all or a portion of its rights and obligations under this Agreement (including all or a portion of its Notes at the time owing to it with the prior written consent of B. Riley. The parties to each assignment shall execute and deliver to Agent an Assignment and Assumption Agreement. The assignment shall have been recorded in the Register in accordance with paragraph (C) of this subsection.

Subject to acceptance and recording thereof by Agent pursuant to paragraph (C) of this subsection, from and after the effective date specified in each Assignment and Assumption Agreement, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption Agreement, have the rights and obligations of a Purchaser under this Agreement, and the assigning Purchaser thereunder shall, to the extent of the interest assigned by such Assignment and Assumption Agreement, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption Agreement covering all of the assigning Purchaser's rights and obligations under this Agreement, such Purchaser shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 11.1 and 11.2 with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Purchaser of rights or obligations under this Agreement that does not comply with this paragraph shall be null and void.

(C) Register. Agent, acting solely for this purpose as an agent of the Borrower, shall maintain a copy of each Assignment and Assumption Agreement delivered to it and a register for the recordation of the names and addresses of the Purchasers and principal amounts (and related interest amounts) of the Notes owing to, each Purchaser pursuant to the terms hereof from time to time (the "Register"). Notwithstanding anything to the contrary herein or in the Note Documents, the entries in the Register shall be conclusive absent manifest error, and each Note Party, Agent and the Purchasers shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Purchaser and the owner of the amounts owing to it under the Note Documents as reflected in the Register for all purposes of the Note Documents. The Register shall be available for inspection by the Borrower and any Purchaser, at any reasonable time and from time to time upon reasonable prior notice. This Section 11.12 shall be construed so that the Notes are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2), and 881(c)(2) of the IRC.

(D) Security Interests; Assignment to Affiliates. Notwithstanding any other provision set forth in this Agreement, any Purchaser may at any time following written notice to Agent pledge the Obligations held by it or create a security interest in all or any portion of its rights under this Agreement or the other Note Documents in favor of any Person; provided, however (a) no such pledge or grant of security interest to any Person shall release such Purchaser from its obligations hereunder or under any other Note Document and (b) the acquisition of title to such Purchaser's Obligations pursuant to any foreclosure or other exercise of remedies by such Person shall be subject to the provisions of this Agreement and the other Note Documents in all respects including, without limitation, any consent required by this Section 11.12.

11.13. No Fiduciary Relationship; No Duty; Limitation of Liabilities.

(A) No Fiduciary Relationship. No provision in this Agreement or in any of the other Note Documents and no course of dealing between the parties shall be deemed to create any fiduciary duty by Agent or any Purchaser to any Note Party.

(B) No Duty. All attorneys, accountants, appraisers, and other professional Persons and consultants retained by Agent or any Purchaser shall have the right to act exclusively in the interest of Agent or such Purchaser and shall have no duty of disclosure, duty of loyalty, duty of care, or other duty or obligation of any type or nature whatsoever to any Note Party or any of any Note Party's shareholders or any other Person.

(C) Limitation of Liabilities. Neither Agent nor any Purchaser, nor any Affiliate, officer, director, shareholder, employee, attorney, or agent of Agent or any Purchaser shall have any liability with respect to, and each Note Party hereby waives, releases, and agrees not to sue any of them upon, any claim for any special, indirect, incidental, or consequential damages suffered or incurred by each Note Party in connection with, arising out of, or in any way related to, this Agreement or any of the other Note Documents, or any of the transactions contemplated by this Agreement or any of the other Note Documents. Each Note Party hereby waives, releases, and agrees not to sue Agent or any Purchaser or any of Agent's or any Purchaser's Affiliates, officers, directors, employees, attorneys, or agents for punitive damages in respect of any claim in connection with, arising out of, or in any way related to, this Agreement or any of the other Note Documents, or any of the transactions contemplated by this Agreement or any of the transactions contemplated hereby.

11.14. CONSENT TO JURISDICTION. EACH NOTE PARTY, AGENT AND EACH PURCHASER HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF NEW YORK, STATE OF NEW YORK AND IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE OTHER NOTE DOCUMENTS SHALL BE LITIGATED IN SUCH COURTS; PROVIDED THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH NOTE PARTY, AGENT AND EACH PURCHASER EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. EACH NOTE PARTY, AGENT AND EACH PURCHASER HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON SUCH PERSON BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUCH PERSON, AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

11.15. WAIVER OF JURY TRIAL. EACH NOTE PARTY, AGENT AND EACH PURCHASER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT AND THE OTHER NOTE DOCUMENTS. EACH NOTE PARTY, AGENT AND EACH PURCHASER ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER NOTE DOCUMENTS AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH NOTE PARTY, AGENT AND EACH PURCHASER WARRANT AND REPRESENT THAT EACH HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

11.16. Construction. Each Note Party, Agent and each Purchaser each acknowledge that it has had the benefit of legal counsel of its own choice and has been afforded an opportunity to review this Agreement and the other Note Documents with its legal counsel. This Agreement and the other Note Documents shall be construed as if jointly drafted by Note Parties, Agent and each Purchaser.

11.17. Counterparts; Effectiveness. This Agreement and any amendments, waivers, consents, or supplements may be executed via facsimile or other electronic method of transmission in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all of which counterparts together shall constitute one and the same instrument. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto.

11.18. Confidentiality. Agent and each Purchaser agree to use commercially reasonable efforts to keep confidential any non-public information delivered pursuant to the Note Documents and identified as such by Note Parties and not to disclose such information to Persons other than to: its respective Affiliates, officers, directors and employees; or its potential assignees or financing sources (subject to an agreement containing provisions substantially the same as those of this Section 11.18); or Persons employed by or engaged by Agent, a Purchaser or a Purchaser's assignees, financing sources including, without limitation, attorneys, auditors, professional consultants, rating agencies, and portfolio management services (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential). The confidentiality provisions contained in this subsection shall not apply to disclosures (a) required to be made by Agent or any Purchaser to, or requested to be made by, any regulatory or governmental agency or pursuant to legal process, (b) to effect compliance with any law, rule, regulation or order applicable to the Agent or such Purchaser, (c) consisting of general portfolio information that does not identify any Note Party, (d) with the Borrower's prior written consent, (e) to the extent such information presently is or hereafter becomes (i) publicly available other than as a result of a breach of this Section 11.18 or (ii) available to Agent, Purchaser, or any of their respective Affiliates, officers, or directors, as the case may be, from a source (other than any Note Party) not known by them to be subject to disclosure restrictions, (f) to any other party hereto, and (g) in connection with the exercise or enforcement of any right or remedy under any Note Document, in connection with any litigation or other proceeding to which such Agent or Purchaser is a party or bound, or to the extent necessary to respond to public statements or disclosures by the Note Parties referring to Agent, a Purchaser, or any of their Affiliates, officers, or directors. The obligations of Agent and Purchasers under this Section 11.18 shall supersede and replace the obligations of Agent and Purchasers under any confidentiality agreement in respect of this financing executed and delivered by Agent or any Purchaser prior to the date hereof. In no event shall Agent or any Purchaser be obligated or required to return any materials furnished by Note Parties; provided, however, each potential assignee shall be required to agree that if it does not become an assignee it shall return all materials furnished to it by Note Parties in connection herewith.

Notwithstanding the foregoing, and notwithstanding any other express or implied agreement or understanding to the contrary, each of the parties hereto and their respective employees, representatives, and other agents are authorized to disclose the tax treatment and tax structure of these transactions to any and all persons, without limitation of any kind. Each of the parties hereto may disclose all materials of any kind (including opinions or other tax analyses) insofar as they relate to the tax treatment and tax structure of the transactions contemplated by the Note Documents. This authorization does not extend to disclosure of any other information including (without limitation) (a) the identities of participants or potential participants in the transactions; (b) the existence or status of any negotiations; (c) any pricing or other financial information; or (d) any other term or detail not related to the tax treatment and tax structure of the transactions contemplated by the Note Documents.

11.19. Publication. Each Note Party consents to the publication by Agent of a tombstone or similar advertising material relating to the financing transactions contemplated by this Agreement. Agent and Purchasers reserve the right to provide industry trade organizations information necessary and customary for inclusion in league table measurements.

11.20. USA PATRIOT Act Notice. Each Purchaser and Agent (for itself and not on behalf of any Purchaser) hereby notifies each Note Party that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies each Note Party and each of its Subsidiaries, which information includes the names and addresses of each Note Party and each of its Subsidiaries and other information that will allow such Purchaser or Agent, as applicable, to identify each Note Party and each of its Subsidiaries in accordance with the USA PATRIOT Act.

11.21. Agent for Service of Process. Each Note Party hereby appoints Borrower (the "Process Agent") as its agent to receive and forward on its behalf, and in respect of its property, service of any and all legal process, summons, notices and documents which may be served in any action or proceeding in the state courts sitting in the city of New York, New York, United States of America or the United States District Court for the Southern District of New York and agrees that (x) service in such manner shall, to the fullest extent permitted by law, be deemed effective service of process upon it in any such suit, action or proceeding and (y) the failure of the Process Agent to give any notice of any such service of process to it shall not impair or affect the validity of such service or, to the extent permitted by applicable law, the enforcement of any judgment based thereon. If for any reason such Process Agent shall cease to be available to act as such, each Note Party agrees to designate a new Process Agent in the city of New York (and notify the Agent of such designation), on the terms and for the purposes of this provision, provided, however, that the new Process Agent shall have accepted such designation in writing before the termination of the appointment of the prior Process Agent. Each Note Party further consents to the service of process or summons by certified or registered mail, postage prepaid, return receipt requested, directed to it at its address specified in Section 11.3 hereof. Nothing herein shall in any way be deemed to limit the ability of the Agent to serve legal process in any other manner permitted by applicable law or to obtain jurisdiction over any other Person in such other jurisdictions, and in such manner, as may be permitted by applicable law.

11.22. Purchase for Investment; ERISA.

(A) Each Purchaser, severally and not jointly, represents and warrants (i) that it has received all information necessary or appropriate to decide whether to acquire the Notes to be issued to it pursuant hereto, (ii) that it will acquire such Notes for its own account for investment and not for resale or distribution in any manner that would violate applicable securities laws, but without prejudice to its rights to dispose of such Notes or a portion thereof to a transferee or transferees, in accordance with such laws and Section 11.12 if at some future time it deems it advisable to do so, (iii) that it is an "accredited investor" as such term is defined in Regulation D of the Commission under the Securities Act and has such knowledge, skill and experience in business and financial matters, based on actual participation, that it is capable of evaluating the merits and risks of an investment in the Notes and the suitability thereof as an investment for such Purchaser, and can bear the economic risk of its investment in the Notes, and (iv) neither it nor anyone authorized by it to do so on its behalf (A) has directly or indirectly offered any beneficial interest or security (as defined in Section 2(a)(1) of the Securities Act) relating to the Notes for sale to, or solicited any offer to acquire any such interest or security from, or has sold any such interest or security to, any Person in violation of the registration provisions of the Securities Act, (B) has taken any action that would subject any such interest or security to the registration requirements of Section 5 thereof, or the registration or qualification provisions of any applicable blue sky or other securities law, and (C) will directly or indirectly make any such offer, solicitation or sale in violation of such registration provisions of the Securities Act, or the registration or qualification provisions of any applicable blue sky or other securities law. The acquisition of such Notes by each Purchaser at each Closing shall constitute its confirmation of the foregoing representations and warranties. Each Purchaser understands that such Notes are being sold to it in a transaction which is exempt from the registration requirements of the Securities Act, and that, in making the representations and warranties contained in Section 4.13, the Borrower is relying, to the extent applicable, upon such Purchaser's representations and warranties contained herein.

(B) Each Purchaser represents that at least one of the following statements is an accurate representation as to each source of funds (a "Source") used by such Purchaser to pay the purchase price of the Notes purchased by such Purchaser hereunder:

(1) the Source is an "insurance company general account" as defined in Section V(e) of Prohibited Transaction Exemption ("PTE") 95-60 (issued July 12, 1995) and, except as such Purchaser has disclosed to the Borrower in writing pursuant to this subsection (1), the amount of reserves and liabilities for the general account contract(s) held by or on behalf of any employee benefit plan or group of plans maintained by the same employer or employee organization do not exceed 10% of the total reserves and liabilities of the general account (exclusive of separate account liabilities) plus surplus as set forth in the NAIC Annual Statement filed with the state of domicile of the insurer; or

(2) the Source is a separate account of an insurance company maintained by such Purchaser in which an employee benefit plan (or its related trust) has an interest, which separate account is maintained solely in connection with its fixed contractual obligations under which the amounts payable, or credited, to such plan and to any participant or beneficiary of such plan (including any annuitant) are not affected in any manner by the investment performance of the separate account; or

(3) the Source is either (A) an insurance company pooled separate account, within the meaning of PTE 90-1 (issued January 29, 1990), or (B) a bank collective investment fund, within the meaning of the PTE 91-38 (issued July 12, 1991) and, except as such Purchaser has disclosed to the Borrower in writing pursuant to this subsection (3), no employee benefit plan or group of plans maintained by the same employer or employee organization beneficially owns more than 10% of all assets allocated to such pooled separate account or collective investment fund; or

(4) the Source constitutes assets of an "investment fund" (within the meaning of Part VI of PTE 84-14 (the "QPAM Exemption")) managed by a "qualified professional asset manager" or "QPAM" (within the meaning of Part VI of the QPAM Exemption), no employee benefit plan's assets that are managed by the QPAM in such investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Part VI(c)(1) of the QPAM Exemption) of such employer or by the same employee organization and managed by such QPAM, represent more than 20% of the total client assets managed by such QPAM, the conditions of Part I(c) and (g) of the QPAM Exemption are satisfied, neither the QPAM nor a person controlling or controlled by the QPAM maintains an ownership interest in the Borrower that would cause the QPAM and such Borrower to be "related" within the meaning of Part VI(h) of the QPAM Exemption and (i) the identity of such QPAM and (ii) the names of any employee benefit plans whose assets in the investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Part VI(c)(1) of the QPAM Exemption) of such employer or by the same employee organization, represent 10% or more of the assets of such investment fund, have been disclosed to the Borrower in writing pursuant to this clause (4); or

(5) the Source constitutes assets of a "plans(s) (within the meaning of Part IV(h) of PTE 96-23 (the "INHAM Exemption") managed by an "in-house asset manager" or "INHAM" (within the meaning of Part IV(a) of the INHAM Exemption), the conditions of Part I(a), (g) and (h) of the INHAM Exemption are satisfied, neither the INHAM nor a person controlling or controlled by the INHAM (applying the definition of "control" in Part IV(d)(3) of the INHAM Exemption) owns a 10% or more interest in the Companies and (A) the identity of such INHAM and (B) the name(s) of the employee benefit plan(s) whose assets constitute the Source have been disclosed to the Companies in writing pursuant to this Section 11.25(B)(5); or

(6) the Source is a governmental plan; or

(7) the Source is one or more employee benefit plans, or a separate account or trust fund comprised of one or more employee benefit plans, each of which has been identified to the Borrower in writing pursuant to this Section 11.25(B)(7); or

(8) the Source does not include assets of any employee benefit plan, other than a plan exempt from the coverage of ERISA.

As used in this Section 11.22, the terms "employee benefit plan", "governmental plan" and "separate account" shall have the respective meanings assigned to such terms in Section 3 of ERISA, and the term "QPAM Exemption" means PTE 84-14 (issued March 13, 1984, as amended).

[*Signature pages follow*]

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

NOTE PARTIES:

theMaven, Inc., as the Borrower

By: /s/ James C. Heckman
Name: James C. Heckman
Title: CEO

Maven Coalition, Inc., as a Guarantor

By: /s/ James C. Heckman
Name: James C. Heckman
Title: CEO

Say Media, Inc., as a Guarantor

By: /s/ James C. Heckman
Name: James C. Heckman
Title: CEO

HubPages, Inc., as a Guarantor

By: /s/ James C. Heckman
Name: James C. Heckman
Title: CEO

TST ACQUISITION CO, INC., as a Guarantor

By: /s/ James C. Heckman
Name: James C. Heckman
Title: CEO

AGENT AND PURCHASERS:

BRF Finance Co., LLC,
as Agent and a Purchaser

By: /s/ Bryant R. Riley
Name: Bryant R. Riley
Title: Chief Executive Officer

[Signature Page to Note Purchase Agreement]

Exhibit 10.4

NOTE

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR OTHER APPLICABLE SECURITIES LAW AND MAY NOT BE SOLD, ASSIGNED, PLEDGED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT COVERING THE TRANSFER OR PURSUANT TO AN EXEMPTION FROM REGISTRATION.

THE FOLLOWING INFORMATION IS SUPPLIED SOLELY FOR U.S. FEDERAL INCOME TAX PURPOSES. THIS NOTE MAY BE ISSUED WITH ORIGINAL ISSUE DISCOUNT (''OID'') WITHIN THE MEANING OF SECTION 1273 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE ''CODE''), AND THIS LEGEND IS REQUIRED BY TREASURY REGULATIONS PROMULGATED UNDER SECTION 1275(c) OF THE CODE.

HOLDERS MAY OBTAIN INFORMATION REGARDING THE AMOUNT OF OID (IF ANY), THE ISSUE PRICE, THE ISSUE DATE, AND THE YIELD TO MATURITY RELATING TO THE NOTES BY CONTACTING THE LEGAL DEPARTMENT AT THEMAVEN, INC., 1500 FOURT AVENUE, SUITE 200, SEATTLE, WA 98101, LEGAL@MAVEN.IO, OR AT (646) 732-4427.

THEMAVEN, INC.

12.00% Note due July 31, 2019

No. R-1
$20,000,000.00 June 10, 2019

THEMAVEN, INC., a Delaware corporation (the "Company"), for value received, hereby promises to pay to BRF FINANCE CO., LLC (the foregoing, and any successors or its registered assigns of this Note, "Holder"), the principal amount of TWENTY MILLION]= DOLLARS ($20,000,000) on the Maturity Date, with interest (computed on the basis of the actual number of days elapsed over a 360-day year) on the unpaid balance of such principal amount at the rates, on the dates and in the manner specified in the Note Purchase Agreement (as defined below); provided that in no event shall the amount payable by the Company as interest on this Note exceed the highest lawful rate permissible under any law applicable hereto. Payments of principal, premium, if any, and interest hereon shall be made in lawful money of the United States of America by the method and at the address for such purpose specified in the Note Purchase Agreement hereinafter referred to, and such payments shall be overdue for purposes hereof if not made on the originally scheduled date of payment therefor, without giving effect to any applicable grace period.

This Note is one of the Company's 12.00% Notes due July 31, 2019, issued pursuant to that certain Note Purchase Agreement dated June 10, 2019 (such agreement, as amended, modified and supplemented from time to time, the "Note Purchase Agreement") among, among others, the Company, the other Note Parties named therein, and the Purchasers named therein, and the holder hereof is entitled to the benefits of the Note Purchase Agreement and the other Note Documents referred to in the Note Purchase Agreement and may enforce the agreements contained therein and exercise the remedies provided for thereby or otherwise available in respect thereof, all in accordance with the terms thereof.

This Note is subject to prepayment only as specified in the Note Purchase Agreement.

Capitalized terms used herein without definition have the meanings ascribed to them in the Note Purchase Agreement.

This Note is in registered form and is transferable only by surrender hereof at the principal executive office of the Company as provided in the Note Purchase Agreement. This Note may not be transferred except in accordance with the provisions of the Note Purchase Agreement and any purported transfer in violation of the terms of the Note Purchase Agreement shall be null and void. The Company may treat the person in whose name this Note is registered on the Note register maintained at such office pursuant to the Note Purchase Agreement as the owner hereof for all purposes, and the Company shall not be affected by any notice to the contrary.

In case an Event of Default, as defined in the Note Purchase Agreement, shall occur and be continuing, the unpaid balance of the principal of this Note may be declared and become due and payable in the manner and with the effect provided in the Note Purchase Agreement.

The parties hereto, including the makers and all guarantors and endorsers of this Note, hereby waive presentment, demand, notice, protest and all other demands and notices in connection with the delivery, acceptance, performance or enforcement of this Note.

THIS NOTE SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Company has executed this Note as an instrument under seal as of the date first above written.

THEMAVEN, INC.

By: _____
Name:
Title:

[Signature Page to Note]

Exhibit 10.5

PLEDGE AND SECURITY AGREEMENT

dated as of June 10, 2019

among

THEMAVEN, INC.,

EACH OF THE OTHER GRANTORS FROM TIME TO TIME PARTY HERETO

and

BRF FINANCE CO., LLC,

as Agent

Table of Contents

This **PLEDGE AND SECURITY AGREEMENT**, dated as of June 10, 2019 (this "Agreement"), is entered into by and among THEMAVEN, INC., a Delaware corporation (the "Borrower"), CERTAIN DIRECT AND INDIRECT SUBSIDIARIES OF THE BORROWER FROM TIME TO TIME PARTY HERETO (the "Subsidiary Grantors" and, collectively with the Borrower, the "Grantors") and BRF FINANCE CO., LLC, as agent for the Purchasers (as herein defined) (in such capacity, together with its successors and assigns, the "Agent").

RECITALS:

WHEREAS, reference is made to that certain Note Purchase Agreement, dated as of the date hereof (as it may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Note Purchase Agreement") by and among the Borrower, the Guarantors (as defined therein) from time to time party thereto, the Purchasers named therein or which thereafter become a party thereto (each a "Purchaser" and collectively, the "Purchasers") and the Agent, pursuant to which the Agent and the Purchasers have agreed, subject to the terms and conditions contained therein, to provide certain financial accommodations to the Borrower.

In order to induce the Agent and the Purchasers to provide or continue to provide the financial accommodations described in the Note Purchase Agreement, Grantors have agreed to pledge and grant a security interest to the Agent for its benefit and for the ratable benefit of the other Secured Parties in the Collateral (as hereinafter defined);

NOW, THEREFORE, for value and in consideration of the premises and the agreements, provisions and covenants herein contained, each Grantor and the Agent agree as follows:

Section 1. Definitions and Interpretations.

1.1 General Definitions. In this Agreement, the following terms shall have the following meanings:

"Accounts" shall mean all "accounts" as such term is defined in Article 9 of the UCC, whether now owned or hereafter acquired, including all present and future rights of a Grantor to payment of a monetary obligation, whether or not earned by performance, which is not evidenced by Chattel Paper or an Instrument, (a) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (b) for services rendered or to be rendered, (c) for a secondary obligation incurred or to be incurred or (d) arising out of the use of a credit or charge card or information contained on or for use with such a card.

"Additional Grantors" shall have the meaning assigned in Section 5.2.

"Agent" shall have the meaning set forth in the preamble hereto, and shall include its successors and assigns.

"Agreement" shall have the meaning set forth in the preamble hereto.

"Bankruptcy Code" shall mean Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute.

"Borrower" and shall have the meaning set forth in the preamble hereto.

"Cash Proceeds" shall mean all Proceeds of any Collateral received by any Grantor consisting of cash and checks.

"Chattel Paper" shall mean all "chattel paper" as such term is defined in Article 9 of the UCC, including all "electronic chattel paper" and all "tangible chattel paper," as each such term is defined in Article 9 of the UCC.

"Closing Date" shall mean June 10, 2019.

"Collateral" has the meaning assigned to such term in Section 2.1.

"Collateral Support" shall mean all property (real or personal) assigned, hypothecated or otherwise securing any Collateral and shall include any security agreement or other agreement granting a lien or security interest in such real or personal property.

"Commercial Tort Claims" shall mean all "commercial tort claims" as such term is defined in Article 9 of the UCC asserted by any Grantor or in which any Grantor has any rights, including all commercial tort claims listed in Section 2(l) of the Perfection Certificate.

"Commodities Accounts" (i) shall mean all "commodity accounts" as such term is defined in Article 9 of the UCC and (ii) shall include all commodity accounts listed in Section 2(n) of the Perfection Certificate.

"Copyright Licenses" shall mean any and all agreements providing for the granting of any right in or to Copyrights (only if Grantor is a licensor or an exclusive licensee thereunder and in each case solely to the extent of such Grantor's interest), including each agreement referred to in Section 2(h) of the Perfection Certificate.

"Copyrights" shall mean all United States and foreign copyrights (including community designs), whether now or hereafter owned by or exclusively licensed to any Grantor, including copyrights in Software and databases, and all Mask Works (as defined under 17 U.S.C. 901 of the U.S. Copyright Act), whether registered or not registered, and, with respect to any and all of the foregoing: (i) all registrations and applications therefor, including registrations and applications referred to in Section 2(h) of the Perfection Certificate, (ii) all extensions and renewals thereof, (iii) all rights corresponding thereto throughout the world, (iv) all rights to sue for past, present and future infringements thereof, and (v) all Proceeds of the foregoing, including licenses, royalties, income, payments, claims, damages and proceeds of suit.

"Deposit Accounts" (i) shall mean all "deposit accounts" as such term is defined in Article 9 of the UCC and (ii) shall include all deposit accounts listed in Section 2(n) of the Perfection Certificate.

"Documents" shall mean all "documents" as such term is defined in Article 9 of the UCC.

"Equipment" shall mean all "equipment" as such term is defined in Article 9 of the UCC, and in any event, shall include (i) all machinery, equipment, furnishings, appliances, furniture, fixtures, tools and vehicles now or hereafter owned by any Grantor (in each case, regardless of whether characterized as equipment under the UCC) and (ii) any and all accessions, substitutions, replacements or additions of any of the foregoing, all parts thereof, wherever located, whether or not at any time of determination incorporated or installed therein or attached thereto, and all replacements therefor, together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto, wherever located, now or hereafter existing, including any fixtures.

"Excluded Assets" shall have the meaning given to such term in Section 2.2.

"General Intangibles" (i) shall mean all "general intangibles" as such term is defined in Article 9 of the UCC, including "payment intangibles" as such term is defined in Article 9 of the UCC, and (ii) shall include all interest rate or currency protection or hedging arrangements, all tax refunds, all licenses, permits, concessions and authorizations and all Intellectual Property (in each case, regardless of whether characterized as general intangibles under the UCC).

"Goods" (i) shall mean all "goods" as such term is defined in Article 9 of the UCC and (ii) shall include all Inventory and Equipment (in each case, regardless of whether characterized as goods under the UCC).

"Grantor" shall have the meaning set forth in the preamble hereto.

"Insolvency Proceeding" shall mean: (a) any voluntary or involuntary petition, case or proceeding under the Bankruptcy Code with respect to any Grantor; (b) any other voluntary or involuntary insolvency or bankruptcy petition, case or proceeding, or any similar petition, case or proceeding (including receiverships, liquidations, reorganizations or recapitalizations) under any applicable bankruptcy, insolvency or other similar law with respect to any Grantor or with respect to a material portion of its assets or the claims of its creditors; (c) the admission in writing by any Grantor of its inability to pay its debts generally as they become due; (d) any liquidation, dissolution, or winding up of any Grantor whether voluntary or involuntary and whether or not involving insolvency or bankruptcy; or (e) any assignment for the benefit of creditors or any other marshaling of assets and liabilities for creditors of any Grantor or other similar arrangement in respect of such Grantor's creditors generally.

"Instruments" shall mean all "instruments" as such term is defined in Article 9 of the UCC.

"Intellectual Property" shall mean, collectively, the Software, the Copyrights, the Copyright Licenses, the Patents, the Patent Licenses, the Trademarks, the Trademark Licenses, the Trade Secrets and the Trade Secret Licenses.

"Inventory" shall mean (i) all "inventory" as such term is defined in Article 9 of the UCC and (ii) (a) all goods held for sale or lease or to be furnished under contracts of service or so leased or furnished, all raw materials, work in process, finished goods, and materials used or consumed in the manufacture, packing, shipping, advertising, selling, leasing, furnishing or production of such inventory or otherwise used or consumed in any Grantor's business, (b) all goods in which any Grantor has an interest in mass or a joint or other interest or right of any kind, (c) all goods which are returned to or repossessed by any Grantor, (d) all computer programs embedded in any goods and (e) all accessions and products of the foregoing (in each case, regardless of whether characterized as inventory under the UCC).

"Investment Accounts" shall mean all Securities Accounts, Commodities Accounts and Deposit Accounts.

"Investment Related Property" shall mean (i) all "investment property" (as such term is defined in Article 9 of the UCC) and (ii) all Pledged Equity Interests, Pledged Debt, Investment Accounts and certificates of deposit (in each case, regardless of whether classified as investment property under the UCC).

"Joinder to Pledge and Security Agreement" shall mean a joinder agreement to this Agreement, which shall be in form and substance acceptable to the Agent in its discretion.

"Letter-of-Credit Right" shall mean "letter-of-credit right" as such term is defined in Article 9 of the UCC.

"Note Purchase Agreement" shall have the meaning set forth in the recitals hereto.

"Patent Licenses" shall mean all agreements providing for the granting of any right in or to Patents (only if a Grantor is a licensor or an exclusive licensee thereunder and solely to the extent of such Grantor's right).

"Patents" shall mean all patents (whether United States or foreign) in or to which any Grantor now has or hereafter has any right, title or interest therein and certificates of invention, or similar industrial property rights, and applications for any of the foregoing, including: (i) each patent and patent application listed in Section 2(i) of the Perfection Certificate, (ii) all reissues, divisions, continuations (including continuations in-part and improvements thereof), extensions, renewals, and reexaminations thereof, (iii) all rights corresponding thereto throughout the world, (iv) all inventions, discoveries, designs and improvements described therein, (v) all rights to sue for past, present and future infringements thereof, (vi) all licenses, claims, damages, and proceeds of suit arising therefrom, and (vii) all Proceeds of the foregoing, including licenses, royalties, income, payments, claims, damages, and proceeds of suit.

"Perfection Certificate" shall mean the Perfection Certificate delivered on the Closing Date by the Grantors to the Agent.

"Pledge Supplement" shall mean any supplement to this Agreement relating to Pledged Equity Interests acquired by the Grantors after the date hereof, which shall be in form and substance acceptable to the Agent in its discretion.

"Pledged Debt" shall mean all indebtedness owed to a Grantor, including all indebtedness described in Section 2(k) of the Perfection Certificate, issued by the obligors named therein, the instruments evidencing such indebtedness, and all interest, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such indebtedness.

"Pledged Equity Interests" shall mean all Pledged Stock, Pledged LLC Interests, Pledged Partnership Interests, Pledged Trust Interests and all other ownership interests owned by any Grantor in any Person and all rights and privileges of any Grantor with respect to any of the foregoing.

"Pledged LLC Interests" shall mean all interests in any limited liability company owned by a Grantor, including all limited liability company interests listed in Section 2(j) of the Perfection Certificate, and all certificates, if any, representing such limited liability company interests and any interest of a Grantor on the books and records of such limited liability company or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such limited liability company interests.

"Pledged Partnership Interests" shall mean all interests in any general partnership, limited partnership, limited liability partnership or other partnership owned by a Grantor, including all partnership interests listed in Section 2(j) of the Perfection Certificate, and all certificates, if any, representing such partnership interests and any interest of a Grantor on the books and records of such partnership or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such partnership interests.

"Pledged Stock" shall mean all shares of capital stock owned by a Grantor, including all shares of capital stock listed in Section 2(j) of the Perfection Certificate, and all certificates, if any, representing such shares and any interest of a Grantor in the entries on the books of the issuer of such shares or on the books of any securities intermediary pertaining to such shares, and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such shares.

"Pledged Trust Interests" shall mean all interests in a Delaware business trust or other trust owned (whether legally or beneficially) by a Grantor, including all trust interests listed in Section 2(j) of the Perfection Certificate, and all certificates, if any, representing such trust interests and any interest of a Grantor on the books and records of such trust or on the books and records of any securities intermediary pertaining to such interest and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such trust interests.

"Proceeds" shall mean all "proceeds" as such term is defined in Article 9 of the UCC and, in any event, shall also include (i) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to the Agent or any Grantor from time to time with respect to any of the Collateral, (ii) any and all payments (in any form whatsoever) made or due and payable to any Grantor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any Governmental Authority (or any Person acting on behalf of any Governmental Authority), (iii) payments or distributions made with respect to any Investment Related Property, (iv) whatever is receivable or received when Collateral or proceeds are sold, leased, licensed, exchanged, collected or otherwise disposed of, whether such disposition is voluntary or involuntary and (v) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

"Purchaser" shall have the meaning set forth in the recitals hereto.

"Receivables" shall mean all rights to payment, whether or not earned by performance, for goods or other property sold, leased, licensed, assigned or otherwise disposed of, or services rendered or to be rendered, including all such rights constituting or evidenced by any Account, Payment Intangible, Chattel Paper, Instrument, General Intangible or Investment Related Property, together with all of a Grantor's rights, if any, in any goods or other property giving rise to such right to payment and all Collateral Support and Supporting Obligations related thereto and all Receivables Records.

"Receivables Records" shall mean (i) all original copies of all documents, instruments or other writings or electronic records or other Records evidencing any Receivables, (ii) all books, correspondence, credit or other files, Records, ledger sheets or cards, invoices, and other papers relating to Receivables, including all tapes, cards, computer tapes, computer discs, computer runs, record keeping systems and other papers and documents relating to any Receivables, whether in the possession or under the control of a Grantor or any computer bureau or agent from time to time acting for a Grantor or otherwise, (iii) all evidences of the filing of financing statements and the registration of other instruments in connection therewith, and amendments, supplements or other modifications thereto, notices to other creditors or secured parties, and certificates, acknowledgments, or other writings, including lien search reports, from filing or other registration officers, (iv) all credit information, reports and memoranda relating thereto and (v) all other written or non-written forms of information related in any way to the foregoing or any Receivable.

"Record" shall have the meaning specified in Article 9 of the UCC.

"Secured Obligations" shall mean all the Obligations of each Grantor, including (i) any and all sums advanced by the Agent in order to preserve the Collateral or preserve its security interest in the Collateral and (ii) in the event of any proceeding for the collection or enforcement of any Obligations of each Grantor, after an Event of Default shall have occurred and be continuing, the reasonable expenses of retaking, holding, preparing for sale or lease, selling or otherwise disposing of or realizing on the Collateral, or of any exercise by the Agent of its rights hereunder, together with reasonable attorneys' fees and expenses and court costs; it being acknowledged and agreed that the "Secured Obligations" shall include extensions of credit or incurrence of indebtedness of the types described above, whether outstanding on the date of this Agreement or extended or incurred from time to time after the date of this Agreement.

"Securities" shall mean all "securities" as such term is defined in Article 8 of the UCC, any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

"Securities Accounts" (i) shall mean all "securities accounts" as such term is defined in Article 8 of the UCC and (ii) shall include all of the securities accounts listed in Section 2(n) of the Perfection Certificate.

"Software" shall mean computer programs, object code, source code and supporting documentation, including "software" as such term is defined in the UCC, and computer programs that may be construed as included in the definition of "goods" in the UCC, all licensed rights to the foregoing, and all media on which any such programs, code, documentation or associated data may be stored.

"Subsidiary Grantor" shall have the meaning set forth in the preamble hereto.

"Supporting Obligation" shall mean all "supporting obligations" as such term is defined in Article 9 of the UCC.

"Trade Secret Licenses" shall mean any and all agreements providing for the granting of any right in or to Trade Secrets (only if such Grantor is a licensor or an exclusive licensee thereunder and solely to the extent of such Grantor's rights).

"Trade Secrets" shall mean all trade secrets and all other confidential or proprietary information and know-how in which any Grantor now has or hereafter has any right, title or interest therein, whether or not any of the foregoing has been reduced to a writing or other tangible form, including all documents and things embodying, incorporating, or referring in any way to any of the foregoing, including: (i) any secretly held existing engineering or other data, information, production procedures and other know-how relating to the design manufacture, assembly, installation, use, operation, marketing, sale and/or servicing of any products or business of any Grantor worldwide, (ii) the right to sue for past, present and future misappropriation or other violation thereof and (iii) all Proceeds of the foregoing, including licenses, royalties, income, payments, claims, damages, and proceeds of suit.

"Trademark Licenses" shall mean any and all agreements providing for the granting of any right in or to Trademarks (only if such Grantor is a licensor or an exclusive licensee thereunder and solely to the extent of such Grantor's rights).

"Trademarks" shall mean all United States and foreign trademarks, trade names, corporate names, company names, business names, fictitious business names, Internet domain names, service marks, certification marks, collective marks, logos, trade dress, other source or business identifiers, designs and general intangibles of a like nature, and all registrations and applications for any of the foregoing in which any Grantor now has or hereafter has any right, title or interest, including: (i) the registrations and applications referred to in Section 2(g) of the Perfection Certificate, (ii) all extensions or renewals of any of the foregoing, (iii) all of the goodwill of the business connected with the use of and symbolized by the foregoing, (iv) the right to sue for past, present and future infringement or dilution of or unfair competition with any of the foregoing or for any injury to goodwill, and (v) all Proceeds of the foregoing, including licenses, royalties, income, payments, claims, damages, and proceeds of suit.

"United States" shall mean the United States of America.

1.2 Definitions; Interpretation. Capitalized terms used herein (including the preamble and recitals hereto) and not otherwise defined herein shall have the respective meanings ascribed thereto in the Note Purchase Agreement. Capitalized terms used herein (including the preamble and recitals hereto) and not otherwise defined herein or in the Note Purchase Agreement shall have the meanings ascribed thereto in the Uniform Commercial Code as in effect from time to time in the State of New York. References to "Sections," "Exhibits" and "Schedules" shall be to Sections, Exhibits and Schedules, as the case may be, of this Agreement unless otherwise specifically provided. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word "include" or "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. Unless the context requires otherwise, (i) any definition of or reference to this Agreement, any other Note Document or any other agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth in any Note Document), (ii) any references herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (iv) any reference to any law, including the UCC, shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such law and (v) the words "assets" and "property" shall be deemed to have the same meaning and to refer to all the tangible and intangible, whether real or personal (or mixed), assets and properties.

1.3 Perfection Certificate References. References to any Section of the Perfection Certificate hereunder shall refer to the Section in the Perfection Certificate on the Closing Date, as well as to any written supplement or modification to the information contained in such Section delivered to the Agent thereafter, including but not limited to, any amendment, supplement or modification effected by delivery of written notice pursuant to the terms of the Note Purchase Agreement, this Agreement or any Pledge Supplement, together with the applicable supplements to the Perfection Certificate, and the representations and warranties made in this Agreement shall be deemed to be qualified by the information contained in any such amendment, supplement or modification. Any representation made or deemed made with respect to a Schedule to the Perfection Certificate will be deemed to be made as of the Closing Date or as of the earlier of the (i) date on which the most recent updates to the Perfection Certificate were required to be provided to Agent pursuant to Section 13 hereof or the Note Purchase Agreement and (ii) date on which any such updates were actually provided to Agent.

Section 2. Grant of Security.

2.1 Grant of Security. Subject to Section 2.2(a), as security for the payment and performance in full of the Secured Obligations, each Grantor hereby grants to the Agent, and its successors and assigns, in each case for the benefit of the Secured Parties, a continuing lien on and security interest in all of such Grantor's right, title and interest in, to and under all tangible and intangible property and assets of such Grantor, in each case whether now or hereafter existing or in which any Grantor now has or hereafter acquires any right, title or interest and wherever the same may be located (all of which being hereinafter collectively referred to as the "Collateral"), including without limitation, the following:

(i) all Accounts;

(ii) all Goods, including Equipment and Fixtures;

(iii) all Inventory;

(iv) all Documents, Instruments and Chattel Paper;

(v) all Letter-of-Credit Rights;

(vi) all Investment Related Property;

(vii) all Intellectual Property;

(viii) all Commercial Tort Claims, including those described in Section 2(l) of the Perfection Certificate;

(ix) all General Intangibles;

(x) all money and all Deposit Accounts;

(xi) all Supporting Obligations;

(xii) all books and records relating to the Collateral;

(xiii) all Receivables; and

(xiv) all Proceeds and products of any of the foregoing and all accessions to, substitutions and replacements for any of the foregoing.

2.2 Certain Limited Exclusions.

(a) Notwithstanding anything herein to the contrary, in no event shall the term "Collateral" include or the liens and security interests granted under Section 2.1 attach to:

(i) any property or asset to the extent that the grant of a security interest in such property or asset is prohibited by any Applicable Law or requires a consent not obtained of any Governmental Authority pursuant to Applicable Law (other than, in each case, to the extent that any such prohibition or requirement would be rendered ineffective pursuant to the UCC of any relevant jurisdiction or any other Applicable Law (including Title 11 of the United States Code) or principles of equity and, other than any Receivables and Proceeds thereof, the assignment of which is expressly deemed effective under the UCC or other Applicable Law notwithstanding such prohibition or requirement);

(ii) any right, title or interest in any permit, lease, license, contract or agreement held by any Grantor or to which any Grantor is a party or any of its right, title or interest thereunder to the extent, but only to the extent, that such a grant would, under the terms of such permit, lease, license, contract or agreement, result in a breach of the terms of, or constitute a default under or result in the termination of or give rise to a right on the part of the parties thereto other than the Borrower and Subsidiaries of the Borrower to terminate, any permit, lease, license, contract or agreement held by any Grantor or to which such Grantor is a party (other than, in each case, to the extent that any such term would be rendered ineffective pursuant to the UCC of any relevant jurisdiction or any other Applicable Law (including Title 11 of the United States Code) or principles of equity and other than any Receivables and Proceeds thereof the assignment of which is expressly deemed effective under the UCC or other Applicable Law notwithstanding such term); provided, however, that immediately upon the ineffectiveness, lapse or termination of any such provision, such right, title or interest in such permit, lease, license, contract or agreement shall cease to be excluded from the Collateral under this Section 2.2(a)(ii);

(iii) any trademark or service mark consisting of an "intent to use" application until such time as an amendment to allege use in respect thereof has been accepted by the United States Patent and Trademark Office, at which time such trademark or service mark shall cease to be excluded from the Collateral under this Section 2.2(a)(iii) (the assets referred to in clauses (i) through (iii) above shall, subject to the proviso below, be collectively referred to as the "Excluded Assets");

provided that (A) Excluded Assets will not include any Proceeds, substitutions or replacements of any Excluded Assets referred to in clauses (i) through (iii) unless such Proceeds, substitutions or replacements would constitute Excluded Assets referred to in clauses (i) through (iii); and (B) if and when any property that would constitute Collateral but for the provisions of this Section 2.2(a) shall cease to be an Excluded Asset, such property shall automatically constitute Collateral and, without any further action, each applicable provision of this Agreement, including the grant of liens and security interests pursuant to Section 2.1, shall automatically apply to such property.

(b) Notwithstanding anything to the contrary in this Agreement, to the extent any provision of this Agreement or the Note Purchase Agreement excludes any assets from the scope of the Collateral, or from any requirement to take any action to perfect any security interest in favor of the Agent in any Collateral, the representations, warranties and covenants made by the Grantors in this Agreement or the Note Purchase Agreement with respect to the creation, perfection or priority (as applicable) of the security interest in the Collateral granted in favor of the Agent shall be deemed not to apply to such assets (if such asset is an Excluded Asset) or shall be deemed to be modified as appropriate to give effect to such exclusion, as applicable.

Section 3. Security for Obligations; Grantors Remain Liable.

3.1 Security for Secured Obligations. This Agreement secures, and the Collateral is collateral security for, the prompt and complete payment and performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including the interest and fees accruing during the pendency of any bankruptcy, insolvency, receivership, or other similar proceeding, regardless of whether allowed or allowable in such proceeding, and the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code (and any successor provision thereof)), of all Secured Obligations.

3.2 Continuing Liability Under Collateral. Notwithstanding anything herein to the contrary, (a) each Grantor shall remain liable for all obligations under the Collateral unless released from such obligations in accordance with the Note Documents and nothing contained herein is intended or shall be a delegation of duties to the Agent or any other Secured Party, (b) each Grantor shall remain liable under each of the agreements included in the Collateral, including any agreements relating to Pledged Partnership Interests or Pledged LLC Interests, to perform in all respects all of the obligations undertaken by it thereunder all in accordance with and pursuant to the terms and provisions thereof and neither the Agent nor any other Secured Party shall have any obligation or liability under any of such agreements by reason of or arising out of this Agreement or any other document related thereto nor shall the Agent nor any other Secured Party have any obligation to make any inquiry as to the nature or sufficiency of any payment received by it or have any obligation to take any action to collect or enforce any rights under any agreement included in the Collateral, including any agreements relating to Pledged Partnership Interests or Pledged LLC Interests and (c) the exercise by the Agent of any of its rights hereunder shall not release any Grantor from any of its duties or obligations under the contracts and agreements included in the Collateral.

Section 4. Representations and Warranties and Covenants.

4.1 Reserved.

4.2 Reserved.

4.3 Reserved.

4.4 Investment Related Property.

4.4.1 Investment Related Property Generally.

(a) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(i) in the event it acquires rights in any Pledged Equity Interests, Investment Accounts, or any Pledged Debt that is evidenced by a promissory note, Chattel Paper or any similar evidences of Indebtedness after the date hereof, it shall deliver to the Agent, within thirty (30) days of acquiring such rights, a completed Pledge Supplement together with all applicable supplements to Schedules thereto, reflecting such new Investment Related Property. Notwithstanding the foregoing, it is understood and agreed that the applicable security interest of the Agent shall attach to all Investment Related Property immediately upon any Grantor's acquisition of rights therein and shall not be affected by the failure of any Grantor to deliver a Pledge Supplement as required hereby;

(ii) except as provided in the next sentence, in the event such Grantor receives any dividends, interest or distributions on any Investment Related Property, or any securities or other property upon the merger, consolidation, liquidation or dissolution of any issuer of any Investment Related Property, then (A) such dividends, interest or distributions and securities or other property shall be included in the definition of Collateral without further action and (B) such Grantor shall promptly take all steps reasonably necessary or otherwise reasonably requested by the Agent to ensure the validity, perfection and priority of the security interest purported to be granted hereby to the Agent in such Investment Related Property, and the control of the Agent over such Investment Related Property (including delivery thereof to the Agent), and pending any such action such Grantor shall be deemed to hold such dividends, interest, distributions, securities or other property in trust for the benefit of the Agent and shall segregate such dividends, distributions, Securities or other property from all other property of such Grantor. Notwithstanding the foregoing, so long as no Event of Default shall have occurred and be continuing and the Agent has not instructed the Grantors in writing otherwise, the Agent authorizes each Grantor to retain all cash dividends and distributions and all payments of interest; and

(iii) each Grantor consents to the grant by each other Grantor of a security interest in all Investment Related Property to the Agent.

(b) Delivery and Control. Each Grantor agrees that (i) with respect to (A) any Investment Related Property in a Subsidiary and (B) any Investment Related Property in any issuer that is not a Subsidiary with an individual value in excess of $250,000, in each case, in which it currently has rights, it shall comply with the provisions of this Section 4.4.1(b) on or before the Closing Date and (ii) with respect to (A) any Investment Related Property in a Subsidiary and (B) any Investment Related Property in any issuer that is not a Subsidiary with an individual value in excess of $250,000, in each case, hereafter acquired by such Grantor it shall comply with the provisions of this Section 4.4.1(b) within the later of (x) thirty (30) days after the Closing Date and (y) thirty (30) days of acquiring rights therein. With respect to any such Investment Related Property that is represented by a certificate or that is an "instrument" (other than any Investment Related Property credited to a Securities Account) it shall cause such certificate or instrument to be delivered to the Agent, indorsed in blank by an "effective indorsement" (as defined in Section 8-107 of the UCC), regardless of whether such certificate constitutes a "certificated security" for purposes of the UCC.

(c) Voting and Distributions.

(i) So long as no Event of Default shall have occurred and be continuing:

(1) except as otherwise provided under the covenants and agreements relating to Investment Related Property in this Agreement or the Note Purchase Agreement, each Grantor shall be entitled to exercise or refrain from exercising any and all voting and other consensual rights pertaining to the Investment Related Property or any part thereof for any purpose not inconsistent with the terms of this Agreement or the Note Purchase Agreement;

(2) at the sole cost and expense of the Grantors, the Agent shall promptly execute and deliver (or cause to be executed and delivered) to each Grantor all proxies, and other instruments as such Grantor may from time to time reasonably request in writing for the purpose of enabling such Grantor to exercise the voting and other consensual rights when and to the extent which it is entitled to exercise pursuant to clause (1) above; and

(3) each Grantor shall be entitled to receive and retain all dividends and distributions and all payments of interest with respect to any Investment Related Property.

(ii) Upon notice from the Agent to the Grantors that their rights under this Section 4.4.1 are being suspended upon the occurrence and during the continuance of an Event of Default (which notice may be provided contemporaneously with the suspension of such rights, and provided that no such notice shall be required in the case of an Event of Default under subsections 8.1(G) or (H) of the Note Purchase Agreement):

(1) all rights of each Grantor to exercise or refrain from exercising the voting and other consensual rights which it would otherwise be entitled to exercise pursuant hereto shall cease and all such rights shall thereupon become vested in the Agent who shall thereupon have the right to exercise such voting and other consensual rights;

(2) all rights of each Grantor to receive dividends, interest, distributions, Securities or other property that such Grantor is authorized to receive pursuant to paragraph (c)(i)(3) of this Section 4.4.1 shall cease, and all such rights shall thereupon become vested in the Agent who shall have the sole and exclusive right and authority to receive and retain such dividends, interest or distribution. Each Grantor shall be deemed to hold any such dividends, interest, distributions, securities or other property received during such period in trust for the benefit of the Agent and shall segregate such dividends, distributions, Securities or other property from all other property of such Grantor. Any and all monies and other property paid over to or received by the Agent pursuant to the provisions of this paragraph shall be retained by the Agent in an account to be established by the Agent and shall be applied in accordance with the provisions of Section 7.2(a); and

(3) (A) each Grantor shall promptly execute and deliver (or cause to be executed and delivered) to the Agent all proxies, dividend payment orders and other instruments as shall be necessary to permit the Agent to exercise the voting and other consensual rights which it may be entitled to exercise pursuant hereto and to receive all dividends and other distributions which it may be entitled to receive hereunder and (B) each Grantor acknowledges that the Agent (acting at the direction of the Requisite Purchasers) may utilize the power of attorney set forth in Section 6.1.

4.4.2 Pledged Equity Interests.

(a) Representations and Warranties. Each Grantor hereby represents and warrants that:

(i) Section 2(j) of the Perfection Certificate sets forth all of the Pledged Stock, Pledged LLC Interests, Pledged Partnership Interests and Pledged Trust Interests owned by any Grantor and such Pledged Equity Interests constitute the percentage of issued and outstanding shares of stock, percentage of membership interests, percentage of partnership interests or percentage of beneficial interest of the respective issuers thereof indicated in such Section, all of which is true, accurate and complete as of the Closing Date;

(ii) except as set forth in Sections 1(d) and 1(f) of the Perfection Certificate, it has not acquired any majority equity interests of another entity or substantially all the assets of another entity within the five (5) years prior to the Closing Date;

(iii) it is the record and beneficial owner of the Pledged Equity Interests described in Section 2(j) of the Perfection Certificate as held by it, free of all Liens, rights or claims of other Persons other than Permitted Encumbrances and there are no outstanding warrants, options or other rights to purchase, or shareholder, voting trust or similar agreements outstanding with respect to, or property that is convertible into, or that requires the issuance or sale of, any Pledged Equity Interests;

(iv) no material consent of any Person, including any other general or limited partner, any other member of a limited liability company, any other shareholder or any other trust beneficiary, is necessary in connection with the creation or perfection (subject to Permitted Encumbrances) of the security interest of the Agent in any Pledged Equity Interests or the exercise by the Agent of the voting or other rights provided for in this Agreement or the exercise of remedies in respect thereof;

(v) except as otherwise set forth in Section 2(j) of the Perfection Certificate, none of the Pledged LLC Interests nor Pledged Partnership Interests issued by any Grantor or any Subsidiary thereof are or represent interests in issuers that (a) are registered as investment companies within the meaning of the Investment Company Act of 1940 or (b) are dealt in or traded on securities exchanges or markets; and

(vi) all of the Pledged Equity Interests existing on the date hereof have been, and to the extent any Pledged Equity Interests are hereafter issued, such Pledged Equity Interests will be, upon such issuance, duly authorized, validly issued and fully paid and non-assessable to the extent applicable.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(i) Reserved;

(ii) Reserved; and

(iii) it consents to the grant by each other Grantor of a security interest in all Investment Related Property to the Agent and, without limiting the foregoing, following the occurrence and during the continuation of an Event of Default and consents to (x) the transfer of any Pledged Partnership Interest and any Pledged LLC Interest to the Agent or its nominee and (y) the substitution of the Agent or its nominee as a partner in any partnership or as a member in any limited liability company with all the rights and powers related thereto.

4.4.3 Reserved.

4.4.4 Investment Accounts.

(a) Representations and Warranties. Each Grantor hereby represents and warrants that, on the Closing Date:

(i) Section 2(n) of the Perfection Certificate sets forth all of the Securities Accounts and Commodities Accounts in which each Grantor has an interest as of the Closing Date. Each Grantor is the sole entitlement holder of each such Securities Account and Commodities Account, and such Grantor has not consented to, and is not otherwise aware of, any Person (other than the Agent pursuant to this Agreement and the securities intermediary or commodities intermediary, as applicable, to the extent such securities intermediary or commodities intermediary is deemed to have "control" under Applicable Law) having "control" (within the meanings of Sections 8-106 and 9-106 of the UCC) over, or any other interest in, any such Securities Account or Commodities Account or securities or other property credited thereto;

(ii) Section 2(n) of the Perfection Certificate sets forth all of the Deposit Accounts in which each Grantor has an interest as of the Closing Date. Each Grantor is the sole account holder of each such Deposit Account and such Grantor has not consented to, and is not otherwise aware of, any Person (other than Agent pursuant to this Agreement and the applicable depository bank to the extent such depository bank is deemed to have "control" under Applicable Law) having either sole dominion and control (within the meaning of common law) or "control" (within the meanings of Section 9-104 of the UCC) over, or any other interest in, any such Deposit Account or any money or other property deposited therein; and

(iii) each Grantor has taken all actions reasonably requested by the Agent, including those specified in Section 4.4.1(b), to, within the time frames set forth herein, (A) establish the Agent's "control" (within the meanings of Sections 8-106 and 9-106 of the UCC) over any portion of (x) the Investment Related Property in a Subsidiary and (y) the Investment Related Property in any issuer that is not a Subsidiary with an individual value in excess of $250,000, in each case, constituting "certificated securities" (as defined in the UCC) and (B) deliver all Instruments with an individual value in excess of $250,000 to the Agent.

4.5 Reserved.

4.6 Intellectual Property.

(a) Representations and Warranties. Except as disclosed in Sections 2(g), 2(h) or 2(i) of the Perfection Certificate, each Grantor hereby represents and warrants that:

(i) Sections 2(g), 2(h) and 2(i) of the Perfection Certificate set forth a true and complete list of (x) all registered Trademarks, registered Copyrights and registered Patents and all applications to register any of the foregoing owned by each Grantor and (y) all exclusive Copyright Licenses material to any line of business of the Grantors as of the Closing Date;

(ii) it is the sole owner of the entire right, title, and interest in and to all Intellectual Property listed in Sections 2(g), 2(h) and 2(i) of the Perfection Certificate that it purports to own and owns or has the valid right to use Intellectual Property used in or necessary to conduct its business, free and clear of all Liens (other than Permitted Encumbrances), except where failure to own or possess the right to use, individually or in the aggregate, has not had, and could not reasonably be expected to have, a Material Adverse Effect;

(iii) all Intellectual Property is subsisting and has not been adjudged invalid or unenforceable, in whole or in part, and each Grantor has performed all acts and has paid all renewal, maintenance, and other fees and taxes required to maintain each registration of and application for Copyrights, Patents and Trademarks in full force and effect, except where failure to maintain, individually or in the aggregate, has not had, and could not reasonably be expected to have, a Material Adverse Effect;

4.7 Commercial Tort Claims.

(a) Representations and Warranties. Each Grantor hereby represents and warrants, that, on the Closing Date, Section 2(l) of the Perfection Certificate sets forth all Commercial Tort Claims of each Grantor as of the Closing Date; and

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that with respect to any Commercial Tort Claim in excess of $250,000 individually, or $500,000 in the aggregate, hereafter arising it shall promptly and in no event later than fifteen (15) days of it acquiring rights in such Commercial Tort Claims deliver to the Agent a completed Pledge Supplement, together with all applicable supplements to Schedules thereto, identifying such new Commercial Tort Claims and granting to the Agent a security interest therein and in the Proceeds thereof.

Section 5. Further Assurances; Additional Grantors.

5.1 Further Assurances.

(a) Each Grantor agrees that from time to time, at the expense of such Grantor, it shall promptly execute and deliver all such instruments and documents, and take all such other action, that the Agent may reasonably request in order to create and/or maintain the validity, perfection or priority of any security interest granted hereby to the extent contemplated hereby, and it shall promptly execute and deliver all further instruments and documents, and take all further action, that the Agent may reasonably request in order to enable the Agent to exercise and enforce its rights and remedies hereunder or under any other Security Document with respect to any Collateral. Without limiting the generality of the foregoing, each Grantor shall:

(i) file such financing or continuation statements, or amendments thereto, as may be required, and execute and deliver such other agreements, instruments, endorsements, powers of attorney or notices as Agent may reasonably request, in order to perfect and preserve the security interests granted or purported to be granted hereby to the extent contemplated hereby; and

(ii) take all actions necessary to ensure the recordation of appropriate evidence of the liens and security interest granted hereunder in owned material United States Patents, Trademarks and Copyrights and Copyright Licenses in respect of which such Grantor is the exclusive licensee with the United States Patent and Trademark Office or the United States Copyright Office, as applicable, in which such Intellectual Property is registered or in which an application for registration is pending, including executing and filing a grant of security in the Intellectual Property in form and substance acceptable to the Agent, at the United States Patent and Trademark Office or the United States Copyright Office, as applicable;

provided, however, that notwithstanding anything to the contrary, the Agent shall have no obligation to make any request permitted by this Section 5.1(a) and shall have no liability to the Secured Parties in connection with any such request or its failure to make any such request.

(b) Each Grantor hereby authorizes, at such Grantor's expense, the Agent to file a Record or Records, including financing or continuation statements, and amendments thereto, in any jurisdictions and with any filing offices as Agent may determine, in its sole discretion, are necessary to perfect the security interest granted to the Agent herein. Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as Agent may determine, in its sole discretion, is necessary, advisable or prudent to ensure the perfection of the security interest in the Collateral granted to the Agent herein, including describing such property as "all assets" or "all personal property, whether now owned or hereafter acquired" or words of similar description.

5.2 Additional Grantors. From time to time subsequent to the date hereof, to the extent required by the Note Documents, additional Persons may become parties hereto as additional Grantors (each, an "Additional Grantor"), by executing a Joinder to Pledge and Security Agreement. Upon delivery of any such Joinder to Pledge and Security Agreement to the Agent, notice of which is hereby waived by the Grantors, each Additional Grantor shall be a Grantor and shall be as fully a party hereto as if such Additional Grantor were an original signatory hereto. Each Grantor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Grantor hereunder, nor by any election of the Agent not to cause any Subsidiary of the Borrower to become an Additional Grantor hereunder. This Agreement shall be fully effective as to any Grantor that is or becomes a party hereto regardless of whether any other Person becomes or fails to become or ceases to be a Grantor hereunder.

Section 6. Agent Appointed Attorney-In-Fact.

6.1 Power of Attorney. To the fullest extent permitted by law, each Grantor hereby irrevocably appoints the Agent (such appointment being coupled with an interest) as such Grantor's attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor, the Agent or otherwise, from time to time, upon the occurrence and during the continuance of an Event of Default (or at any time in the cases of Section 6.1(e) and 6.1(f)), to take any action and to execute any instrument that the Agent may deem reasonably necessary or advisable to accomplish the purposes of this Agreement and the other Note Documents, including the following:

(a) to obtain and adjust insurance required to be maintained by such Grantor or paid to the Agent pursuant to the Note Purchase Agreement;

(b) to ask for, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral;

(c) to receive, endorse and collect any drafts or other instruments, documents and chattel paper in connection with clause (b) above;

(d) to file any claims or take any action or institute any proceedings that the Agent may reasonably request for the collection of any of the Collateral or otherwise to enforce the rights of the Agent with respect to any of the Collateral;

(e) to prepare and file any UCC financing statements or continuations thereof, or amendments thereto, against such Grantor as debtor;

(f) to prepare, sign, and file for recordation in any intellectual property registry, appropriate evidence of the lien and security interest granted herein in the Intellectual Property in the name of such Grantor as debtor;

(g) to take or cause to be taken all actions necessary to perform or comply or cause performance or compliance with the terms of this Agreement, including actions to pay or discharge taxes or Liens (other than Permitted Encumbrances) levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by the Agent in its sole discretion, any such payments made by the Agent to become obligations of such Grantor to the Agent, due and payable immediately without demand; and

(h) generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Agent were the absolute owner thereof for all purposes, and to do, at the Agent's option and such Grantor's expense, at any time or from time to time, all acts and things that Agent deems reasonably necessary to protect, preserve or realize upon the Collateral and the Agent's security interest therein in order to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

6.2 No Duty on the Part of Agent or Secured Parties. The powers conferred on the Agent hereunder are solely to protect the interests of the Secured Parties in the Collateral and shall not impose any duty upon the Agent or any other Secured Party to exercise any such powers. The Agent and the other Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment).

Section 7. Remedies.

7.1 Generally.

(a) If any Event of Default shall have occurred and be continuing, the Agent (acting at the direction of the Requisite Purchasers) may (but shall not be obligated to) exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or the other Note Documents or otherwise available to it at law or in equity all the rights and remedies of the Agent on default under the UCC (whether or not the UCC applies to the affected Collateral) to collect, enforce or satisfy any Secured Obligations then owing, whether by acceleration or otherwise, and also may to the fullest extent permitted by Applicable Law pursue any of the following separately, successively or simultaneously:

(i) require any Grantor to, and each Grantor hereby agrees that it shall at its expense and promptly upon request of the Agent forthwith, assemble all or part of the Collateral as directed by the Agent and make it available to the Agent at a place to be designated by the Agent that is reasonably convenient to both parties;

(ii) without notice or demand or legal process, personally, or by agents or attorneys, enter onto the property where any Collateral is located and take possession thereof with or without judicial process;

(iii) prior to the disposition of the Collateral, store, process, repair or recondition the Collateral or otherwise prepare the Collateral for disposition in any manner to the extent the Agent deems appropriate and while the Collateral shall be so stored, provide such security and maintenance services as shall be commercially reasonable to protect the same and to preserve and maintain them in good condition;

(iv) without notice except as specified below or under the UCC, sell, assign, lease, license (on an exclusive or nonexclusive basis) or otherwise dispose of the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Agent's offices or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as the Agent may deem commercially reasonable; and

(v) apply any monies constituting Collateral or proceeds thereof in accordance with the provisions of Section 7.2.

(b) The Agent or any other Secured Party may be the purchaser of any or all of the Collateral at any public or private (to the extent the portion of the Collateral being privately sold is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations) sale in accordance with the UCC and the Agent, as agent for and representative of the Secured Parties, shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale made in accordance with the UCC, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any Collateral payable by the Agent at such sale. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the extent permitted by Applicable Law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Each Grantor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days' notice to such Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Agent (acting at the direction of the Requisite Purchasers) may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Grantor agrees that it would not be commercially unreasonable for the Agent to dispose of the Collateral or any portion thereof by using Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets. Each Grantor hereby waives (to the extent permitted by Applicable Law) any claims against the Agent arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if the Agent accepts the first offer received and does not offer such Collateral to more than one offeree. If the proceeds of any sale or other disposition of the Collateral are insufficient to pay all the Secured Obligations, the Grantors shall remain liable for the deficiency and the reasonable and documented fees of any attorneys employed by the Agent to collect such deficiency. Each Grantor agrees to do or cause to be done all such other acts and things as may be reasonably necessary to make such disposition or dispositions of all or any portion of the Collateral valid and binding and in compliance with any and all Applicable Laws, regulations, orders, writs, injunctions, decrees or awards of any and all courts, arbitrators or Governmental Authorities, domestic or foreign, having jurisdiction over any such sale or sales, all at such Grantor's expense. Each Grantor further agrees that a breach of any of the covenants contained in this Section will cause irreparable injury to the Agent, that the Agent has no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 7.1 shall be specifically enforceable against such Grantor, and such Grantor hereby waives (to the extent permitted by Applicable Law) and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no default has occurred giving rise to the Secured Obligations becoming due and payable prior to their stated maturities. Nothing in this Section shall in any way alter the rights of the Agent hereunder.

(c) The Agent may sell the Collateral without giving any warranties as to the Collateral. The Agent may specifically disclaim or modify any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(d) The Agent shall have no obligation to marshal any of the Collateral.

7.2 Application of Proceeds.

(a) Whether or not any Insolvency Proceeding has been commenced by or against any Grantor, all proceeds received by the Agent (or, to the extent any other Security Document requires proceeds of collateral thereunder, which would otherwise constitute Collateral, to be applied in accordance with the provisions of this Agreement, the pledgee, assignee, mortgagee or other corresponding party under such other Security Document) upon any sale, any collection from, or other realization upon all or any part of, the Collateral (whether or not expressly characterized as such), or in any Insolvency Proceeding, together with all other moneys received by the Agent hereunder (or, to the extent any other Security Document requires proceeds of collateral thereunder, which would otherwise constitute Collateral, to be applied in accordance with the provisions of this Agreement, the pledgee, assignee, mortgagee or other corresponding party under such other Security Document) with respect thereto, shall be applied in accordance with Section 8.6 of the Note Purchase Agreement.

(b) If, despite the provisions of this Agreement, any Secured Party shall receive any payment or other recovery in excess of its portion of payments on account of the Secured Obligations to which it is then entitled in accordance with this Agreement, such Secured Party shall hold such payment or other recovery in trust for the benefit of all Secured Parties hereunder to be applied in accordance Section 9.5(B) of the Note Purchase Agreement.

(c) It is understood that the Grantors shall remain jointly and severally liable to the extent of any deficiency between the amount of the proceeds of the Collateral and the aggregate amount of the Secured Obligations.

(d) It is understood and agreed by each Grantor and each Secured Party that the Agent shall have no liability for any determinations made by it in this Section 7.2, in each case except to the extent resulting from the gross negligence or willful misconduct of the Agent (as determined by a court of competent jurisdiction in a final and non-appealable decision). Each Grantor and each Secured Party also agrees that the Agent (acting at the direction of the Requisite Purchasers) may (but shall not be required to), at any time and in its sole discretion, and with no liability resulting therefrom, petition a court of competent jurisdiction at the Grantors' expense regarding any application of Collateral in accordance with the requirements hereof, and the Agent shall be entitled to wait for, and may conclusively rely on, any such determination.

7.3 Sales on Credit. If the Agent sells any of the Collateral upon credit, each Grantor will be credited only with payments actually made by purchaser and received by the Agent and applied to indebtedness of the purchaser. In the event the purchaser fails to pay for any Collateral, the Agent (acting at the direction of the Requisite Purchasers) may resell such Collateral and each Grantor shall be credited with proceeds of the sale.

7.4 Investment Related Property. Each Grantor recognizes that, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws, the Agent may be compelled, with respect to any sale of all or any part of the Investment Related Property conducted without prior registration or qualification of such Investment Related Property under the Securities Act and/or such state securities laws, to limit purchasers to those who will agree, among other things, to acquire the Investment Related Property for their own account, for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges that any such private sale may be at prices and on terms less favorable than those obtainable through a public sale without such restrictions (including a public offering made pursuant to a registration statement under the Securities Act) and, notwithstanding such circumstances, each Grantor agrees that any such private sale shall not be deemed to have been made in a commercially unreasonable manner solely as a result of it being a private sale, and that the Agent shall have no obligation to engage in public sales and no obligation to delay the sale of any Investment Related Property for the period of time necessary to permit the issuer thereof to register it for a form of public sale requiring registration under the Securities Act or under applicable state securities laws, even if such issuer would, or should, agree to so register it. If the Agent decides to exercise its right to sell any or all of the Investment Related Property, upon written request, each Grantor shall and shall cause each issuer of any Pledged Equity Interest to be sold hereunder, from time to time to furnish to the Agent all such information as Agent may reasonably request in order to determine the number and nature of interest, shares or other instruments included in the Investment Related Property which may be sold by the Agent in exempt transactions under the Securities Act and the rules and regulations of the Securities and Exchange Commission thereunder, as the same are from time to time in effect.

7.5 Intellectual Property.

(a) Anything contained herein to the contrary notwithstanding, upon the occurrence and during the continuation of an Event of Default:

(i) the Agent shall have the right (but not the obligation) to bring suit or otherwise commence any action or proceeding in the name of any Grantor, the Agent or otherwise, in the Agent's sole discretion, to enforce any Intellectual Property, in which event such Grantor shall, at the request of the Agent, do any and all lawful acts and execute any and all documents required by the Agent in aid of such enforcement and such Grantor shall promptly, upon demand, reimburse and indemnify the Agent as provided in the Note Purchase Agreement in connection with the exercise of its rights under this Section, and, to the extent that the Agent shall elect not to bring suit to enforce any Intellectual Property as provided in this Section 7.5, each Grantor agrees to use, in its reasonable business judgment, all reasonable measures, whether by action, suit, proceeding or otherwise, to prevent the infringement or other violation of any of such Grantor's rights in the Intellectual Property that is material to the business by others and for that purpose agrees to diligently maintain any action, suit or proceeding against any Person so infringing as shall be reasonably necessary to prevent such infringement or violation;

(ii) upon written demand from the Agent or exercise of its rights under Section 7.5(c)(ii), each Grantor shall grant, assign, convey or otherwise transfer to the Agent an absolute assignment of all of such Grantor's right, title and interest in and to the Intellectual Property and shall execute and deliver to the Agent such documents as are reasonably necessary or appropriate to carry out the intent and purposes of this Agreement;

(iii) the Agent shall have the right to notify, or require each Grantor to notify, any obligors with respect to amounts due or to become due to such Grantor in respect of the Intellectual Property, of the existence of the security interest created herein, to direct such obligors to make payment of all such amounts directly to the Agent, and, upon such notification and at the expense of such Grantor,

(1) to enforce collection of any such amounts and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done; and

(2) such Grantor shall not adjust, settle or compromise the amount or payment of any such amount or release wholly or partly any obligor with respect thereto or allow any credit or discount thereon; and

(iv) the Agent (acting at the direction of the Requisite Purchasers) may (but shall not be obligated to), by written notice to the relevant Grantor, take any or all of the following actions: (A) declare the entire right, title, and interest of such Grantor in the Intellectual Property vested in the Agent in order to collect, enforce, or satisfy the Secured Obligations, in which event such right, title, and interest shall immediately vest in the Agent for the benefit of the Secured Parties, in which case the Agent shall be entitled to exercise the power of attorney referred to in Section 7.5(c)(ii) hereof to execute, cause to be acknowledged and notarized and to record said absolute assignment with the applicable agency; (B) use or sell the Intellectual Property; (C) use or sell the goodwill of such Grantor's business symbolized by the Trademarks and the right to carry on the business and use the assets of such Grantor in connection with which the Trademarks have been used; and (D) direct such Grantor to refrain, in which event such Grantor shall refrain, from using the Intellectual Property directly or indirectly, and such Grantor shall execute such further documents as the Agent may reasonably request further to confirm this and to transfer ownership of the Intellectual Property and registrations and any pending applications in the United States Copyright Office, United States Patent and Trademark Office, equivalent office in a state of the United States or a foreign jurisdiction or applicable domain name registrar to the Agent for the benefit of the Secured Parties.

(b) If (i) an Event of Default shall have occurred and, by reason of cure, waiver, modification, amendment or otherwise, no longer be continuing, (ii) no other Event of Default shall have occurred and be continuing, (iii) an assignment or other transfer to the Agent of any rights, title and interests in and to the Intellectual Property shall have been previously made in accordance with the terms hereof and shall have become absolute and effective, and (iv) the Secured Obligations shall not have become immediately due and payable, upon the written request of any Grantor, the Agent shall promptly execute and deliver to such Grantor, at such Grantor's sole cost and expense, such assignments or other transfer as may be reasonably necessary to reassign to such Grantor any such rights, title and interests as may have been assigned to the Agent as aforesaid, subject to any disposition thereof that may have been made by the Agent; provided, after giving effect to such reassignment, the Agent's security interest granted pursuant hereto, as well as all other rights and remedies of the Agent granted hereunder, shall continue to be in full force and effect; and provided, further, the rights, title and interests so reassigned shall be free and clear of any other Liens granted by or on behalf of the Agent and the Secured Parties.

(c) Solely for the purpose of enabling the Agent to exercise rights and remedies under this Section 7 and at such time as the Agent shall be lawfully entitled to exercise such rights and remedies hereunder, each Grantor hereby grants to the Agent, to the extent it has the right to do so, (i) an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to such Grantor) (subject, in the case of Trademarks, to sufficient rights to quality control and inspection in favor of such Grantor to avoid the risk of invalidation of said Trademarks) to use, operate under, license, or sublicense any Intellectual Property now owned or hereafter acquired by such Grantor, and wherever the same may be located; and (ii) an absolute power of attorney to sign, upon the occurrence and during the continuation of an Event of Default, any document which may be required to effect any assignments or enforce any rights or obligations as provided for in this Section 7.

7.6 Cash Proceeds. In addition to the rights of the Agent specified in Section 4.3 with respect to payments of Receivables, if any Event of Default shall have occurred and be continuing, all proceeds of any Collateral received by any Grantor consisting of Cash Proceeds shall, upon demand by Agent, be held by such Grantor in trust for the Agent, segregated from other funds of such Grantor, and shall, forthwith upon receipt by such Grantor, unless such funds are deposited in a Deposit Account subject to a Control Agreement, be turned over to the Agent in the exact form received by such Grantor (duly indorsed by such Grantor to the Agent, if required) and held by the Agent. Any Cash Proceeds received by the Agent (whether from a Grantor or otherwise) if an Event of Default shall have occurred and be continuing, may, in the sole discretion of the Agent, (a) be held by the Agent for the benefit of the Secured Parties as collateral security for the Secured Obligations (whether matured or unmatured) and/or (b) then or at any time thereafter be applied by the Agent against the Secured Obligations then due and owing in accordance with Section 7.2(a).

Section 8. Continuing Security Interest. This Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect until the payment in full in cash of all the Secured Obligations (other than contingent obligations to the extent no claims giving rise thereto have been asserted by the Person entitled thereto), and be binding upon each Grantor, its successors and assigns, and inure, together with the rights and remedies of the Agent hereunder, to the benefit of the Agent and its successors, transferees and assigns.

Section 9. Termination or Release. This Agreement shall terminate (other than provisions hereof providing for indemnities and similar contingent obligations) and the security interests granted hereby shall be automatically released upon payment in full in cash of all the Secured Obligations (other than contingent obligations to the extent no claims giving rise thereto have been asserted by the Person entitled thereto). The Liens securing the Secured Obligations will be released, in whole or in part, as provided in Section 9.1(H) of the Note Purchase Agreement; provided, that this Agreement and the security interests granted hereby shall be reinstated and continue to be effective, if at any time any amount owed and paid to the Purchasers in respect of the Secured Obligations is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy dissolution, liquidation or reorganization of any Grantor or upon the appointment of any intervener or conservatory of, or trustee or similar official for, any Grantor or any substantial part of such Grantor's property, or otherwise, all as though such payments had not been made. The obligations of each Grantor contained in this Section 9 shall survive the termination hereof and the discharge of each such Grantor's obligations under this Agreement, the Note Purchase Agreement and the other Note Documents.

Section 10. Standard of Care; Agent May Perform. The powers conferred on the Agent hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Beyond the safe custody thereof, the Agent shall have no duty with respect to any Collateral or with respect to any income thereon or the preservation of rights against prior parties or any other rights pertaining thereto. The Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which the Agent accords its own property. Neither the Agent nor any of its directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon all or any part of the Collateral or any delay in doing so or for any diminution in the value thereof, by reason of the act or omission of any warehouse, carrier, forwarding agency, consignee, broker or other agent or bailee selected by any Grantor or selected by the Agent in good faith.

Section 11. Amendment; Waiver. Section 9.4(A) of the Note Purchase Agreement is hereby incorporated herein, *mutatis mutandis*, as if a part hereof.

Section 12. Miscellaneous. Any notice required or permitted to be given under this Agreement shall be given in accordance with Section 11.3 of the Note Purchase Agreement. No failure or delay on the part of the Agent in the exercise of any power, right or privilege hereunder or under any other Note Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement and the other Note Documents are cumulative to, and not exclusive of, any rights or remedies otherwise available. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. In the event that any provision hereunder directly conflicts with any express provision of the Note Purchase Agreement, the Note Purchase Agreement shall control. This Agreement shall be binding upon and inure to the benefit of the Agent, the Secured Parties and the Grantors and their respective successors and assigns. This Agreement and the other Note Documents embody the entire agreement and understanding between the Grantors and the Agent and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Note Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties. This Agreement may be executed in one or more counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Delivery of an executed signature page to this Agreement by facsimile, PDF or other electronic transmission shall be as effective as delivery of an original executed counterpart of this Agreement.

Section 13. APPLICABLE LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK.

[Signature Pages Follow]

IN WITNESS WHEREOF, each Grantor and the Agent have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

THEMAVEN, INC., as a Grantor

By: /s/ James C. Heckman
Name: James C. Heckman
Title: CEO

MAVEN COALITION, INC., as a Grantor

By: /s/ James C. Heckman
Name: James C. Heckman
Title: CEO

HUBPAGES, INC., as a Grantor

By: /s/ James C. Heckman
Name: James C. Heckman
Title: CEO

SAY MEDIA, INC., as a Grantor

By: /s/ James C. Heckman
Name: James C. Heckman
Title: CEO

TST ACQUISITION CO., INC., as a Grantor

By: /s/ James C. Heckman
Name: James C. Heckman
Title: CEO

BRF FINANCE CO., LLC, as the Agent

By: /s/ Bryant R. Riley
Name: Bryant R. Riley
Title: Chief Executive Officer

[Signature Page to Pledge and Security Agreement]

Exhibit 99.1

Maven to Acquire TheStreet

Third acquisition in 12 months, Maven continues drive to build leading tech and distribution platform for premium, independent media

NEW YORK, June 12, 2019 /BusinessWire/ -- Maven (TheMaven, Inc., OTC: MVEN, maven.io) announced TheStreet, Inc. (Nasdaq: TST, www.t.st) has agreed to be acquired by Maven. A subsidiary of Maven will acquire all of the outstanding common shares of TheStreet for $16.5 million in cash. The transaction is funded through debt financing fully committed by a subsidiary of B Riley Financial, Inc. (Nasdaq: RILY).

This marks Maven's third acquisition in the last year, advancing its ongoing mission to empower the growing coalition of independent media partners on Maven's digital distribution and monetization platform which today reaches more than 100 million consumers worldwide.

"This is an important milestone for Maven's growth strategy," said Maven CEO James Heckman. "The entire team at TheStreet have built a powerful and important voice delivering market-leading financial insights. By combining our reach, technology, platform and monetization capabilities, we can help amplify their amazing work."

Joining household brands such as History, Maxim, Yoga Journal, and Ski Magazine, TheStreet's acquisition is intended to boost Maven's growing finance network with recognized analysts, premium content, thousands of subscribers, and the industry branding power to facilitate better monetization and distribution for all maven partners.

TheStreet will form the core of a finance vertical that will combine with Maven's other strategic finance partners operating hyper-focused category destinations, such as long and short equities, bonds, commodities, crypto, macro, taxes, retirement, cybersecurity, and more. TheStreet brings its 20-year editorial tradition, strong subscription platform and valuable membership base to Maven, and will benefit from Maven's mobile-friendly CMS, social and monetization technology.

Eric Lundberg, CEO and CFO of TheStreet said, "We're excited to join the Maven family and its coalition of over 270 independent publishers. We've seen the power of the Maven platform and are pleased to bring new capabilities to our readers, and our great content to Maven's existing audience. Together, that kind of scale provides critical mass to propel our growth."

The combined companies are expected to profitably generate more than $50 million in revenue over the next four quarters. The transaction is expected to close in the third quarter.

About Maven

Maven (maven.io) is a coalition of Mavens, from individual thought-leaders to world-leading independent publishers, operating on a shared digital publishing, advertising, and distribution platform and unified under a single media brand. Based in Seattle, Maven is publicly traded under the ticker symbol MVEN.

About TheStreet, Inc.

TheStreet, Inc. (NASDAQ: TST, www.t.st) is a leading financial news and information provider to investors and institutions worldwide. The Company's flagship brand, TheStreet (www.thestreet.com), has produced unbiased business news and market analysis for individual investors for more than 20 years.

Notice Regarding Forward-Looking Statements

This press release contains forward-looking statements as that term is defined in the Private Securities Litigation Reform Act of 1995. These forward-looking statements include statements regarding planned investments in our business and expectations for 2019. Such forward-looking statements are subject to risks and uncertainties, including those described in the Company's filings with the Securities and Exchange Commission ("SEC") that could cause actual results to differ materially from those reflected in the forward-looking statements. Factors that might contribute to such differences include, among others, economic downturns and the general state of the economy, including the financial markets and mergers and acquisitions environment; our ability to drive revenue, and increase or retain current advertising and subscription revenue; our ability to develop new products; competition and other factors set forth in our filings with the SEC, which are available on the SEC's website at www.sec.gov. All forward-looking statements contained herein are made as of the date of this press release. Although the Company believes that the expectations reflected in the forward-looking statements are reasonable, the Company cannot guarantee future results or occurrences. The Company disclaims any obligation to update these forward-looking statements, whether as a result of new information, future developments or otherwise.

Contact: Doug Smith, Chief Financial Officer, theMaven, Inc., ir@maven.io